JUDGMENT OF THE COURT (FIRST CHAMBER)
30 MAY 1984 [1]

Pierre Favre
v Commission of the European Communities

(Temporary employee — Dismissal)

Case 346/82

Officials — Assignment — Interest of the service — Principle governing administrative action — Scope
(Staff Regulations of Officials, Art. 7)

Article 7 of the Staff Regulations, according to which the competent authority must, as regards assignment by appointment or transfer, be guided solely by the interest of the service, expresses a principle which constitutes one of the guiding rules of administrative action whose application cannot be limited solely to the agreement of officials.

In Case 346/82

PIERRE FAVRE, a former temporary employee of the Commission of the European Communities, residing at 3 Rue Maurice-Barrès, Hettange-Grande, France, assisted and represented by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Biel, 18 A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by John Forman, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATION primarily for the annulment of the applicant's dismissal of 4 November 1982,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Mr Favre was engaged on 16 September 1981 as a temporary employee in Grade A 6, for an indefinite period "linked to the duration of the Nuclear Inspection Programme" and assigned to Directorate General XVIII (Energy) — Euratom Safeguards Directorate. The applicant was given a number of tasks set out in a memorandum sent to him on 27 October 1981 by Mr Bommelle and Mr Van der Stijl, his immediate superiors. The applicant was asked to submit a report by the following December containing his conclusions and proposals on the various matters mentioned in the said memorandum.

The report was not submitted within the required period and the applicant's head of division, Mr Bommelle, sent him a reminder on 27 January 1982.

On 29 January 1982, the applicant sent a memorandum of a little more than one page to Mr Van der Stijl, this being the result of his work during the preceding months. On the same day, he produced a second memorandum containing a

summary of a letter sent to the Directorate General for Energy by the British Department of Energy. On 10 March 1982, he submitted a memorandum to his superiors summarizing a course he had attended.

A draft report at the expiry of the probationary period, dated 5 April, was sent to Mr Favre on 23 April 1982 for his observations.

That report cast doubt on the applicant's sense of initiative and responsibility and also on his efficiency. It was stated that Mr Favre had shown little initiative during the probationary period, that regard had been had to his grade (A 6), above the basic grade in which he had been engaged, his sense of responsibility was unsatisfactory and the speed with which he did his work left much to be desired. Furthermore, it was pointed out that because of his minimal output, the quality of his work could not be judged. The general observations indicated that Mr Favre, who had been asked to study the Windscale reprocessing plant in the United Kingdom, had produced a two-page synthesis of that file, which must be regarded as totally insufficient. It also appeared that the applicant had been reminded orally on several occasions and twice in writing to finish the work he had been given, and the official responsible for training had drawn the attention of Mr Favre's superiors to the manifest lack of interest which Mr Favre had shown in the courses which he had attended.

In reply to that report, the applicant drafted a memorandum on 9 June 1982 in which he stated that it was incorrect to say that he had been reminded orally several times and twice in writing to finish the work which he had been given. The first and only oral reminder, before 23 April 1982, had been given in January 1982 and similarly the one and only written reminder was given a few days later. Furthermore, the applicant indicated his total disagreement with the criticisms made of him with regard to the quality and the speed of his work, his initiative and his sense of responsibility. He complained that he had been obliged to work alone without the help of his superiors, and that the file which he had been given was a sensitive one, on which there had been very little progress since the end of 1973. Moreover, Mr Favre was not cleared to see classified material until 15 March 1982 and thus, to have literally followed the work plan given to him on 27 October 1981 would have involved infringing the rules on the protection of such material.

By a memorandum of 24 August 1982, the applicant's head of division informed Mr Gmelin, director of Euratom Safeguards Directorate, that, in spite of his insistence, Mr Favre had not submitted the report which he had been asked to submit by July before his departure on leave.

In the same memorandum, it was stated that during the summer of 1982, the applicant had been on sick leave from 14 to 31 July and from 1 to 15 August and that he had therefore not done the work which he had been directed to do in a programme sent to him on 2 July 1982.

On 30 July 1982, the applicant was informed, by a letter from the Director General of Personnel and Administration that the latter had proposed that the appointing authority terminate his contract with effect from 2 November 1982. That letter was sent to Mr Favre with a

view to making it easier for him to find other employment.

