



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Third Chamber)

26 June 2013*

(Civil service — ECB Staff — Disciplinary proceedings — Disciplinary penalty — Written reprimand)

In Case F-106/11,

ACTION brought under Article 36.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the TEU and the TFEU,

BM, member of staff at the European Central Bank, residing in Frankfurt am Main (Germany), represented by L. Levi and M. Vandenbussche, lawyers,

applicant,

v

European Central Bank (ECB), represented initially by P. Embley, M. López Torres and E. Carlini, acting as Agents, and subsequently by M. López Torres and E. Carlini, acting as Agents, assisted by B. Wägenbaur, lawyer,

defendant,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

composed of S. Van Raepenbusch, President, R. Barents (Rapporteur) and K. Bradley, Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 26 September 2012,

gives the following

Judgment

- 1 By application lodged at the Tribunal Registry on 18 October 2011, BM, a member of the staff of the European Central Bank (ECB), brought the present action for, first, annulment of the decision of the Deputy Director General of the Human Resources, Budget and Organisation Directorate General (DG) ('the Human Resources DG') of 15 April 2011 imposing a written reprimand on him and, secondly, payment of the sum of EUR 10 000 by way of compensation for the non-material harm he suffered.

* Language of the case: English.

Legal context

- 2 Article 36 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, in the version applicable to these proceedings ('the Protocol on the Statute of the ESCB and of the ECB'), provides:

'36.1 The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2 The Court of Justice of the European Union shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.'

- 3 On the basis of Article 12.3 of the Protocol on the Statute of the ESCB and of the ECB, the Governing Council adopted, on 19 February 2004, the version of the Rules of Procedure of the ECB in force at the material time (OJ 2004 L 80, p. 33) ('the Rules of Procedure of the ECB').
- 4 On the basis of Article 36.1 of the Protocol on the Statute of the ESCB and of the ECB, the Governing Council of the ECB adopted the version of the Conditions of Employment of the staff of the ECB applicable to the proceedings ('the Conditions of Employment').
- 5 On the basis of Article 21.3 of the Rules of Procedure of the ECB and of Article 9(a) of the Conditions of Employment, the Executive Board adopted the version of the ECB Staff Rules in force at the material time ('the Staff Rules').
- 6 As provided in Article 21 of the Conditions of Employment:

'The ... allowances [referred to in the third part of the Conditions of Employment, namely the household allowance, the child allowance, the expatriation allowance, the education allowance and the pre-school allowance] are complementary to any other allowances of the same nature provided by other sources. Members of staff shall claim and declare such allowances, which shall be deducted from those payable by the ECB.'

- 7 Pursuant to Article 44 of the Conditions of Employment:

'The following disciplinary measures may be taken, as appropriate, against members of staff or former members of staff to whom these Conditions of Employment apply who, whether intentionally or through their negligence, breach their professional duties:

- (i) the Director General Human Resources, Budget and Organisation or their Deputy Director General (for members of staff in salary bands A to J), or the member of the Executive Board to whom the ['Human Resources' DG] reports (for members of staff in salary bands K to L), may impose any of the following:

- a written warning,
- a written reprimand;

- (ii) in addition, the Executive Board may impose any of the following:

- a temporary reduction in salary,
- a permanent reduction in salary,

- demotion with a corresponding change in the employment position of the member of staff within the organisation,
- dismissal with or without notice, accompanied, in duly justified circumstances, by a reduction of benefits under the pension arrangements as referred to in Part 7 [of these Conditions of Employment] or the disability allowance; the effects of this measure shall not extend to dependants. However, in case of such reduction the part withheld shall not be more than half of the benefits under the pension arrangements as referred to in Part 7 or the disability allowance,
- where a member of staff is in receipt of a retirement pension or disability allowance, withdrawal in whole or in part either temporarily or permanently of entitlement to a retirement pension or disability allowance; the effects of this measure shall not extend to dependants. In case of such reduction however, the part withheld shall not be more than half of the benefits under the pension arrangements as referred to in Part 7 or the disability allowance.'

