JUDGMENT OF THE COURT (FIRST CHAMBER)
15 DECEMBER 1965[1]

Werner Klaer
v High Authority of the ECSC

Case 15/65

Summary

Officials — Duties performed, grade and post — Correspondence — Duties of the administration

(Staff Regulations of Officials of the ECSC, Articles 5 and 7 and Annex I)

It follows from the provisions of Articles 5 and 7 of the Staff Regulations of Officials of the ECSC that an official is entitled not only to remain in the same grade and to receive the corresponding remuneration, but also to be entrusted with duties and powers which are in accordance with the post corresponding to the grade which he holds in the administration.

Cf. paragraph 4, summary, Case 102/63, Rec. 1964, p. 1351.

In Case 15/65

WERNER KLAER, an Unclassified Adviser to the High Authority, residing at Luxembourg, assisted by Alex Bonn, Advocate of the Cour Supérieure de Justice of the Grand-Duchy of Luxembourg, with an address for service in Luxembourg at the Chambers of his said counsel, 22 rue de la Côte-d'Eich,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Guy Sautter, acting as Agent, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the decision of 2-16 December 1964 assigning the applicant to the Directorate-General for Economy and Energy or, alternatively, for a declaration that this decision is illegal;

THE COURT (First Chamber)

composed of: L. Delvaux (Rapporteur), President of Chamber, A. Trabucchi and R. Lecourt, Judges,

1 — Language of the Case: German.

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

Mr Werner Klaer, a German national born on 7 January 1906, was in 1952 an official in the administration of the German National Railways, with the grade of Ministerialrat.

On 21 October 1952 he entered the service of the High Authority as Director of the Transport Division. On the entry into force of the initial Staff Regulations of the ECSC he was established in Grade A1, Step 5, with effect from 1 July 1956.

As a result of the reorganization of the departments of the High Authority carried out in 1960, the Transport Division became a Directorate responsible to the Directorate-General for Economy and Energy. As a result, by a decision of 18 January 1960, Mr Klaer was first appointed Adviser (Grade 1) with effect from 1 February 1960 and on 1 March 1963 an Unclassified Adviser with effect from 1 January 1962. A decision of 12 and 13 March 1963 defined Mr Klaer's duties in the form of a threefold authority:

— authority to act as Adviser at the Directorate-General for Economy and Energy, to coordinate questions of transport with the other departments of the High Authority;
— authority to undertake certain studies concerning ECSC transport;
— authority to represent the High Authority at various organizations outside the present framework of the Common Market (subject to the authority of the Directorate for External Relations).

On 18 December 1964, the President of the High Authority notified to Mr Klaer a decision of the High Authority of 2 December 1964, which is the subject of the present application.

This decision is drafted in the following terms:

'*Article 1*:

Mr Werner Klaer, Unclassified Adviser, responsible for questions concerning transport (post No 10 in the detailed list of posts of Unclassified Advisers) shall be attached, with immediate effect, to the Directorate-General for Economy and Energy (post No 3 in the detailed list of posts of that Directorate-General).

Article 2:

Apart from the duties resulting from the authority conferred on him on 12 March 1963, in the performance of which he is directly responsible to the High Authority, Mr Klaer shall in future perform the duties of Assistant to the Director-General for Economy and Energy in conjunction with Mr Cros.

Article 3:

The powers and duties of Mr Klaer are set out in the Schedule to this decision.

Schedule

I — Duties of Mr Klaer in his capacity as Adviser to the High Authority on questions of transport

The duties notified to Mr Klaer on 6 May 1963 have not been amended.

II — Duties of Mr Klaer, Special Adviser, in his capacity as Assistant to the Director-General for Economy and Energy

In conjunction with Mr Cros, Mr Klaer shall perform the following duties:

— He shall represent the Director-General for Economy and Energy both within and outside the Directorate-General and preside at internal meetings when the Director-General is prevented from so doing;

— At external meetings he shall express the point of view of the Directorate-General in the absence of the Director-General;

— He shall work with the Director-General in coordinating the activity of the various Directorates within the Directorate-General and act with him to ensure coordination with the other Directorates-General to the High Authority;

— He shall share with the Director-General in the distribution of the current tasks between the Directorates and follow up their performance and, in specific cases, receive complete delegation of powers from the Director-General.