By a memorandum of 19 August 1982 addressed to Mr Burke, the member of the Commission responsible for personnel matters, the Director General of Personnel and Administration proposed, on the basis of the opinion of the Directorate General for Energy, that the applicant be dismissed under the provisions of Article 47 (2) (a) of the Conditions of Employment of Other Servants.

The Luxembourg Staff Committee, to whom the applicant had referred his case, approached Mr Burke on 17 September 1982 and asked that the applicant be given a second chance. On 4 November 1982, Mr Burke decided to terminate the applicant's contract by notice beginning on 10 November and ending on 31 December 1982.

Mr Favre was informed of that decision by a letter of 4 November 1982, and he submitted a complaint against it which was registered on 26 November 1982 and rejected by a letter from Mr Burke of 3 February 1983.

The applicant brought these proceedings on 29 December 1982 and also applied for an interim order "to suspend the applicant's dismissal pending a decision on the substance of the case".

That application was dismissed by order of the President of the First Chamber of the Court dated 7 February 1983.

The written procedure then followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

In his application, the *applicant* claims that the Court should:

"Declare the application admissible with regard to the time-limit and with regard to its form;

Declare it well founded as regards the substance and therefore:

Annul the dismissal of 4 November 1982;

Remit the case to the appointing authority with a view to finding another solution and, in particular, with a view to a transfer to duties corresponding to the applicant's grade and scientific training;

Order the Commission to pay the costs in their entirety.

In the alternative:

Permit the applicant to prove by the evidence of witnesses that the dismissal was not in the interests of the service but was an abuse of powers or alternatively a misuse of powers."

In its defence, the *Commission* contends that the Court should:

Dismiss the application as unfounded;

Order the applicant to pay the costs.

In his reply, the *applicant* claims that the Court should:

"In the alternative, hear several witnesses, if necessary, to prove that his application is well founded; if necessary, summon as witnesses capable of providing information for the Court, Mr Bommelle and Mr Van der Stijl, Mr Favre's immediate superiors;

Furthermore, hear the following witnesses, who represented Mr Favre as members or representatives of the Staff Committee on 14 September 1982, for the purpose of giving Mr Burke the documents which were missing from the file and those which had not been communicated to him . . ." Here follow the names.

III — Submissions and arguments of the parties

1. In his application, the *applicant* contends in the first place that since he had been engaged for the duration of the Nuclear Inspection Programme, he was, during that period, assimilated to an official within the meaning of the Staff Regulations. On the other hand, his contract would have expired immediately and even without notice when that programme ended. In that sense, the case is not comparable to most of those dealing with other duties for an indefinite period (Case 25/80 *De Briey* [1981] ECR 637).

The applicant bases his first argument on the absence of grounds for the decision or, at least, the insufficient nature thereof. It would not appear that the statements made in the report at the end of the applicant's probationary period can be used against him. Moreover, no reference is made to them in the decision to dismiss him. The quality of the applicant's work could not be proved, since he never had a chance to present specific results, the file which he was given being too complicated to be dealt with in so short a time. On the other hand, the applicant repeats that the period of his employment was unconditionally linked to the duration of the Nuclear Inspection Programme.

The applicant's second submission is based on Article 7 of the Staff Regulations which provides that only the interest of the service can justify a dismissal. The recruitment of nuclear scientists would become impossible if such highly qualified specialists were offered no security of employment.

The third submission alleges misuse of powers. The appointing authority did not feel able to dismiss the applicant on the basis of the first notice of dismissal. As regards the second notice of dismissal, it is peremptory and contains no trace of the grounds on which it is based. The applicant claims "that Mr Gmelin and perhaps also Mr Director General Audland felt frustrated and diminished in their authority by the resistence of an employee who, on two occasions, had 'won' ". Under those conditions, the young "troublemaker" had to be got rid of, "on the proposal of the Director General for Energy", and without any further grounds being indicated.

The administration has not proved, specifically and in detail, the objective and reasonable grounds militating in favour of the termination of the appointment. It should have sought a post in which Mr Favre could have continued to serve, for example, by assigning him to Ispra. However, instead of seeking a reasonable solution, those in charge sacrificed a career which had been particularly brilliant in the past.