8 Pursuant to Article 45 of the Conditions of Employment:

'Disciplinary measures shall be proportional to the seriousness of the breach of professional duties and shall state the grounds on which they are based. To determine the seriousness of the breach of professional duties and the disciplinary measure to be imposed, account shall be taken in particular of:

- the nature of the breach of professional duties and the circumstances in which it occurred,
- the extent to which the misconduct adversely affects the ECB's integrity, reputation or interests,
- the extent to which the misconduct involves intentional actions or negligence,
- the motives of the member of staff's breach of professional duties,
- the member of staff's grade and seniority,
- the degree of the member of staff's responsibility,
- whether the breach of professional duties involves repeated action or behaviour,
- the conduct of the member of staff throughout the course of their career.

Disciplinary measures shall be adopted in accordance with the procedure laid down in the Staff Rules. The said procedure shall ensure that no member of staff or former member of staff to whom these Conditions of Employment apply may be subjected to a disciplinary measure without first being offered an opportunity to reply to the relevant charges. A single case of breach of professional duties shall not give rise to more than one disciplinary measure.'

9 Under Article 0.1.1 of the Staff Rules:

'The conduct of members of staff shall neither hinder their independence and impartiality nor harm the ECB's reputation. Members of staff shall:

- (a) respect the ECB's common values and conduct themselves in their professional and private lives in a manner befitting the character of the ECB as a European institution;

...'

10 Under Article 0.4.3 of the Staff Rules:

'Members of staff shall behave loyally towards their colleagues. In particular, members of staff shall neither withhold from other members of staff information that may affect the conduct of business, particularly to gain a personal advantage, nor provide false, inaccurate or exaggerated information. Moreover, they shall not obstruct or refuse to cooperate with colleagues.'

11 Under Article 3.3.1 of the Staff Rules:

'Members of staff shall furnish evidence of their entitlement to allowances prior to any payment being made by the ECB.'

12 Under Article 3.3.2 of the Staff Rules:

'Members of staff shall inform the ECB without delay of any change in their circumstances that might affect their entitlements.'

13 Under Article 8.3.2 of the Staff Rules:

'On the basis of a report, which shall state the facts and the circumstances of the breach of professional duties, including any aggravating or extenuating circumstances and the underlying evidence, and the results of the hearing of the member of staff concerned after they have been notified of all evidence in the files, the Executive Board may decide any of the following:

- to initiate disciplinary proceedings for breach of professional duties,
- to inform the member of staff that no case can be made against them,
- not to impose a disciplinary measure, even if there is or appears to have been a breach of professional duties.

If the disciplinary measure likely to be imposed is a written warning or a written reprimand, the Director General Human Resources, Budget and Organisation or their Deputy Director General (for members of staff in salary bands A to J), or the member of the Executive Board to whom the Directorate General Human Resources, Budget and Organisation reports (for members of staff in salary bands K or L), may take any of the abovementioned decisions.

...'

14 Under Article 8.3.19 of the Staff Rules:

'The decision imposing a disciplinary measure shall be removed from the personal file of the member of staff after three years in case of a written warning, after five years in case of a written reprimand and after seven years in any other case.'

15 Administrative Circular No 1/2006 of the Executive Board of the ECB of 21 March 2006 on internal administrative inquiries ('Circular No 1/2006') provides, in Article 4(2):

'If the Director General [of the 'Human Resources' DG], the Director [of the Internal Audit DG] and the Director General [of the Secretariat and Language Service DG] confirm the need for an [internal] administrative inquiry, they shall immediately propose its initiation to the Executive Board.'

16 According to Article 4(4) of Circular No 1/2006:

‘Upon submission of the proposal according to paragraph 2 or facts according to Article 3(3), or where the Executive Board becomes aware of a possible breach of professional duties itself, and if the submitted facts and nature of evidence justify the application of this Administrative Circular, the Executive Board may decide to open an administrative inquiry.’

Factual background to the dispute

17 The applicant was recruited by the ECB on a two-year fixed term assignment on its Graduate Programme from 1 September 2007 to 31 August 2009. By letter of 31 July 2009, the ECB extended the applicant’s participation in that programme until 31 August 2010. The applicant was then offered a fixed term, non convertible contract of employment, issued on 3 August 2010, as an economist at the ‘Economics’ DG, from 1 September 2010 to 31 October 2011. This contract was subject to a probationary period of six months from its date of commencement.

