JUDGMENT OF THE COURT (SECOND CHAMBER)
16 JUNE 1965[1]

Claude Brus
v Commission of the European Economic Community

Joined Cases 48/64 and 1/65

Summary

1. *Officials — Grading — Table of definition of duties — Terms not corresponding to clearly distinct concepts — Discretion of the administration — Exercise of that discretion open to criticism in a particular case — Measures which cannot be annulled*

   (*Staff Regulations of officials of the EEC, Article 5*)

2. *Officials — Grading — No right to a particular post based on an internal proposal for the improvement of the service*

1. Cf. para. 1, summary, in Case 10/64, [1965] E.C.R.

2. Cf. para. 2, summary, in Case 10/64, [1965] E.C.R.

In Joined Cases 48/64 and 1/65

CLAUDE BRUS, an official of the Commission of the European Economic Community, of 26 rue de Décembre, Woluwé-Saint-Lambert, represented and assisted by Marcel Grégoire, Advocate of the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard de la Grande-Duchesse Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Louis de la Fontaine, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for :

— the annulment of the implied decision (Case 48/64) and the express decision (Case 1/65) of the Commission dismissing the applicant's claim to be integrated as from 1 January 1962, in Grade A5, together with all legal consequences arising therefrom,

1 — Language of the Case: French.

— the annulment so far as is necessary of the decision of 12 December 1962, to the extent that it classified him in Grade B1, Step 3,
— compensation by the payment of arrears of salary;

THE COURT (Second Chamber)

composed of: A. M. Donner, President (Rapporteur), W. Strauß and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The applicant entered the service of the Commission on 1 October 1958. He was classified in Grade B8, Step 4, and was later reclassified in Grade B6, Step 2, as from 1 March 1960. He had previously been employed by the Société nationale des chemins de fer français (the French State Railways) where since 1 October 1954 he had carried out the duties of group leader, which were classified in the public service in the category of 'executive', treated as equivalent to Category A in the public service. By an appointment of 12 December 1962 the applicant was appointed an official of the EEC, established in Grade B1, Step 3, and assigned to a post in the Directorate-General of Administration, Personnel Department, Salaries and Missions Division.

On 4 September 1963 the applicant submitted a request to the President of the Commission under Article 90 of the Staff Regulations with a view to obtaining his reclassification in the career bracket of Principal Administrator, Grade A5, as from 1 January 1962. By letter of 18 September 1963 the President informed the applicant that his request was being thoroughly examined. On 21 May 1964 the applicant informed the President that he had not yet received a reply from the Commission and asked to be informed whether this lack of response should be considered simply as a rejection of his request. On 15 July 1964 the Director-General of Administration replied to him that the problems raised by this request for reclassification were still under consideration and that he hoped to notify him shortly of the decision which he believed the Commission would take. On 29 October 1964 the applicant lodged Application 48/64, asking for the annulment of the implied decision of refusal of the Commission. By letter of 13 November 1964 the President of the Commission notified the applicant of the decision taken by

the Commission in response to his complaint. On 7 January 1965 the applicant lodged Application 1/65 requesting the annulment of this express decision of refusal of the Commission.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Annul the implied decision of the Commission of the EEC so far as it by implication rejected the applicant's request and refused to integrate him in Grade A5, with all the legal consequences thereof, as from 1 January 1962;
2. So far as is necessary, annul the defendant's decision of 12 December 1962, whereby the applicant was established in Grade B1, Step 3;
3. Rules that the applicant should be established in Grade A5, Step 3, with all the legal consequences thereof, as from 1 January 1962;
4. Order the Commission of the EEC to pay to the applicant the arrears of salary which, taking account of his grade, are due to him since 1 January 1962;
5. Order the Commission of the EEC to pay to the applicant by way of compensation interest at a rate to be fixed by the Court on the arrears of salary due;
6. Order the Commission of the EEC to pay the costs;
7. Take official note that the applicant reserves the right to adduce fresh evidence in support of his submissions during the course of the proceedings and taking into account the arguments of the Commission of the EEC.

In his application in Case 1/65 the applicant again submits that the Court should:

— Annul the decision of the Commission of 13 November 1964 to the extent that it rejected the applicant's request and refused to integrate him in Grade A5, with all the legal consequences thereof, as from 1 January 1962.

The *defendant* contends that the Court should:

1. Declare Application 48/64 to be inadmissible;
2. In any event, dismiss Applications 48/64 and 1/65 as being without foundation;
3. Order the applicant to bear the costs in accordance with the relevant provisions.

III — Submissions and arguments of the parties

On admissibility

According to the *defendant,* Application 48/64 should be declared inadmissible because it was not lodged within the period of two months laid down in Article 91 (2) of the Staff Regulations. A letter of acknowledgement addressed to the person concerned cannot have the effect of extending the period within which the competent authority is alleged to have given an implied decision of rejection.