The applicant repeats what he had already put forward in the complaint through official channels, that is to say, that his dismissal constitutes an economically and socially irregular act. His dismissal is in effect a wrongful dismissal inasmuch as there is no good reason for it. It is for the appointing authority to prove that the applicant's

efficiency was not up to the standard of what could be expected of him. He states that if his efficiency was not what it should have been, that was for purely administrative reasons.

2. In its defence, the *Commission* contends in the first place, as regards the facts, that the applicant was recruited as a nuclear inspector, and that his contract of temporary employment, based on Article 2 (a) of the Conditions of Employment of Other Servants, could be terminated by means of the notice provided for in Article 47 (2) of the said conditions. Furthermore, it is incorrect to contend that the question of the Windscale reprocessing plant was particularly controversial or of a political nature. The applicant, who was assigned to the Euratom Safeguards Directorate, was given an exclusively technical study which he should have been able to carry out in view of the nature of his experience.

As regards the first submission, the Commission contends that the applicant's interpretation of his contract is unfounded, if for no other reason than that it contradicts the clear words of Article 47 (2) of the Conditions of Employment of Other Servants referred to in the contract, which lays down in precise terms the method whereby notice is to be calculated. Moreover, even though the Safeguards, Nuclear Inspection Programme constitutes one of the permanent tasks of the Commission, the considerable growth of work in this area has compelled the defendant to increase the number of nuclear inspectors, without however having available a sufficient number of posts for officials. On the other hand, the Commission has obtained from the Council, for a period of three years, a number of temporary posts to which several successful candidates from the competition in which Mr Favre took part have been recruited. Those posts have been approved only for a limited period, and it was thus necessary to indicate in the contracts that their duration could not exceed that for which they had been approved. Thus, the applicant clearly has a contract for an indefinite period, which might be terminated by notice and without any need to give reasons for the decision to dismiss him.

The statement of facts indicates that on various occasions the applicant was told of the reasons for which his work was considered unsatisfactory.

As regards the second submission, it appears from the documents before the Court that the applicant's superiors considered that his work was not of the standard which might be expected of an employee in Grade A 6, with responsibilities in the field of nuclear inspection. Thus, after careful reflection and after taking note of the observations submitted on several occasions by Mr Favre, his superiors reached the conclusion that it was not in the interest of the service that he should continue to be employed by the Commission. Moreover, the Commission contends that, according to the judgment in the *De Briey* case, in the case of dismissal for incompetence the Court may not review the basis on which that decision was arrived at,

except where a patent error or a misuse of power may be proved. In this case, the applicant has neither proved nor even alleged that the contested decision is vitiated by either a patent error or a misuse of power.

As regards the third submission, the defendant regrets that the applicant saw fit to implicate two officials, even though it is sufficiently clear from the documents produced that the disputed decision, which, moreover, was not taken by the said officials, was adopted after an objective consideration of all the elements of the case and after consultation with the applicant's immediate superiors. Furthermore, contrary to what the applicant states, misuse of power cannot be presumed: it is for the applicant to prove it. The fact that the applicant was not dismissed at the end of his probationary period is certainly not proof of such a misuse. On the contrary, that fact proves that the superior officers wished for time to consider the case before proposing that the appointing authority should take a decision which would have such serious consequences for the employee concerned. Furthermore, it is true that Mr Favre's theoretical knowledge has not been called in question. That fact, far from constituting evidence of any kind of misuse of power, proves rather that the applicant's superiors behaved in a clearly objective manner since the initiative, sense of responsibility, quantity and quality of the applicant's work were considered unsatisfactory in relation to the post which he held.

Finally, the defendant does not see how the dismissal could constitute "an economically and socially irregular act", since Article 47 (2) of the Conditions of Employment of Other Servants expressly provides for the possibility of terminating the contract of a temporary employee, concluded for an indefinite period, by means of notice.