18 In November 2010, following an internal audit concerning the payments process for child allowance, the ‘Human Resources’ DG reviewed the right of ECB staff members to child allowance. Eleven members of staff, including the applicant, stated that they also received child allowance from the German authorities (‘Kindergeld’). That allowance additionally received by the applicant since February 2009 and for a period of 23 months, in a total amount of EUR 4 012, was deducted in two parts from his salary for January and February 2011.

19 On 17 March 2011, the applicant was invited by email to a hearing, which took place on 24 March 2011, concerning a possible breach of his professional duty linked to the double receipt of child allowance.

20 Following a decision of 11 March 2011, the applicant was informed by letter dated 14 March 2011 and received on 22 March 2011 that, on account of the ongoing disciplinary procedure, the probationary period was being extended until 31 May 2011.

21 On 29 March 2011, the applicant was informed by letter that, first, disciplinary proceedings concerning the double receipt of child allowance had been initiated and that, secondly, he was invited to a hearing before Ms Z., the Deputy Director General of the ‘Human Resources’ DG, on 5 April 2011. Minutes of that meeting and of the meeting of 24 March 2011 are annexed to the ‘Report on a Possible Breach of Duty’ of 7 April 2011.

22 On 15 April 2011, the applicant received a letter from Ms Z., dated the same day, informing him that a written reprimand was to be imposed on him for breach of Article 21 of the Conditions of Employment and of Articles 0.1.1(a), 0.4.3, 3.3.1 and 3.3.2 of the Staff Rules (‘the contested decision’). Ms Z. also stated that the reprimand was necessary and at the same time sufficient and that she had taken into account the fact that, first, the child allowance had been paid without a formal application on the applicant’s part, secondly, that his conduct had been negligent but not intentional and that it did not constitute gross negligence and, thirdly, that he had admitted his error and apologised for it.

23 On 23 May 2011, the applicant received a letter dated 20 May 2011, informing him that the breach of his professional duty which had occurred during his probationary period was the ground for caused the decision of the competent member of the Executive Board of the ECB to ‘terminate his contract as of 31 October 2011’, the date of expiry of his contract (‘the decision of 20 May 2011’). The annulment of the decision of 20 May 2011 is the subject of Case F-78/11 (*BM v ECB*).

24 The special appeal lodged by the applicant on 14 June 2011 against the written reprimand was dismissed by the President of the ECB on 4 August 2011.

Forms of order sought by the parties and procedure

25 The applicant claims that the Tribunal should:

- annul the contested decision and, if necessary, the decision of 4 August 2011 dismissing the special appeal;
- order the compensation of the non-material harm he suffered, assessed at EUR 10 000;
- order the ECB to pay the entirety of the costs.

26 The ECB contends that the Tribunal should:

- dismiss the action;
- order the applicant to pay the costs.

27 By letter from the Registry of 27 March 2012, the Tribunal asked the ECB, in the context of measures of organisation of procedure, to reply to a question. The ECB complied with the Tribunal's request by letter dated 5 April 2012.

The claims for annulment

28 In support of his action, the applicant puts forward four pleas in law, alleging infringement, first, of Circular No 1/2006, second, of Article 44 of the Conditions of Employment and of Article 8.3.2 of the Staff Rules, third, of Article 45 of the Conditions of Employment, of the principle of proportionality and of the *non bis in idem* principle and, fourth, of the principles of the duty to have regard for the welfare of staff and sound administration.

The first plea, alleging infringement of Circular No 1/2006

Arguments of the parties

29 The applicant claims that the ECB did not comply with Article 4(2) and (4) of Circular No 1/2006, in so far as it did not open an administrative inquiry within the meaning of that circular, that is to say, before the disciplinary proceedings were initiated. Therefore, the administrative inquiry carried out by the ECB is unlawful, and, as a result, the contested decision is unlawful.

30 The ECB contends that this plea should be rejected. It explains that Article 45 of the Conditions of Employment clearly states that '[d]isciplinary measures shall be adopted in accordance with the procedure laid down in the Staff Rules', and not pursuant to Circular No 1/2006. The Staff Rules, for their part, do not refer to Circular No 1/2006 and no provision of that circular gives grounds for the contention that an administrative inquiry must precede the initiation of the disciplinary proceedings.