The *applicant* maintains that there is only an implied decision where there is no express decision excluding the presumption deriving from the absence of a decision.

On 15 July 1964, the date on which the President of the Commission promised an early decision, there could be no question of an implied decision of rejection; moreover good faith must prevail in relations between the defendant and its staff.

On the substance of the case

Infringement of Article 102 (1) of the Staff Regulations

The *applicant* alleges that Article 102

(1) has been infringed since Annex I to the Staff Regulations was adopted by common accord of the Councils of the European Economic Community and the European Atomic Energy Community and therefore constitutes standardization under the said Article 102.

The *defendant* disputes that Annex I to the Staff Regulations forms an integral part of the Staff Regulations and cannot be considered as a decision within the meaning of Article 102 (cf. Opinion of the Advocate-General in Joined Cases 20 and 21/63, Maudet).

Infringement of the provisions of Article 5 (4) and of Annex I to the Staff Regulations, and of the decision of the Commission of the EEC of 29 July 1963.

The *applicant* alleges that the duties which he carried out were 'administrative [planning[1]] and advisory duties which require university education or equivalent professional experience' ('des fonctions de direction, de conception et d'étude nécessitant des connaissances de niveau universitaire ou une expérience professionnelle d'un niveau équivalent') (second paragraph of Article 5 (1) of the Staff Regulations)

and that he was

'Head of one particular sector of activity in a Division'

or else

'Head of a specialized department'

(Decision of the Commission of 29 July 1963, EEC Commission Staff Information Bulletin 54 of 2 October 1963).

The *applicant* appends documents to his statement of case in order to prove that his work in fact entails planning duties.

The *defendant* alleges that duties relating to the calculation and payment of the salary of officials are by their nature executive duties (tâches d'application), not requiring university education or equivalent professional experience. Likewise the administrative re-organization of the Salaries section, effected by the applicant, fell within the normal activity of a head clerk.

The *applicant* maintains that he carries out his duties under the direct authority of the Head of Division. As the Salaries and Mission Expenses Division comprises four subdivisions of which the applicant considers that the Salaries Department of which he is in charge is the principal one and that he is therefore 'the head of one particular sector of activity in a Division'.

The *defendant* states that each of these four subdivisions—named sections or offices—of the Salaries and Mission Expenses Division had an official in Category B in charge of it, and that the Court dismissed the appeal for classification in A5 by the official in charge of the Mission Expenses Section (Jointed Case 109/63 and 13/64, Müller). According to the defendant, there is no difference in kind between the duties of the applicant in Case 109/63 and those of the present applicant.

Since he planned the organization and operation of the Social Security Section for auxiliary and local staff, which section was placed under his control and entrusted with the study and implementation of the legal provisions governing social security, the *applicant* alleges that he was the 'Head of a specialized department'.

The *defendant* disputes that there were officially organized groups in the applicant's department and states that the official in charge of social security for auxiliary staff was recruited at Grade B3 and that his duties are those of Category B.

The *applicant* invokes in support of his claims the fact that the defendant in express terms recognized that the duties

1 — Translator's Note: This word does not in fact appear in the English version of the Staff Regulations.

carried out by him are planning duties since in its budget demands of 1964 and 1965 it claimed for the Salaries and Mission Expenses Division the transformation of one B post into an A5 post and the transformation of three B posts to A6 posts and stated moreover that the assistant to the Head of Division in question should have A5 status and further that the Heads of the four Sections are in any event 'officials engaged in planning advisory and supervisory duties on the basis of general Directives'.

The *defendant* is astonished that the applicant considers that he may thus use an internal document of the Commission, without having obtained the prior permission of the competent authority. It maintains moreover that the Court has laid down in its judgment in Joined Cases 109/63 and 13/64 that such an internal document cannot by itself constitute proof of the applicant's right to the post in question. According to the defendant there are no grounds for failing to apply these same principles in the present case.

The *applicant* requests the Court to order the defendant to produce the minutes of all the meetings in the course of which it considered the request for reclassification addressed to it by the applicant, and in particular the minutes of the meetings in March 1964.

IV — Procedure

The procedure followed the normal course.

On 25 January 1965 the Court joined Cases 48/64 and 1/65.

At the hearing on 19 May 1965, the Advocate-General delivered his opinion that Application 48/64 should be dismissed as being inadmissible and that Application 1/65 should be dismissed as being without foundation.

Grounds of judgment

Admissibility

The defendant has raised an objection of inadmissibility against Application 48/64 on the ground that it was out of time.

In fact, as a decision upon the administrative appeal submitted on 4 September 1963 was not taken, the applicant only brought the matter before the Court on 29 October 1964.

The appeal was therefore not filed within the period provided for in Article 91 of the Staff Regulations.

