ORDER OF THE COURT OF FIRST INSTANCE
25 October 1993 *

In Case T-41/93,

B, an official of the Commission of the European Communities, residing in Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

supported by

Union Syndicale-Bruxelles, whose registered office is in Brussels, represented by Gérard Collin and Thierry Demaseure, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

intervener,

v

Commission of the European Communities, represented by Ana Maria Alves Viera, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's decision refusing the applicant 100% reimbursement of the expenses caused by a serious illness,

* Language of the case: French.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES,

composed of: C. P. Briët, President, A. Saggio, and C. W. Bellamy, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought

1 The applicant, an official of the Commission, is an insulin dependent diabetic. Since his illness was treated as a serious illness by the appointing authority, he received 100% reimbursement of his medical expenses pursuant to Article 72(1) of the Staff Regulations of Officials of the European Communities.

2 On 13 January 1993, the applicant submitted to the Claims Office of the Sickness Insurance Scheme common to the institutions of the European Community an estimate of dental expenses for the fitting of four implant dentures and 14 teeth or removable prostheses. On 14 January 1993, the Claims Office approved the estimate submitted by the applicant, but only in respect of the fitting of 14 teeth or removable prostheses. No reimbursement was authorized for the four implant dentures. Moreover, in respect of the reimbursement of expenses for the fitting of 14 teeth or removable prostheses, the Claims Office applied the 80% reimbursement rate for dental treatment and prostheses laid down in Section VI of Annex I to the Sickness Insurance Rules for Officials of the European Communities (hereinafter 'the Sickness Insurance Rules').

3 On 3 February 1993, the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the Claims Office's decision of 14 January 1993. The applicant considered that all the dental expenses in question had been caused by 'serious illness' within the meaning of Article 72(1) of the Staff Regulations and Section IV of the Sickness Insurance Rules and that he was thereby entitled to reimbursement at 100%. In the absence of a reply within the four-month period prescribed in Article 90(2) of the Staff Regulations, the complaint was implicitly rejected on 3 June 1993.

4 By application lodged at the Registry of the Court of First Instance on 9 June 1993, the applicant brought an action for:

— annulment of the decision of 14 January 1993 refusing full reimbursement of dental expenses for four implant dentures and the decision not to apply the 100% rate of reimbursement to all the dental services specified in the estimate;

— annulment, in so far as is necessary, of the implied decision rejecting the complaint lodged by the applicant on 3 February 1993;

and an order that the Commission pay the costs.

5 Following a request lodged at the Registry on 22 June 1993, by order of 14 July 1993 Union Syndicale-Bruxelles (European Public Service Union, Brussels) was granted leave to intervene in support of the form of order sought by the applicant.

6 At the applicant's request, the President of the Fourth Chamber decided to grant him anonymity in all published documents.

7 On 16 July 1993 the Director General of Personnel and Administration sent the applicant the following memorandum informing him that his complaint had received a favourable response:

'As regards reimbursement of the implant dentures, I am pleased to inform you that, having taken note of Opinion No 9/93 of 5 May 1993 of the Management Committee of the Sickness Insurance Scheme and having regard to Section XV(2) of Annex I to the Sickness Insurance Rules for Officials of the European Communities, you will exceptionally be reimbursed. This decision is based, in particular, on the finding that implant dentures are absolutely necessary as a result of serious illness.

As for the other expenses specified in the estimate, I have decided that, since they were also caused by serious illness, you will be reimbursed at the rate of 100%.

The appropriate reimbursement will be made after you have submitted your request.'

8 By application lodged at the Registry on 30 June 1993, the Commission raised a plea of inadmissibility against the action under Article 114 of the Rules of Procedure and requested that a decision be taken without considering the merits.

9 The observations of the applicant and of the intervener on the plea of inadmissibility were lodged at the Registry on 6 September 1993.

10 In the proceedings concerning the plea of inadmissibility, the Commission claims that the Court should:

— dismiss this application as inadmissible in so far as it serves no purpose;

— make an appropriate order as to costs.

11 In its observations concerning the plea of inadmissibility, the applicant contends that the Court should:

— either stay the proceedings or set a time limit for the Commission to state whether it agrees to pay interest and the costs of the proceedings.

12 The intervener claims that the Court should:

— not dispose of the action by way of an order of inadmissibility.

13 Under Article 114(3) of the Rules of Procedure, unless the Court otherwise decides, the remainder of the proceedings on the preliminary issue is to be oral. The Court considers that it has sufficient information from the documents before it and that there is no need to open the oral procedure.