Findings of the Tribunal

31 In so far as no applicable provision, either in the Conditions of Employment or in the Staff Rules, or indeed in the Administrative Circular, provides that the initiation of disciplinary proceedings must be preceded by an administrative inquiry within the meaning of that circular, this plea must be rejected.

32 As the ECB has correctly observed, Article 45 of the Conditions of Employment states that '[d]isciplinary measures shall be adopted in accordance with the procedure laid down in the Staff Rules'. Those rules do not refer to Circular No 1/2006. Moreover, that circular does not provide that it is mandatory for an administrative inquiry to precede the disciplinary proceedings.

33 The first plea must therefore be rejected.

The second plea, alleging infringement of Article 44 of the Conditions of Employment and of Article 8.3.2 of the Staff Rules

Arguments of the parties

34 In the context of this plea, after having pointed out that under Article 44 of the Conditions of Employment the ECB is not required to impose a disciplinary penalty, the applicant submits that the contested decision is based on a manifest error in the assessment of the facts of the case and of the nature and the seriousness of the breach of his duties. In addition, the contested decision fails to take into account the ECB's own liability, which stems from the fact that it provided unclear information on the requirements as regards the award of child allowance.

35 According to the applicant, his error, which was not only committed negligently but was also made good in full once he had become aware of it and which consisted in having unintentionally and unwittingly validated incorrect information in the Personal and Dependents Details Form, could not result in an infringement of Articles 0.1.1(a) and 0.4.3 of the Staff Rules. As regards the infringement of Article 3.3.1 of those rules, the applicant observes that the ECB paid the child allowance, first, without his ever having filled in a form to that effect, secondly, without asking the applicant whether he was in receipt of any other similar allowance and, thirdly, without drawing his attention to the consequences of a double payment. The applicant adds that the reference to Article 3.3.2 of the Staff Rules in the contested decision is irrelevant in so far as the decision dismissing the special appeal concerns only the validation of incorrect information in the abovementioned form.

36 Next, the applicant observes that, in adopting the contested decision, the ECB did not take into account its own liability for having provided unclear information on the conditions for the grant of child allowance, as demonstrated, first, by the internal audit of November 2010, revealing flaws in the payments process for child allowance and recommending its alteration, secondly, by the fact that ten other members of staff replied in the affirmative to the investigations of the 'Human Resources' DG on the receipt of child allowance under the German legislation and, lastly, by the distribution in July 2011 of a completely new ECB form on child allowance.

37 The ECB maintains that the applicant, while describing his negligence as a mistake, would not however deny that he knew of the existence and the scope of the obligation to declare allowances, in so far as he received, when he took up office, a copy of the Conditions of Employment and of the Staff Rules, which are an integral part of the employment contract. The fact that he cooperated with the 'Human Resources' DG by reimbursing the sums improperly received, while making his apologies, in no way negates the fact that he did not comply with his professional duty.

38 Furthermore, the ECB points out that the application form for the payment of child allowance under German legislation requires the signature of a second person in addition to that of the person requesting the allowance, namely that of the applicant. Consequently, the applicant would indisputably have been aware of the receipt of family allowance under the German legislation. According to the ECB, the applicant does not indeed deny that the receipt of allowances of the same nature from another source entails the obligation to declare that source to the ECB. The applicant therefore did not make a straightforward mistake, but clearly breached his professional duty. Moreover, Article 21 of the Conditions of Employment does not merely require members of staff to

declare the receipt of allowances of the same nature, but instructs them also to take measures to request such allowances. It was therefore for the applicant to take the initiative to inform the ECB of changes which had occurred in his personal situation. Consequently, according to the ECB, the fact that the child allowance from the ECB was paid to him without his having applied for it did not exempt him from his professional duty towards the ECB.

- 39 The ECB observes, lastly, as regards the statement that it provided unclear information on the conditions for the grant of the child allowance, that the fact that it had to improve certain aspects of the provision of this information or the fact that other members of staff also failed to inform the ECB of the additional receipt of allowances of the same nature in no way released the applicant from his duty to the ECB to check and declare the allowances.