3. In his reply, the *applicant* expresses his surprise at learning from the defence that his contract was for a period of three years only, since in all good faith he had relied upon the actual terms of the contract which expressly stated that it was valid as long as the Nuclear Inspection Programme remained in being, and this was linked to the continuance in force of the Treaty itself. Moreover, it would be surprising if it were true that a contract which could be terminated by notice did not have to state the grounds on which it was based. However, in the applicant's view, it is not disputed that the decision to dismiss him was definitive in Mr Gmelin's mind, even before the applicant's defence had been considered. As proof of this, he refers to the director's memorandum of 7 May 1982, according to which "the basis of the report will not be modified". The applicant also contends that it is not contested that the procedure in question was changed and the file was incomplete because it contained documents which, contrary to Article 26 of the Staff Regulations, were not communicated to him. The relevant Member of the Commission took his decision without even taking note of the documents which were missing from the file or which had not been communicated to the applicant. The applicant's immediate superiors were opposed to his dismissal, which they neither proposed nor suggested, and, moreover, they were not kept informed of developments in the proceedings. The documents cited by the Commission against the applicant are unilateral, and do not take account of the views of both sides. That is the case, for example, with

the memoranda of the interviews between the various persons concerned, dictated by the director, Mr Gmelin, and not properly circulated.

As regards the interest of the service, Mr Favre contends that he remained in office for months after the end of his probationary period, that he continued to study the Windscale programme and that his work is very largely wasted because he cannot continue it. However, he is probably the only one capable of doing it, since the inspectors recruited by means of the competition in which he was successful have very little knowledge of nuclear matters. The applicant contends in that connection that, despite the Commission's statements, the said competition was not organized for the purpose of recruiting nuclear inspectors, because it was no more than an open competition on the basis of both qualifications and tests for the purpose of constituting a reserve list of administrators belonging to the scientific staff.

As regards the misuse of powers, the applicant contends that a director who presents minutes of meetings which distort the opinions expressed by the superior officers of the person concerned is not acting legally, but is usurping powers granted him by the Staff Regulations. The proof that the dismissal was already certain in Mr Gmelin's mind is that, from April 1982, he did not take the necessary steps to ensure that the applicant underwent the medical examination required by the regulations, the applicant not having undergone any sort of medical examination other than upon his engagement on 9 February 1981.

4. In its rejoinder, the *Commission* contends that, as regards the first submission, if the applicant considered that the procedure followed was irregular, or that the rights of the defence had been disregarded, it was for him to make an express submission on that point, which he has refrained from doing.

The defendant points out that, contrary to what was erroneously indicated in the defence, the temporary posts provided for a number of the successful candidates recruited through the competition in which the applicant was successful were in fact granted by the budgetary authorities not for a period of three years but for an indefinite period. They were none the less temporary posts, as the applicant could not be unaware because his contract expressly referred to Article 2 (a) of the Conditions of Employment of Other Servants, which deals with "staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to each institution and which the budgetary authorities have classified as temporary".

The statement in Mr Favre's contract that: "This contract is concluded for an indefinite period linked to the duration of the Nuclear Inspection Programme" means therefore that the period of validity of the contract is limited to the period for which the temporary post is granted by the budgetary authorities. Obviously that limit in no way restricts the possibility of making use of Article 47 (2) of the Conditions of Employment of Other Servants.

The applicant is confusing the statement of the grounds on which a decision is based (which is not required in this case) and the reasons for which that decision was taken. Consideration of the reasons for which the decision was taken goes to the substance of the case and need not therefore be examined in the context of this submission. In any event, the obligation to state the grounds on which the decision was based has been respected in this case. It is obvious that transmission of the report at the end of the probationary period, the various interviews which the applicant had with his superiors, the various written and oral comments which they made with regard to his work and an examination of the file constituted during the proceedings enabled the applicant to acquaint himself with the reasons underlying his dismissal.

As regards the second submission, the Commission contends that the applicant was given another chance in the sense that he was allowed to continue to carry out his duties for seven months after the end of his probationary period instead of being dismissed when that period came to an end. At the end of that further period, the administration was unfortunately obliged to take the view that the assessments set out in the report at the end of the probationary period remained valid.