In the absence of the Director-General Mr Klaer shall deputize for him.'

On 15 January 1965, the applicant lodged a complaint through official channels against this decision.

On 15 March 1965, in the absence of any reply on the part of the defendant, he made the present application in order to avoid losing his right of action.

II — Conclusions of the parties

A — The *applicant* claims that the Court should:

'1. Annul the decision of the High Authority of 2-16 December 1964 or, alternatively, declare it illegal;

2. Order the defendant to pay the costs.'

B — The *defendant* contends that the Court should:

'Dismiss as inadmissible and in any case as unfounded the application made by Mr Klaer against the decision of 16 December 1964 fixing his duties, with all the consequences arising therefrom in law, in particular as regards the payment of costs.'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *Admissibility*

The *defendant* claims that the application is inadmissible in that it is directed against an act which does not adversely affect the applicant.

1. The defendant maintains, first, that like the Director-General to whom he will offer more effective assistance in the future, the applicant remains an official in Grade A1.

It follows that the contested decision involves no *capitis diminutio* and preserves intact the consideration due to the applicant.

2. Moreover, the complaint that the contested decision renders the applicant responsible for new tasks over and above the duties assigned to him under the authority of 12 March 1963 is not one which may validly be put forward by an official. In support of this allegation, the defendant refers to French administrative case-law, according to which an official has no power to contest the decision of a superior which alters his duties without adversely affecting his status.

The *applicant* replies that the defendant's arguments are based on the idea

that the application is unfounded and thus prejudge any discussion of the substance of the case. He maintains that as a result the objection of inadmissibility becomes confused with the submission of lack of justification.

B — *The substance of the case*

In order to contest the legality of the decision in question, the *applicant* makes the following four submissions:

— infringement of an essential procedural requirement and in particular, an absence of reasons for the decision;
— infringement of the provisions of the Staff Regulations of Officials concerning posts;
— *ultra vires* acts;
— irregularity of the procedure employed in drawing up the decision in question.

1. Infringement of an essential procedural requirement

(a) Whilst expressly declaring that he does not wish to raise this fact as a ground for annulment, the *applicant* observes that the contested decision and the letter of notification were drawn up in French, although he is a German national.

The *defendant* replies that the applicant was considered to be satisfied with the notification procedure, as he had a thorough command of the French language.

(b) Secondly, the *applicant* maintains that under the terms of Article 25 of the Staff Regulations of Officials 'Any decision adversely affecting an official shall state the reasons on which it is based'.

He maintains that the contested decision adversely affects him for the following reasons:

— as regards relationships within the department, it subordinates him to the Director-General for Economy and Energy;
— in addition to the duties which he previously performed it assigns to him new and wide-ranging tasks, although it attributes the same tasks to another official (Mr Cros) while discharging the latter from the duties which he previously performed;
— it gives him two posts, maintaining him in post No 10 of the detailed list of posts while awarding him in addition post No 3.

It follows from this that the contested decision should have been reasoned. The applicant alleges, however, that the measure in question merely referred to an earlier decision of the High Authority of 24 September 1964. This earlier decision cannot be regarded as constituting the reasons for the decision in question. In fact, it was neither published nor brought to the attention of the officials of the High Authority nor notified to the applicant, in any event as regards those passages which could have been of interest to him.

The *defendant* replies, first, that the contested decision does not constitute an act adversely affecting the applicant. In support of this view it sets out the arguments which it developed in support of its allegation that the application is inadmissible (See above, A, Admissibility).

It adds that sufficient reasons are given for the decision in question in the ferences to the meetings of the High Authority on 24 September 1964 and 2 December 1964. It refers here to the case-law of the Court in Joined Cases 35/62 and 16/63 [1963] ECR.

