

Decision of the Board of Appeal: Annulment of the Opposition Division decision, the matter being referred back to it for reconsideration.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 7 October 2004 by Scandlines Sverige AB against the Commission of the European Communities

(Case T-399/04)

(2005/C 6/78)

(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 7 October 2004 by Scandlines Sverige AB, Helsingborg, Sweden, represented by C. Vajda QC and R. Azelius and K. Azelius, lawyers.

The applicant claims that the Court should:

- annul the Decision of the Commission of the European Communities, of 23 July 2004, rejecting the applicant's complaint of 2 July 1997;
- remit the case back to the Commission for re-examination of the complaint in the light of the Court's judgment;
- order the Commission to indemnify the applicant for the costs of these proceedings irrespective of the outcome.

Pleas in law and main arguments

The applicant is Swedish company whose main activity consists in being the port agent of a ferry-operator. The applicant filed a complaint with the Commission, against Helsingborgs Hamn AB (HHAB), a company responsible for running the port in Helsingborg in Sweden and for setting port charges. The applicant considered that HHAB charged the applicant excessive port charges, abusing its dominant position in breach of Article 82 EC. This complaint was rejected by the contested decision.

In support of its application the applicant contends that the Commission erred in concluding that port charges to ferry-operators were not excessive. According to the applicant the

Commission's cost/price analysis established that HHAB has been making returns, on its ferry business, of over 100 % the value of the equity employed in this business. The applicant argues that such returns cannot be achieved in a competitive market and are therefore excessive, unfair and abusive. It considers that in rejecting that conclusion the Commission misapplied the term 'economic value' and failed to apply the principle of proportionality or the correct burden of proof. It also contends that the Commission wrongly rejected the comparison between prices charged to ferry-operators and those charged to cargo-operators as well as the comparison between prices charged at Helsingborg and those charged at Elsinore, at the other end of the same route. The applicant also challenges the Commission's finding that there was no price discrimination in the meaning of Article 82 EC between ferry and cargo operators. According to the applicant, the Commission wrongly concluded that services provided by HHAB to those two branches are not equivalent and that there was no competitive disadvantage to the ferry operators.

The applicant further claims that the Commission's reasoning is wrong, inadequate and contradictory and for this reason violates Article 253 EC. It also invokes a breach of its right to be heard under Article 6 of Regulation 2842/98 and contends that the Commission failed to carry out a proper investigation within a reasonable time, thereby breaching Article 10 EC, Article 6 of the European Convention of Human Rights and the principle that the Commission must act within a reasonable time.

Action brought on 8 October 2004 by Nadine Schmit against the Commission of the European Communities

(Case T-419/04)

(2005/C 6/79)

(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 October 2004 by Nadine Schmit, residing in Ispra (Italy), represented by Pierre Paul Van Gehuchten and Pierre Jadoul, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the explicit rejection of 8 July 2004 of the applicant's complaint, the decision not to draw up an evaluation report for the period 2001-2002 and the authority's decision not to include her in the number of officials promoted to Grade C2 in the promotion year 2003;
- order the defendant to pay the applicant the sum of EUR 3 000 by way of compensation for her non-material damage;
- order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant, an official of the Commission, took sick leave in October 2002. She has received an invalidity pension since September 2003. It was on that basis that the appointing authority decided not to draw up a staff report for the applicant for the period 2001-2002. She therefore received no merit or priority points for the promotion year 2003 and her name was not included in the list of officials promoted to Grade C2.

The applicant challenges the decisions at issue, pleading infringement of Article 43 of the Staff Regulations and of the general provisions implementing that article (decision of the Commission of 26 April 2002) and of the principles of equal treatment and proper administration. In that context, the applicant claims that the Commission was not entitled, at the end of 2002 or at the beginning of 2003, to regard the applicant as an official less than a year away from retirement for whom there was no reason to draw up a staff report. Challenging the decision not to promote her to Grade C2, the applicant alleges breach of Article 45 of the Staff Regulations and of the principles of equal treatment and proper administration.

Action brought on 11 October 2004 by José Antonio Carreira against the European Agency for Safety and Health at Work

(Case T-421/04)

(2005/C 6/80)

(Language of the case: French)

An action against the European Agency for Safety and Health at Work was brought before the Court of First Instance of the European Communities on 11 October 2004 by José Antonio Carreira, residing in Brussels, represented by Georges Vander-sanden and Laure Levi, lawyers.

The applicant claims that the Court should:

- annul the Agency's decision awarding the applicant part only of the differential allowance mentioned in Article 7(2) of the Staff Regulations as a result of his being called upon to occupy a temporary posting between 13 January 2003 and 15 August 2004;
- order the defendant to pay the balance of the differential allowance payable under Article 7(2) of the Staff Regulations;
- order the defendant to pay all the costs.

Pleas in law and main arguments

The applicant in this case who, like the defendant's legal adviser, was called upon to occupy temporarily the duties of the Agency's head of administration, because the holder of that post was absent on sick leave, challenges the appointing authority's decision to divide the amount of the differential allowance between the two persons who filled the temporary posting. He responded to that decision by stating that he did not accept that he had worked part-time in replacing the head of administration and that, in consequence, he was entitled to the whole of the differential allowance in dispute.

In support of his claims, the applicant alleges infringement of Article 7(2) of the Staff Regulations, and breach of the principles of correspondence between the grade and the post, of non-discrimination and of proportionality.

He also considers that the duty to state the reasons on which an act is based was not complied with in the circumstances.

Action brought on 22 October 2004 by Walter Parlante against the Commission of the European Communities

(Case T-432/04)

(2005/C 6/81)

(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 22 October 2004, by Walter Parlante, residing in Enghien (Belgium), represented by L. Vogel, lawyer.