The Commission draws attention to the fact that nuclear inspectors are responsible, in particular, for carrying out inspections at the various installations where production, separation and use of raw materials or special fissionable materials, as well as the processing of irradiated fuels, takes place. The inspectors are, in particular, supposed to ensure that the aforementioned materials are not put to a use other than that for which their users have declared that they are intended. They are also responsible for leading a team of Grade B inspectors and for cooperating both with the operators of nuclear installations within the Community and with the International Atomic Energy Agency. The importance of those tasks permits the Commission to require that its nuclear inspectors have a very high degree of initiative and responsibility and that they show themselves to be highly motivated in their work. In the present case, the appointing authority concluded that the applicant had not shown that he possessed the required qualities. The interest of the service therefore required, particularly in an area as important as that of nuclear energy, that the applicant's contract be terminated.

As regards the third submission, the Commission contends that there is no justification for the applicant's belief that he is entitled to claim that the evaluations of him supplied by his superiors were distorted by Mr Gmelin. Similarly, the fact that the applicant did not have to undergo the special medical examination required for workers likely to be exposed to ionizing radiation was due to the fact that, with the exception of a three-day stay at Ispra, the applicant has never been exposed to such radiation.

The application to call witnesses should be dismissed. The documents produced prove beyond a shadow of a doubt that the applicant's superiors, whose evidence the applicant wished to have placed before the Court, considered that he did not have the necessary knowledge and experience to carry out the duties entrusted to him. Similarly, to examine them in order to establish whether they had asked that Mr Favre be dismissed,

whether they considered that that measure was or was not justified, whether they took part in the dismissal procedure or were kept informed of developments therein would be irrelevant because those questions are for the authority empowered to dismiss temporary employees.

The application to hear the staff representatives is no more justified than the preceding one because it seeks to establish, on the one hand, that at the time at which he inspected his personal file, Mr Favre made certain oral observations about its content and, on the other hand, that, at the conciliation meeting with Mr Burke held to discuss the case, a staff representative offered to send Mr Burke certain documents from the file which were either missing or disputed. Those facts, even if they were proved, could have no influence whatsoever on the proceedings because the applicant does not make clear to which missing or disputed documents he is referring and, what is more, he does not explain how the said documents (or their absence) could have any influence on the contested decision.

IV — Oral procedure

The parties presented oral argument at the sitting on 26 January 1984.

The Advocate General delivered his opinion at the sitting on 23 February 1984.

Decision

1 By application lodged at the Court Registry on 29 December 1982, Pierre Favre, a former temporary employee of the Commission of the European Communities, brought proceedings for the annulment of the decision taken by the Commission on 4 November 1982 on the basis of Article 47 (2) (a) of the Conditions of Employment of Other Servants (hereinafter referred to as "the conditions"), to terminate his contract of employment as a temporary employee.

The background to the decision

2 The applicant, a successful candidate in Competition No COM/A/322 held for the purpose of constituting a reserve list for the recruitment of administrators with scientific training and having experience in the nuclear field, was engaged on 16 September 1981 as a temporary employee for, according to the terms of his contract, "an indefinite period (Article 2 (a) of the Conditions of Employment of Other Servants) linked to the duration of the Nuclear Inspection Programme".

3 He was assigned to the Directorate General for Energy, Euratom Safeguards Directorate, and, by a memorandum sent to him on 27 October 1981, his superiors, Mr Bommelle, head of division, and Mr Van der Stijl, head of sector, directed him to study certain problems of security relating to the nuclear plant at Windscale in England, and also to prepare a report containing his conclusions and proposals on those questions by December 1981.

4 That report was not submitted within the required period and Mr Bommelle sent him a reminder on 27 January 1982, as written confirmation of an interview which took place on 19 January, calling on him to submit the results of his work without delay.

5 On 29 January, the applicant sent to Mr Van der Stijl a memorandum of a little more than one page entitled "Basis for a reply to BNFL/DOE", representing the results of his work on the study which he had been given, as well as a one-page summary of an annex to a letter of 20 February 1981 sent to the Directorate General for Energy by the United Kingdom Department of Energy. On 10 March, he forwarded to his superiors a memorandum describing a training course in which he had taken part on the use of an instrument for measuring enrichment in U-235.