(c) The *applicant* points out that the High Authority transferred him to post No 3 of the detailed list of posts, which had become vacant on the retirement of its former occupant, Mr Regul, without observing the rules of procedure laid down in Article 7 of the General Rules on Organization adopted by the High Authority on 28 April 1960. (Official Journal of 3 May 1960, p. 748).

The applicant maintains that there is no doubt as to the mandatory nature of these provisions. The sixth paragraph of Article 7 expressly speaks of the 'post to be filled' and the second paragraph specifies that a 'notice of internal competition' must be circulated. The result of that internal competition may be the recruitment of an official by means of a transfer, promotion, or reintegration.

The *defendant* replies that the provision in question lays down a procedure which need only be followed for the recruitment of Directors-General, Assistant Directors-General, Directors and Assistant Directors.

The High Authority was unable to recruit an Assistant Director-General by means of the decision in question, since the Staff Regulations of Officials of the ECSC, which entered into force on 1 January 1962, abolished such posts. The decision only attributed to the applicant—who was and is an Unclassified Adviser in Grade A1—further duties within the general framework of his appointment as an official 'engaged in top-level studies'.

2. Infringement of the provisions of the Staff Regulations of Officials

(a) According to the definitions of the duties and powers attaching to each basic post referred to in Annex I to the Staff Regulations (Article 5 (4) of the Staff Regulations), adopted by the High Authority on 18 December 1962, with effect from 1 January 1962, an official in Grade A1 directs an administrative unit of the highest echelon (Director-General) or is a very highly-qualified official with the task of advising the institution, or is engaged in top-level studies (Unclassified Adviser).

The *applicant* alleges that the duties which were attributed to him in the contested decision and which are described in the schedule thereto are not those of an official of Grade A1.

The applicant maintains that:

— provision for his new duties as Assistant to the Director-General for Economy and Energy is not made in the abovementioned definitions of duties and powers;

— the comparable duties of Assistant Director-General which appeared in the former Staff Regulations are presented as duties in Grade A2, which shows the subordinate position in the administration in which the contested decision places him in comparison with the Director-General.

The applicant then refers to a decision of the High Authority of 2 September 1964 (Schedule No 3 to the application) which appoints Mr Jacques Cros, an official in Grade A2, an Assistant to the Director-General for Economy and Energy in conjunction with the applicant. The applicant considers that this proves conclusively that the duties entrusted to him by the contested decision are not Grade A1 duties.

The *defendant* replies that it is true that an Unclassified Adviser holds the same rank as the Director-General and, like him, is directly responsible to the High Authority. The defendant maintains, however, that the High Authority does not itself define the activities of such Unclassified Advisers. The activities of such officials are necessarily linked to those of the Director-General; they take various forms depending on the internal organization of the work of the High Authority but implying the pre-eminence of the Director-General in the running of the departments for which he has sole responsibility. According to the defendant, the decision in question merely provided for close collaboration between two officials of the same grade, to the extent of allowing the applicant to deputize for the Director-General when he is absent or prevented from performing his duties.

Moreover, the defendant observes that the effect of the decision in question was not to appoint the defendant to a post as Assistant to the Director-General:

such an appointment would have been improper, in that the post had not been properly created. The decision merely modified, in the sense of extending, the duties of an official 'responsible for undertaking research at the highest level' by specifying that he shall collaborate at that level with the Director-General. The decision in question was, therefore, not taken in infringement of the definitions of duties and powers adopted by the High Authority. To the objection concerning the duties conferred on Mr Jacques Cros, the defendant replies that their respective ranks remain separate by reason of the continuing distinction in their grades. The level of these two officials is only the same as regards the authority required to perform their duties. Even here, however, the seniority remains intact since, by reason of his higher grade, the applicant is alone qualified to deputize for the Director-General.

(b) The *applicant* maintains that the High Authority has infringed the provisions of the Staff Regulations of Officials by keeping him in his present post, while appointing him to a second position.