Findings of the Tribunal

- 40 First of all, the file clearly shows that the applicant admitted having received child allowance under the German legislation for a period of 23 months, and having validated in his Personal Details Form the incorrect information that he was not receiving any other allowances of the same nature as the child allowance. In his email of 7 January 2011, sent to the competent departments of the ECB, he stated that he had not complied with Article 21 of the Conditions of Employment. The applicant also admitted the acts of which he is accused and apologised for them, which is confirmed by the Report on a Possible Breach of Duty of 7 April 2011 and in his special appeal of 14 June 2011 against the contested decision. In the present application, the applicant states that he did not check whether his wife received child allowance under the German legislation and that he did not correctly inform the ECB in that regard. Lastly, the information at issue was not provided on the applicant's own initiative but only when the competent ECB departments expressly asked him for it.
- 41 The applicant's argument that the ECB committed a manifest error of assessment in imposing on him a disciplinary penalty for acts committed negligently and following which he had fully cooperated with the competent departments by providing complete and accurate information in order to enable the recovery of the sums improperly paid, is irrelevant. According to Article 44 of the Conditions of Employment, the disciplinary penalties listed there can be taken against members of staff who, intentionally or through their negligence, have breached their professional duty.
- 42 On the other hand, it is apparent from Article 45 of the Conditions of Employment that the issue of whether the person concerned has breached his professional duty intentionally or negligently concerns the proportionality between the disciplinary penalty and the seriousness of the alleged breaches and will be examined in the context of the third plea in law. Moreover, in the contested decision, the ECB acknowledged that the applicant had not acted intentionally and that he had cooperated in order to remedy the errors made.
- 43 The applicant's argument that the ECB paid the child allowance without asking him whether he was in receipt in addition of a similar allowance must be rejected pursuant to Article 21 of the Conditions of Employment. It is clear from that article that it is not for the ECB to seek information about the receipt of any allowances of the same nature, but for members of staff to declare that they are in receipt of such allowances from other sources.
- 44 The fact that the decision dismissing the special appeal concerned only the validation of incorrect or incomplete information in the abovementioned Personal Details Form is not such as to change the finding that the onus was on the applicant to inform the ECB. That argument is also based on a manifestly incorrect reading of that decision. At the end of the third paragraph of that decision, reference is made to Article 21 of the Conditions of Employment and to Articles 3.3.1 and 3.3.2 of the Staff Rules.

- 45 Lastly, the argument that the contested decision involves a failure by the ECB to take into account its own liability for having provided unclear information on the conditions for the grant of the child allowance, is irrelevant. The mere fact that the internal audit revealed that ten other members of the ECB's staff also received child allowance is of no importance in this connection. Next, the applicant has not challenged the ECB's statements, contained in the defence, concerning the information on this topic provided to every newly-recruited member of staff and also available on the ECB's intranet site. In any event, it is settled case-law that a member of staff exercising ordinary care is deemed to know the rules governing his remuneration (judgment of 1 February 1996 in Case T-122/95 *Chabert v Commission*, paragraph 32).
- 46 Having regard all the foregoing, the second plea must be rejected.

The third plea, alleging infringement of Article 45 of the Conditions of Employment, of the principle of proportionality and of the non bis in idem principle