6 At the end of his probationary period, a draft report, drawn up on 5 April, was sent to him on 23 April 1982 for observations. That report, drawn up by Mr Gmelin, Director of the Euratom Safeguards Directorate, and Mr Bommelle, indicated, as work carried out during the probationary period, attendance at "training courses and schemes" and an "analysis of the file and proposals for action regarding the Windscale reprocessing plant". His initiative and sense of responsibilities were considered "unsatisfactory". The speed with which he carried out his work was described as "very unsatisfactory". It was pointed out that because of his "minimal output", the quality of his work could not be judged. The general observations drew attention to the fact that the applicant, who had been directed to carry out the study referred to above, had only produced "a two-page synthesis of the file", work which must be regarded as "totally unsatisfactory", that he had been called upon orally on several occasions and twice in writing to finish his

work and, finally, that the official responsible for training had drawn the attention of Mr Favre's superiors to "his manifest lack of interest in the courses". The report concluded that the applicant did not have the necessary qualifications to carry out the duties entrusted to him.

7 Since he had not submitted any written observations during the 15 days following the transmission of the report, the applicant was asked by Mr Gmelin to attend a meeting on 7 May at which Mr Bommelle, Mr Van der Stijl and Mr Korzilius were also present. When asked to give his opinion on the contents of the probation report, the applicant gave Mr Gmelin his observations, which he set out in writing on 6 May. It was decided to continue the interview on 17 May, after the applicant's observations had been read. At the end of that second meeting, at which the same persons were present, Mr Gmelin told the applicant that, as regards the substance of the problem, after having heard him several times and having studied his written observations, he could do nothing other than indicate to his superior, Mr Audland, Director General of DG XVII, that, in his opinion, the applicant did not have the necessary qualifications to carry out the duties entrusted to him but he would none the less propose to Mr Audland that if it was decided to dismiss the applicant, the period of notice of approximately three weeks provided for in the Conditions should be extended to four months.

8 In reply to the probation report, which was transmitted to him signed by Mr Audland, and upon which the applicant had indicated his disagreement in a signed statement, Mr Favre added to the said report a memorandum dated 9 June in which he repeated most of the arguments that he had advanced both in his written observations of 7 May and during the meetings of 7 and 17 May 1982. In his view, it was incorrect to say that he had been given several oral reminders and two written reminders. The one and only oral reminder, before 23 April, had been given on 19 January and likewise the one and only written reminder had been sent in the memorandum of 27 January. As regards the complaints made about the quality and the speed of his work, his initiative and his sense of responsibilities, he pointed out that during his probationary period, half of his time had been spent at training or language courses, or on leave. Furthermore, he did not have an office in the directorate until the end of March 1982 and had had to work essentially alone without the help of his superiors. The Windscale file which he had been given was a sensitive file on which little progress had been made since 1973 and in view of the fact that he was cleared to see classified material only on 15 March 1982, to have followed to the letter the work plan given him on 27 October 1981 would have involved infringing the rules regarding

the protection of classified material. He pointed out that after the first comments had been made to him on 23 April 1982, he had drafted, during the week of 26 to 30 April, a longer report on security control at Windscale, so as to prove that he had correctly carried out the work given to him during his probationary period. Mr Van der Stijl had considered that the report "could be used as a starting document". Finally, as regards his initiative and his sense of responsibility, he does not understand how such complaints could be made about an officer on probation who had not yet been trained, who had not yet been cleared to see classified material, who was not authorized to carry out inspections and who had no staff.

9 On 2 July, Mr Bommelle gave the applicant a new work programme consisting of (1) the drafting, by 15 July at the latest, of a "letter to BNFL on the subject of Design Information" (2), the drawing up, by the end of July, of a new version of the report on security control at Windscale which he had drafted in April, taking account of Mr Van Der Stijl's comments, (3) the drawing up, by the end of August and the end of September respectively, of "FA" and "PSP", projects, and finally (4) the drafting of a letter to the International Atomic Energy Agency, as soon as a reply had been received from BNFL to the letter referred to in Point (1) above.

10 In his monthly report, drawn up on 24 August 1982 and sent to Mr Gmelin, of Mr Favre's work performed during the month of July Mr Bommelle pointed out that, in spite of his insistence and of the applicant's promises, the latter had not performed, by the required date, the first task which had been given to him in the work programme of 2 July. As regards the second task, the applicant has drafted two memoranda. The first, whilst containing some good features, none the less tailed off into "unreal comparisons with the situation in France". The report also pointed out that the applicant had been present from 1 to 12 July and absent from 14 July to 15 August because of illness, which was supported by a medical certificate.