He states that the note of 18 December 1964 from the President of the High Authority (Schedule No 2 to the application) notifying the contested decision expressly emphasizes that, although the applicant is being placed in post No 3, he shall remain in post No 10 which shall be a post in career bracket A1 for as long as it is held by the applicant. The applicant maintains, first, that even if the High Authority believed that it had the power to amend the detailed list of posts of its departments by means of an individual decision (a point of view challenged by the applicant) it should have expressly stated in the contested decision that it was combining posts No 10 and No 3 and was transferring the applicant. This argument also relates to the submission of infringement of an essential procedural requirement (See above, 1).

The applicant submits that, while maintaining him in his former post No 10 of the detailed list of posts of the departments adopted by the decision of 5 September 1963, the decision in question transferred him to post No 3 of Unclassified Adviser and incorporated him into the Directorate-General for Economy and Energy. As post No 3 had become vacant on 4 June 1964 on the retirement of its former occupant, Mr Regul, the effect of the contested decision was to fill this post; such a procedure was irregular from the point of view both of the Staff Regulations and the budget, since it led to one official simultaneously and permanently holding two different posts appearing separately and individually in the detailed list of posts without any prior decision having been taken to combine these two posts.

The applicant further criticizes the words 'shall be attached, with immediate effect, to the Directorate-General for Economy and Energy' appearing in Article 1 of the contested decision and observes that the Staff Regulations do not recognize the concept of attachment but only of appointment, promotion and transfer.

Finally, in support of his arguments set out under (a) above to the effect that the duties assigned to him by the contested decision are not Grade A1 duties, the applicant alleges that his new post, No 3, is in fact a post in Category A2. He maintains that post No 3 held by Mr Regul, who was only classified in Grade A1 on personal grounds, became on the retirement of this official a post in Category A2, as is shown by the estimate of administrative expenditure of the Community for the financial year 1962-1963, page 1, 5.

The *defendant* replies that it is not in the light of the detailed list of posts adopted on 5 September 1963, which determines the structure of the departments for the period from 1 July 1963

to 30 June 1964, that the regularity of the decision in question must be assessed. This decision was, in fact, taken after the period of application of the detailed list of posts of 5 September 1963. It is in the light of the new detailed list, which is retroactive to 1 July 1964 and annexed by the defendant to its rejoinder, that the contested decision must be considered. In this new detailed list of posts, the post No 10 of Unclassified Adviser no longer exists after 16 December 1964. The defendant concludes from this that post No 10 must be regarded as having been combined with post No 3. On the subject of the detailed list of posts, the defendant observes that Article 6 of the Staff Regulations of Officials refers to the 'list of posts', which gives general quantitative information on the allocation of the credits intended for staff expenses. However, the detailed list of posts, which is the separate description of the organization of the various departments, gives information on the allocation of the total credits provided for in the establishment plan and is only for internal use. Unlike the establishment plan, the detailed list of posts cannot be determined definitely in advance for a whole year; no obligation to publish it is imposed on the Institution by the Staff Regulations and it is not binding on the administration.

As regards the expression 'attached' appearing in the contested decision, the defendant explains that it was a *sui generis* procedure, that the applicant had in fact been transferred from one post in the detailed list of posts to another, but that this post itself was, first, abolished and, secondly, recreated with the same powers and that, as regards the applicant, the final result is the same as a transfer.

As regards the criticism made by the applicant that post No 3 was in fact a post in Category A2, the defendant observes that post No 3 was abolished in June 1964 on the retirement of Mr Regul. The detailed list of posts for the financial year 1964-1965 shows that the post at present held by the applicant in the Directorate-General for Economy and Energy was only created an A1 post on 16 December 1964 on the abolition of post No 10 which he then held, and by use of the corresponding budgetary post. Although the new post carries the number 3, this is the result of the usual practice of reusing those numbers available so as to avoid increasing them unduly but, like the abolished post No 10, it is still an A1 post.

3. *Ultra vires* acts

(a) The *applicant* alleges that, although the High Authority had observed the provisions of Article 7 of the General Rules of Organization of 20 April 1960 (Official Journal of 3 May 1960, p. 748), it became clear that post No 3 is not a post in career bracket A1. He maintains that, according to the estimate of administrative expenditure of the Community for the financial year 1963-1964, post No 3 was one of four posts held temporarily in 1960 by Unclassified Advisers and which, on the departure of these Advisers, became posts in career bracket A2.