Application 48/64 is therefore out of time and consequently inadmissible.

On the other hand no observation need be made on the admissibility of Appeal 1/65, filed within the period of three months from the notification of the contested decision to the person concerned.

On the substance of the case

In alleging that the contested decision infringes Article 102 (1) of the Staff Regulations, the applicant attempts to bring before the Court an alleged infringement of Annex I to the Staff Regulations. This ground of complaint is materially connected with the second, and it is desirable to consider them together.

The applicant has based his application on Annex I to the Staff Regulations and on the decision of the Commission of 29 July 1963, adopting the table of definitions of the duties and powers attaching to each post and notified to the staff in the EEC Commission Staff Information Bulletin No 54 of 2 October 1963, and in particular on the definition in the said table of the duties of a Principal Administrator, which he considers is the only one applicable to the post held by him. His post corresponds either to that of an official engaged in planning duties, or that of Head of one particular sector of activity in a Division, or of Head of a specialized department.

The applicant's allegations are without sufficient foundation. Although the documents produced and the information furnished show the zeal and competence with which the applicant carried out his duties, they are not such as to prove that the ability and knowledge required by the applicant's post exceed those of a post in Grade B1 and clearly fall within the planning duties referred to by the abovementioned description.

The applicant claims alternatively that he occupies the position of a Head of one particular sector of activity in a Division.

The terms 'sector of activity' and 'administrative unit' do not correspond to clearly distinct concepts, and therefore their application to the different subdivisions of an institution is to a certain extent discretionary and depends on the general distribution of administrative responsibilities.

Whilst the application of these concepts to a particular case may give rise to criticism, this fact alone is not of itself sufficient to render the measure liable to annulment for infringement of Article 5 of the Staff Regulations and of measures in implementation thereof.

Although it is true that the arguments adduced by the applicant might justify calling the subdivision of which he is in charge a particular sector of activity of a division, they in no way exclude other evaluations.

The fact that the applicant is placed under the direct authority of a Head of a Division is insufficient to make the administrative unit of which he is in charge a sector of activity.

The applicant cannot claim the status of Head of a specialized department either, because the duties of the Social Security Office for auxiliary and local staff, set in operation by him and placed under his supervision, do not involve a sufficient degree of specialization to justify this status.

The applicant has caused to be produced a document in which the Commission in stating its reasons for its request to the Council of Ministers for budgetary appropriations for the financial year 1964, showed its intention to consider the applicant's post as falling within Category A.

However, an internal administrative document of this sort, directed at persuading the budgetary authority to improve the organization of the department, cannot amount to a legally valid admission that the applicant has the right to be placed in the grade for which he asks but rather appears unsuited to the purposes for which it is quoted.

Finally, the applicant has requested the Court to order the defendant to produce certain documents, in particular the minutes of the meetings relating to the thorough examination of his request which forms the subject of the present dispute.

The secrecy of deliberation of the Commission should be broken only if it is necessary to do so in order to clarify the case. However, nothing gives rise to a presumption that the documents requested are relevant to an appraisal of the grounds of complaint which have been raised. There are therefore no grounds for proceedings with the measure of inquiry requested.

It is not established that the Commission infringed the Staff Regulations and its decision of 29 July 1963 by its refusal to reclassify the applicant in Grade A5. Consequently, the claim for payment of arrears of salary cannot be upheld. The application must therefore be dismissed.

Since the applicant has failed in all his submissions he must bear the costs of the present action, with the exception of those incurred by the Commission, in accordance with Article 70 of the Rules of Procedure.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community;
Having regard to the Staff Regulations of officials of the European Economic Community, especially Articles 5, 91, 102 and Annex I;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 48/64 as inadmissible;**
2. **Dismisses Application 1/65 as unfounded;**
3. **Orders the applicant to bear the costs, with the exception of those incurred by the Commission.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 16 June 1965.

M. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 19 MAY 1965[1]

Mr President,
Members of the Court,

Mr Claude Brus, previously an official with the Société nationale des chemins de fer français, was engaged at the end of 1958 by the Commission of the EEC in Grade B8, Step 4, and assigned to the Salaries and Mission Expenses Division of the Directorate of Personnel. He was subsequently reclassified in Grade B7, Step 3, with effect from 1 December 1959, and in Grade B6, Step 2, with effect from 1 March 1960. At the entry into force of the Staff Regulations, he was established by decision of 20 November 1962 in Grade B1, Step 3, as from 1 January 1962, retaining his previous position as Head of the Salaries Section of the Salaries and Mission Expenses Division.
Following the decision of the Commission defining the duties and powers attaching to each post, on 4 September 1963 he requested his reclassification as from 1 January 1962 in Grade A5, the career bracket of a Principal Administrator. On 18 September 1963 he received

1 — Translated from the French.