11 By a letter of 30 July 1982, the Director General of Personnel informed the applicant that, in the light of the evaluations made by his superiors of the

quality of his work since his appointment, he had asked the relevant Member of the Commission to terminate his contract from 2 November on the basis of Article 47 (2) (a) of the Conditions. That letter was sent to him so as to make it easier for him to find a fresh post.

12 In a memorandum of 19 August 1982 to Mr Burke, the Member of the Commission responsible for personnel matters, the Director General of Personnel, referring to the report made on the applicant at the end of his probationary period and to an interview between the Head of the Staff Regulations Division and Mr Audland on 28 July 1982 during which the latter had confirmed that after 10 months' service, the quality of the applicant's work still left much to be desired and had proposed his dismissal, requested that Mr Favre's contract be terminated with effect from 2 November 1982 in pursuance of Article 47 (2) (a) of the Conditions.

13 The Luxembourg section of the Staff Committee of the Commission, to which the applicant had referred his case, approached Mr Burke on 17 September 1982 and asked that the applicant be given a second chance. At the end of that interview, Mr Burke indicated that he did not share the opinion of the members of the Committee that the legal position was unsatisfactory but that in the light of all the factors put forward by the staff representatives, he would none the less take time to consider the position and would make his decision known later. Following upon that conciliation meeting, a transfer of the applicant was considered but proved to be impossible.

14 On 4 November, on a proposal of the Director General of Personnel dated 29 October, Mr Burke decided to terminate the applicant's contract in pursuance of Article 47 (2) of the Conditions by notice of dismissal beginning on 10 November and ending on 31 December 1982.

15 The applicant was informed by a letter from the Director General of Personnel dated 4 November 1982 that the competent authority had decided to terminate his contract in pursuance of Article 47 (2) (a) of the Conditions

by notice of dismissal to commence on 10 November and end on 31 December 1982. A complaint against that decision was registered on 26 November 1982 and rejected by a letter from Mr Burke on 3 February 1983.

16 In support of his application for the annulment of the decision, the applicant relies on three submissions alleging the absence or insufficient nature of the statement of the reasons on which it was based, the infringement of Article 7 of the Staff Regulations and the misuse or abuse of powers.

First submission

17 Essentially, the applicant complains in his first submission that the Commission, on the one hand, did not indicate in the notice of dismissal sent to him on 4 November 1982 by the Director General of Personnel the grounds for his dismissal and, on the other hand, took that decision on the basis of insufficient or non-existent grounds.

The failure to state grounds

18 Whilst accepting that according to the Court's case-law and in particular the judgment of 26 February 1981 (Case 25/80 *De Briey* [1981] ECR 637), the grounds for the termination, in pursuance of Article 47 (2) (a) of the Conditions, of the contract of a temporary employee appointed for an indefinite period need not necessarily be stated, regard being had to the discretion which that provision confers on the competent authority, the applicant contends that his position, as determined by the very words of Article 4 of his contract of employment according to which that contract was concluded for "an indefinite period (Article 2 (a) of the Conditions of Employment of Other Servants) linked to the duration of the Nuclear Inspection Programme", is not comparable to that of an employee engaged under a "pure", contract for an indefinite period and must be assimilated, for the duration of the programme, to that of an official within the meaning of the Staff Regulations. The aforementioned case-law is not therefore applicable to him.

19 That argument cannot be upheld. The fact that the Commission expressly stated in Article 4 of the contract that it was being concluded for an indefinite period (Article 2 (a) of the Conditions) linked to the duration of the Nuclear Inspection Programme cannot change the temporary nature of

his appointment. As the Commission stated during the oral procedure, the sentence in question simply means that the applicant's post was a temporary one because the budgetary authorities had so decided. At the time of his appointment, the Euratom Safeguards Directorate had eight temporary posts available and it was proposed to engage, for three of those posts, three candidates who had been successful in the competition, among them was the applicant.