The *defendant* replies that, as has been explained (cf. 2, (b)), post No 3 is a new post in Grade A1 created on 16 December 1964.

(b) Secondly, the *applicant* alleges that Article 7 (1) of the Staff Regulations allows an official to be appointed to only one post in the detailed list of posts and that an official cannot, therefore, hold two different posts simultaneously and on a permanent basis without creating, before an individual decision is taken, certain necessary conditions, if need be by combining the two posts, in accordance with the provisions applicable in such cases.

The *defendant* replies that, as has been set out above (cf. 2 (b)), by virtue of the new detailed list taking effect on 1 July 1964, post No 10 of Unclassified

Adviser no longer exists as from 16 December 1964 and that this post must be regarded as having been combined with post No 3.

(c) The *applicant* again alleges that if the 'attachment' of an official was permissible it would be possible to assign an official to any post on condition that he be paid a salary corresponding to his original post and, therefore, that the statement in Article 5 (4) of the Staff Regulations that each institution shall 'define the duties and powers attaching to each basic post' would no longer have any meaning.

The *defendant* replies that, as has been explained above (cf. 2 (b)), the word 'attached' appearing in the contested decision has the same significance as a transfer.

(d) Finally, the *applicant* alleges that under the contested decision he remained responsible for his earlier duties while being entrusted with new ones, although Mr Jacques Cros, who is responsible for the same duties to the Director-General of the Directorate-General for Economy and Energy, was relieved of his former duties as Director.

The *defendant* replies that, following a reorganization, powers conferred on the Directorate under Mr Cros's supervision were distributed among other Directorates and that for this reason he could not continue to perform his former duties. The applicant, on the other hand, could continue to do so since his former duties did not keep him fully occupied.

4. The irregularity of the procedure employed in drawing up the decision in dispute

The applicant maintains that the procedure employed by the High Authority in preparing and implementing the contested decision is as irregular as the content of that decision. The applicant alleges that the defendant took the decision in question without being thoroughly aware of the facts and, therefore, without any sufficient basis.

(a) The *applicant* maintains, first, that Vice-President Coppé had given the reasons for his proposal regarding the future duties of the applicant and of Mr Cros, on which the first decision of 24 September 1964 was based, while asserting, without ever having spoken to the applicant, that the two officials concerned accepted appointment as Assistants. From this arose the mistaken opinion of the High Authority that the applicant accepted the duties reserved for him.

The *defendant* replies that the authority is not legally bound to obtain the prior agreement of an official when it decides to modify the extent of his duties without adversely affecting his status, which means that he can only be assigned duties corresponding to his grade and post. Furthermore it replies that it is clear from the minutes of the meetings of the High Authority on 24 September 1964, 24 November 1964 and 2 December 1964 that this body was fully aware of the applicant's opposition to the proposed scheme of reorganization.

(b) Secondly, the *applicant* maintains that at its meeting on 19 November 1964 the Administrative Committee expressed the opinion that 'it should be suggested that Mr Klaer set out without delay his final position on the proposal for assignment which has been notified to him. In the case of a refusal, Mr Klaer should continue to perform his duties as Unclassified Adviser'. The applicant maintains that this opinion was not communicated to the High Authority. He asks the Court to order, in support of his statement, the production of the minutes of the meetings of the High Authority on 24 November 1964 and 2 December 1964 and of the meeting of the Administrative Committee on 19 November 1964.

The *defendant* replies, first, that as the opinion of the Administrative Committee was purely advisory the High

Authority was under no obligation to follow it and, secondly, that the High Authority was aware of the opinion since two of its members took part in the work of the Administrative Committee and two others were represented on it.

(c) Finally the *applicant* maintains that before taking the decision to entrust him with further tasks which exceed the limits laid down by the authority of 12 March 1963 the High Authority did not study his personal file or any extract from it, with the result that it had no reliable information as to his abilities and it was possible that those members of the High Authority who had been appointed after 1960 were unaware that he held Grade A1.