The absence of a cause of action

Arguments of the parties

14 Since the decision of 16 July 1993 granted the applicant what he seeks, the Commission considers that he no longer has any legal interest in bringing proceedings and that, therefore, the action has become devoid of purpose. The Commission considers that the concept of legal interest in bringing proceedings concerns the interest of applicants in challenging before the Court acts of the administration which adversely affect them.

15 The applicant submits that on the day that the action was brought he had a vested, present and personal interest in bringing proceedings and that the admissibility of an action can only be assessed in relation to the day on which it is brought. He adds that the decision of 16 July 1993 gives him only partial satisfaction since it provides that 'the appropriate reimbursement will be made after you have submitted your request'. The applicant claims that the appointing authority thereby seems to preclude reimbursement of dental expenses from the day on which they were incurred. Moreover, the applicant points out that the Commission did not state, either in the abovementioned decision or in its plea of inadmissibility, that it agreed to bear the legal costs which the applicant had to incur. The applicant concludes that he would only agree to discontinue the action on condition that the Commission undertook to pay him interest calculated at 8% per annum, from the date of payment of the dental expenses in dispute, and to bear the costs of the proceedings.

16 The intervener supports the applicant's claims and, in particular, his request that the action should not be disposed of by way of an order of inadmissibility.

Findings of the Court

17 The Sickness Insurance Rules provide for two stages in the procedure for reimbursement of the expenses for certain dental prostheses and orthodontic treatment (Section VI of Annex I of the Sickness Insurance Rules). Pursuant to Article 11(1),

an official must first submit an application for prior authorization, together with an estimate of the medical costs, to the Claims Office. If authorization is granted, Article 11(2) requires the official to submit an application for reimbursement of the expenses incurred, accompanied by the originals of the supporting documents.

18 In this case, the Court considers that the estimate submitted by the applicant on 13 January 1993 constituted an application for prior authorization within the meaning of Article 11(1) of the Sickness Insurance Rules and that, accordingly, the contested decision was a reply to that application. The decision of 16 July 1993, which authorizes 100% reimbursement of all the dental expenses specified in the estimate of 13 January 1993 without any exception, replaced the contested decision.

19 It follows from the case-law that where a decision which is the basis of a cause of action has been replaced by a new decision meeting the applicant's claims in full, the action must be regarded as no longer serving any purpose. In such circumstances there is no longer any need to give a decision (see, for example, the order of the Court of First Instance of 9 June 1992 in Case T-81/91 *Feltz* v *Parliament* [1992] ECR II-1827; the judgment of the Court of First Instance in Case T-28/90 *Asia Motor France and Others* v *Commission* [1992] ECR II-2285).

20 The applicant cannot claim that the decision of 16 July 1993 gives him only partial satisfaction on the ground that reimbursement will not be made until after an appropriate application has been submitted. Article 11(1)(c) of the Sickness Insurance Rules provides that in order to receive reimbursement of expenditure on treatment for which prior authorization is required, an official must submit an application for reimbursement once he has obtained prior authorization. The estimate which was submitted by the applicant on 13 January 1993 was an application for prior authorization. The effect of the decision of 16 July 1993 was to grant the prior authorization requested, and it should therefore meet the applicant's claims in full.

21 The fact that the decision of 16 July 1993 does not provide for any interest payment to the applicant does not mean that the action retains a purpose since the action seeks only annulment of the contested decision and does not in any way seek compensation for damage allegedly caused by the Commission to the applicant by virtue of the contested decision.

22 The Court accordingly considers that the action, which was brought after the prior administrative remedies had been exhausted and before the adoption of the decision to allow the applicant's claims, was admissible at the time it was brought, but that the decision of 16 July 1993 left it devoid of purpose. There is therefore no longer any need to give a decision.

Costs

23 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are in the discretion of the Court.

24 The Court finds that the defendant's decision of 16 July 1993 to allow the applicant's complaint was notified to him after this action was commenced and after the period laid down in Article 90(2) of the Staff Regulations. Moreover, the Union Syndicale was granted leave to intervene by order of the President of the Fourth Chamber on 14 July 1993, two days before the adoption of the decision to allow the applicant's claims.

25 However, account should be taken of the fact that the applicant did not discontinue his action after the decision of 16 July 1993 satisfied his claims. In those circumstances, the Court considers it fair to order the Commission to bear the whole of the costs, including those of the intervener, apart from the costs incurred by the applicant and the intervener from 16 July 1993, which they must bear themselves.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber)

hereby orders:

1. There is no need to give a decision.

2. The defendant shall pay the whole of the costs, including those of the intervener, apart from the costs incurred by the applicant and the intervener from 16 July 1993, which shall be borne by them.

Luxembourg, 25 October 1993.

H. Jung — Registrar

C. P. Briët — President