20 Under those conditions, the clause in the contract according to which its indefinite duration is "linked to the duration of the Nuclear Inspection Programme" must be interpreted as meaning that it serves, on the one hand, as a justification for his being appointed as a temporary employee and, on the other hand, as an indication to the employee concerned of the final date at which his contract would expire.

21 It follows therefore that the first part of this submission cannot be upheld.

Absence or inadequacy of grounds

22 The applicant contends that the decision to dismiss him was based on inadequate grounds, which is tantamount to being based on no grounds at all. In his view, the statements made in the probation report cannot be cited against him. Moreover, the Windscale file entrusted to him did not allow him, because of its political and secret character, to submit specific results and cannot therefore support the contention repeated in the letter of 30 July 1982 from the Director General of Personnel to the effect that the quality of the applicant's work was unsatisfactory from the time at which he took up his duties.

23 That argument cannot be upheld either. In the first place, it should be emphasized that Article 47 (2) (a) of the Conditions, referred to in Article 5 of the applicant's contract, expressly provides for the possibility of terminating the contract of a temporary employee, concluded for an indefinite period, by means of a given period of notice, and nothing in this case has made it possible to establish that when it adopted the contested decision the competent authority exceeded the limits of its discretion in this matter.

24 The allegation that the political and secret nature of the file entrusted to the applicant prevented him from submitting specific results, capable of allowing the quality of his work to be objectively evaluated, is contradicted by the existence of the report submitted by the applicant on 28 April, that is, four months late, which, according to Mr Van der Stijl's memorandum of 2 July 1982, "could have served as a basis for further studies, had it been published in due time".

25 It appears from the documents before the Court, and in particular from the letters and memoranda from the Director General of Personnel dated 30 July, 19 August and 29 October 1982, that the Commission believed that it had good reason for its decision to dismiss the applicant, particularly because of the inadequacy of his output. The applicant has not proved the existence of errors of fact or of evaluation such as to show that the Commission has exceeded the limits of its discretion in this regard.

26 Under those conditions, it cannot be concluded, on the basis of the documents before the Court, that the evaluation of the quality of the applicant's work is vitiated by a patent error such as to justify the annulment of the decision to dismiss him taken pursuant to Article 47 (2) (a) of the Conditions.

27 Consequently, the second part of this submission must also be rejected.

Second submission

28 In the applicant's view, his dismissal is illegal because it is not in the "interest of the service", within the meaning of Article 7 of the Staff Regulations, which is the corner-stone of those regulations and which, though it is not mentioned in Article 11 of the Conditions, also applies by analogy to the dismissal of temporary employees. The recruitment of nuclear scientists would become impossible, he claims, if such highly specialized persons were offered no security of employment.

29 Whilst it is undeniable that Article 7, according to which the competent authority must, as regards assignment by appointment or transfer, be guided solely by the interest of the service, expresses a principle which constitutes one of the guiding rules of administrative action whose application cannot be limited solely to the assignment of officials, and whilst it is also undeniable that it is in the interest of the institutions to recruit or appoint persons of the highest ability and efficiency, the dismissal of an employee whose work does not correspond, in the view of the competent authority, to what might reasonably be expected of him, cannot be criticized by reference to that rule.

30 This submission must therefore be rejected.

Third submission

31 The applicant contends that his dismissal constitutes a misuse if not an abuse of power. His dismissal was not, he claims, in the interest of the service but rather to allow certain of his superiors to rid themselves of him.

32 It should be noted in this connection that no evidence has been produced in support of that allegation. This submission must therefore be rejected.

33 Since the applicant has failed in his submissions, the application must be dismissed.

Costs

34 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs.

35 However, Article 70 of the said Rules of Procedure provides that in staff cases the institutions of the Communities are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 30 May 1984.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the First Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 23 FEBRUARY 1984

My Lords,

The applicant in these proceedings took part in Competition COM/A/322 which was arranged for the purpose of creating a reserve list of administrative officers in grades A 7/6 who would be concerned with nuclear installations and materials. He came out high in the competition. On 25 September 1981 he entered into a contract of employment with the Commission as a temporary employee, as an administrator in the Directorate General of Energy Security Control of Euratom. His contract was said to be for an indefinite period linked to