The *defendant* replies that it is clear from the minutes of the meetings of the High Authority, in particular of that on 13 November 1964, that all the members of the High Authority were aware of the grade and qualifications of the applicant.

IV — Procedure

The statements of the parties were lodged within the prescribed time-limits and the procedure followed the normal course.

By order of 30 September 1965 the President of the Court appointed Mr J. Gand to act as Advocate-General in place of Mr K. Roemer.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court (First Chamber) decided on 5 October 1965 to open the oral procedure without holding any preparatory inquiry, but nevertheless requested the defendant to lodge certified true copies of the decisions of the High Authority of 22 March 1961, 24 September, 13 November and 2 December 1964 and of the decision of the Administrative Committee of 19 November 1964.

The defendant lodged these documents on 14 October 1965.

The parties presented their oral submissions at the hearing on 20 October 1965.

At this hearing the Court asked the parties to state clearly whether the applicant had been aware of the minutes of the meetings of the High Authority on 24 September and 2 December 1964 which are referred to in the preamble to the decision in question.

Pursuant to Article 29 (2) (b) of the Rules of Procedure, the Court authorized the parties to use the French language in their pleadings.

Mr Advocate-General Gand delivered his opinion at the hearing on 17 November 1965.

Grounds of judgment

A — Admissibility

The defendant maintains that the application is inadmissible in that it is directed against an act which does not adversely affect the applicant. The contested decision led to no injury to the material interests of the applicant and no reduction in his rank as compared with the Director-General with whom he was required to cooperate. The new definition of his duties made by the administrative authority did not adversely affect his status and thus, it is not admissible for the applicant to contest the decision of the High Authority.

The applicant rightly replies that in this case the admissibility of the application is closely connected to the substance of the case and that it is only after the consideration of the substance by comparing the content of the contested decision with those provisions of the Staff Regulations which have allegedly been infringed that it will be possible to state whether or not this decision constitutes an act adversely affecting the applicant.

B — The substance of the case

The applicant maintains that, by assigning to him duties which are not of the level of those usually assigned to an Unclassified Adviser in Grade A1, the decision in question infringed the Staff Regulations of Officials, in particular Articles 5 and 7.

The definitions of duties and powers, adopted by the High Authority on 18 December 1962 in accordance with Article 5 (4) of the Staff Regulations, defines an Unclassified Adviser as a 'very highly-qualified officials with the task of advising the Institution or engaged in top-level studies'.

Thus, an Unclassified Adviser cannot be required to advise a Directorate-General.

Furthermore, under Article 7 of the Staff Regulations the defendant is bound to assign each official to a post in his category which corresponds to his grade.

The abovementioned provisions show that an official is entitled not only to remain in the same grade and receive the corresponding remuneration, but also to be entrusted with duties and powers which are as a whole in accordance with the post corresponding to the grade which he holds in the administration.

The first question is, therefore, whether the effect of the decision appointing the applicant to a post as Assistant to the Director-General for Economy and Energy, who also held Grade A1, was not to place him in a lower administrative position than another official in the same grade. It is in the very nature of the duties of an assistant to the Director-General that the person to whom such duties are assigned is in a subordinate position as compared with the Director-General himself.

The position of the Director-General in relation to the applicant is confirmed by the definitions of duties and powers annexed to the decision in question.

In particular the statement that in the absence of the Director-General at external meetings Mr Klaer shall express the point of view of the Directorate-

General means that this point of view will not be prepared on the basis of the opinion of the applicant but rather on that of the Director-General.

Secondly, it is clear from the definitions of duties and powers adopted by the High Authority on 18 December 1962 that an official performing duties in Grade A1 can only be responsible to the High Authority itself or to its working parties.

Moreover the definitions of the duties in career bracket A2 show the Director to be under the direct authority of the Director-General and, in certain cases, of the Institution and that an Unclassified Adviser is required to advise the Institution or a Directorate-General.