Arguments of the parties

- 47 According to the applicant, the contested decision is manifestly disproportionate, in so far as it does not refer to all the criteria contained in Article 45 of the Conditions of Employment and wrongly assesses those taken into account. First of all, the decision disregards both the unintentional nature of the applicant's breach of his professional duty and the circumstances in which the error was made. Next, the contested decision does not take account of either the applicant's relatively low grade, his lack of seniority and his low level of responsibility, or his good performance. Lastly, the fact that the contested decision will be kept in the applicant's personal file for five years seriously harms his career. Since the ECB has recovered the sums improperly received and the applicant has apologised for his mistake, a written reprimand is, in those circumstances, excessive and disproportionate in relation to the objectives to be met in the interests of the service.
- 48 The applicant also submits that the disciplinary penalty is disproportionate in so far as his negligence has resulted in the termination of his contract, which leads to the same misconduct being punished twice. Accordingly, that penalty does not comply with the *non bis in idem* principle.
- 49 The ECB, on the other hand, considers that it has observed all the criteria set out in Article 45 of the Conditions of Employment, taking account of all the circumstances of the case and drawing attention to certain aggravating or extenuating circumstances which are of relevance. Furthermore, the examination of each case in the light of the essential factors did not prevent other specific circumstances being taken into account. The fact that the applicant fell short of the standard of the requirements imposed by the professional ethical framework had the effect of calling into question the relationship of trust between the applicant and the ECB and led it to impose a disciplinary penalty on him, proportional to the seriousness of his misconduct.
- 50 So far as concerns the infringement of the *non bis in idem* principle, the ECB takes the view that the termination of a contract during a probationary period is neither a disciplinary penalty nor another form of penalty. The mere fact that the reason for the termination coincided with the reason for a disciplinary penalty, such as a written reprimand, does not transform that measure into a disciplinary penalty.

Findings of the Tribunal

- 51 First of all, it is settled case-law that the application of the principle of proportionality in disciplinary matters has two aspects. First, it is for the appointing authority to choose the appropriate penalty where the truth of the matters alleged against the staff member is established, and it is not open to

the Courts of the European Union to criticise that choice unless the penalty imposed is disproportionate to the matters alleged against the person concerned. Second, the penalty to be imposed is to be determined on the basis of an overall assessment by the appointing authority of all the concrete facts and matters appertaining to each individual case, since, as regards members of staff at the ECB, its Conditions of Employment do not specify any fixed relationship between the disciplinary penalties listed by them and the various types of misconduct on the part of officials, and do not state the extent to which aggravating or extenuating circumstances are to be taken into account in the choice of penalty. Therefore, the Courts of the European Union are competent to examine all the issues of fact and of law relevant for the purposes of the dispute before it, which implies, in the case of a disciplinary penalty, that it has, inter alia, the power to assess the proportionality between the misconduct and the penalty (judgment of 15 May 2012 in Case T-184/11 P *Nijs v Court of Auditors*, paragraph 85).

- 52 On the basis of those principles, the Tribunal's review is therefore restricted to assessing whether the penalty imposed is disproportionate in relation to the acts of which the member of staff is accused and whether the ECB has weighed up in an appropriate manner the aggravating and extenuating circumstances.
- 53 In this connection, it is common ground that in the contested decision the ECB found, first, that the applicant had erred through negligence, secondly, that it was not a case of gross negligence, thirdly, that the applicant had not requested the payment of the child allowance and, fourthly, that he had apologised.
- 54 The argument relating to the grade, the seniority and the level of responsibility of the applicant cannot succeed. Even if it were to be accepted that the applicant was classified at a relatively low grade, the fact remains that he was deemed to know and comply with all his obligations to the ECB, including those concerning the grant of child allowance, as it was observed in paragraph 45 above.
- 55 Furthermore, it is apparent from the content of the contested decision that, first, the written reprimand was necessary and, at the same time, sufficient, and that, secondly, the ECB examined the relationship between the applicant's breach of his professional duty and the disciplinary penalty to be imposed. In this connection, the anonymised table of measures taken against other members of staff who had wrongly received child allowance from the ECB shows that the institution chose, subject to special circumstances, to issue a warning to persons who informed the administration on their own initiative and to issue a written reprimand to those who provided information only at the administration's request.
- 56 Lastly, in respect of the argument that the contested decision is retained in the applicant's personal file for five years, it is sufficient to point out that that consequence stems directly from Article 8.3.19 of the Staff Rules and that the applicant has not called into question the lawfulness of that provision.
- 57 In those circumstances, the argument that the ECB imposed a disciplinary penalty which was manifestly disproportionate in the light of the degree of seriousness of the applicant's breach of his professional duty cannot be upheld.
- 58 The applicant's argument that the ECB infringed the *non bis in idem* principle by terminating his contract on account of the written reprimand must be rejected. The termination of the applicant's contract, on 20 May 2011, took place after the disciplinary penalty, imposed on 15 April 2011. In addition, the decision to terminate the contract was annulled in Case F-78/11 (*BM v ECB*), also delivered today.
- 59 Therefore, the third plea is unfounded.