This same concept appears throughout the definitions of duties and places the holder of a post under the authority of the official whose bracket is immediately superior to his own.

However, the effect of this system cannot be—as in this case—to subordinate one official in Grade A1 to the authority of another official in the same grade, at least without having obtained the agreement of the former.

It is true that under the terms of Article 2 of the decision in question the applicant remains responsible for the duties deriving from the authority of 12 March 1963, in the performance of which he is directly responsible to the High Authority.

Although these duties involve a working relationship with the Directorate-General for Economy and Energy, they do not incorporate the applicant into this Directorate-General or subordinate him to its Director-General.

It matters little in this case that, as regards the duties which the applicant continues to perform by virtue of the authority of 1963, he is only responsible to the Institution.

In fact, the new duties assigned to him by the decision in question cannot merely be an extention of his earlier duties in Grade A1, as they are quite distinct and must, as a result of their importance, be assessed separately.

The subordination of the applicant to another official represents a substantial diminution of his earlier status.

Before the decision in question was made the applicant was only responsible to the High Authority, while as a result of this decision he has become subordinate to an official in his own grade.

Finally, the duties of assistant to the Director-General for Economy and Energy were at the same time entrusted to Mr Cros, an official in Grade A2.

This joint appointment is confirmation that it was intended to diminish the authority of the applicant by assigning to him duties corresponding to Grade A2, in spite of a certain importance accorded to him in relation to his colleague in Grade A2, in that the applicant is alone empowered to deputize for the Director-General in his absence.

The above considerations show that the decision in question is not merely an internal measure for the organization of the department, which falls within the sphere of the High Authority's discretionary power, but that it adversely affects the rights held by the applicant under the Staff Regulations by requiring him to perform duties which do not correspond to his post and grade.

The application is therefore admissible and well founded.

C — Costs

The applicant has been successful in his application.

Under the terms of Article 69 (2) of the Rules of Procedure the defendant must therefore be ordered to pay the costs.

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 Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to Articles 5, 6, 7, 25, 90 and 91 of the Staff Regulations of Officials of the ECSC and Annex I thereto;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Annuls the decision of the defendant institution of 2 December 1964, notified to the applicant on 16 December 1964, by which he**

was attached to the Directorate-General for Economy and Energy in the post of assistant to the Director-General;

2. Orders the defendant to pay the costs.

Delvaux Trabucchi Lecourt

Delivered in open court in Luxembourg on 15 December 1965.

A. Van Houtte
Registrar

L. Delvaux
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 17 NOVEMBER 1965[1]

Mr President,
Members of the Court,

Mr Werner Klaer held an important post in the administration of the German National Railways when in 1952 he entered the service of the High Authority as Director of the Transport Division. He left this post in 1960 following a reorganization of the departments, as a result of which this Division became a Directorate responsible to the Directorate-General for Economy and Energy; he was then appointed Adviser (Grade 1) a position which under the new Staff Regulations corresponds to that of Unclassified Adviser. Three years passed before it was possible to define the duties which were conferred on him.

A decision of the High Authority of 12 March 1963, which had been drawn up with his agreement, gave him a three-fold authority: authority to act as Adviser to the Directorate-General for Economy and Energy to ensure coordination in questions of transport with the other departments of the High Authority—authority to undertake certain studies concerning transport within the ECSC—authority to represent the High Authority at various organizations dealing with problems of transport outside the framework of the Common Market.

The High Authority subsequently considered that this definition of Mr Klaer's duties did not permit full use of his abilities and it took advantage of a reorganization in the structure of the Directorate-General for Economy and Energy to modify and extend his duties.

On 18 December 1964, the President of the High Authority notified to Mr Klaer a decision taken by that Institution at its meeting on the preceding 2 December, the precise terms of which it is necessary to recall:

'*Article 1*:

Mr Werner Klaer, Unclassified Adviser, responsible for questions concerning transport (post No 10 in the detailed list of posts of Unclassified Advisers) shall be attached, with immediate effect, to the Directorate-General for Economy and Energy (post No 3 in the detailed list of posts of that Directorate-General).

1 — Translated from the French.