The fourth plea, alleging infringement of the principles of the duty to have regard for the welfare of staff and sound administration

Arguments of the parties

- 60 The applicant submits that, by failing to take into account its own liability as regards information on the scheme applicable to child allowance, the ECB failed to comply with the principle of sound administration. It also infringed its duty to have regard for the welfare of staff by imposing an unnecessary and superfluous penalty in so far as, first, as a result of the applicant's cooperative attitude, it recovered the amounts improperly received and, secondly, while the contested decision remains recorded in the applicant's file, the latter's chances of being recruited are seriously compromised.
- 61 The ECB takes the view that it is the very principle of sound administration which led it, on the basis of objective factors and criteria provided for in the Conditions of Employment, to impose a penalty on the applicant for what constitutes a flagrant example of breach of the professional duty set out in the Conditions of Employment and the Staff Rules.
- 62 The ECB adds that the duty to have regard for the welfare of staff does not in any way prevent it from imposing a disciplinary penalty and therefore does not create any immunity in the event of misconduct or a breach of duty for which disciplinary measures may be imposed. The applicant's conduct, marked by a wish to cooperate and by remorse, represents an extenuating circumstance of which the defendant took account, but this nevertheless does not change the fact that the applicant breached his professional duty.

Findings of the Tribunal

- 63 The argument relating to the infringement of the principle of the duty to have regard for the welfare of staff must be rejected. A member of staff who has breached his professional duty cannot rely on his good faith to avoid a disciplinary penalty (see judgment of 1 April 2004 in Case T-312/02 *Gussetti v Commission*, paragraph 106).
- 64 Nor can the infringement of the principle of sound administration be upheld since, as has already been stated at paragraph 45 above, the applicant was deemed to know the rules governing his remuneration and the fact that other members of staff also wrongly received that allowance is irrelevant in this respect.
- 65 It follows that the fourth plea is unfounded and that, consequently, all of the claims in support of annulment must be rejected.

The application for damages

Arguments of the parties

- 66 The applicant claims that the disciplinary measure, recorded in his personal file, adversely affects his professional reputation, his dignity and his integrity and his chances of being recruited in the next five years. He has consequently suffered non-material harm assessed at EUR 10 000.
- 67 The applicant also relies on the fact that the ECB committed a wrongful act giving rise to its liability since it did not clearly inform staff of the conditions for the grant of child allowance, which also caused him non-material harm.

68 The ECB contends in response that, having regard to the fact that the contested decision is not unlawful, there cannot be any non-material harm. The power to impose a penalty on a member of staff for breach of his professional duty cannot be restricted by the need to take account of the future career prospects of the person concerned.

Findings of the Tribunal

69 It is settled case-law that, where an application for damages is closely linked with an application for annulment, the rejection of the latter, either as inadmissible or as unfounded, also results in the rejection of the application for damages (see, to that effect, judgment of 30 September 2003 in Case T-214/02 *Martínez Valls v Parliament*, paragraph 43; judgments of 4 May 2010 in Case F-47/09 *Fries Guggenheim v Cedefop*, paragraph 119, and of 1 July 2010 in Case F-40/09 *Časta v Commission*, paragraph 94).

70 In the present case, the application for annulment has been rejected.

71 Consequently, the claim for damages must also be rejected as unfounded.

Costs

72 Under Article 87(1) of the Rules of Procedure, subject to the other provisions of Chapter 8 of Title 2 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), the Tribunal may, if equity so requires, decide that an unsuccessful party is to pay only part of the costs or even that that party is not to be ordered to pay any.

73 It follows from the reasoning set out above that the applicant has failed in his action. Furthermore, in its pleadings the ECB has expressly applied for the applicant to be ordered to pay the costs. Since the circumstances of the present case do not warrant application of the provisions of Article 87(2) of the Rules of Procedure, the applicant must bear his own costs and is ordered to pay the costs incurred by the ECB.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Third Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Declares that BM is to bear his own costs and orders him to pay the costs incurred by the European Central Bank.**

Van Raepenbusch

Barents

Bradley

Delivered in open court in Luxembourg on 26 June 2013.

W. Hakenberg
Registrar

S. Van Raepenbusch
President