Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)
15 November 2011

Case T-58/11 P

Michel Nolin
v
European Commission

(Appeal — Civil service — Officials — Promotion — Withdrawal of merit points and priority points following a promotion on the basis of Article 29 of the Staff Regulations — Legal basis — Competence of the author of the act — Principle of non-discrimination)

Appeal: brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 1 December 2010 in Case F-82/09 *Nolin* v *Commission*, seeking the setting aside of that judgment.

Held: The appeal is dismissed. Mr Michel Nolin is ordered to bear his own costs and to pay those incurred by the Commission in the appeal.

Summary

1. Officials — Promotion — Procedure — Merit and priority points — Number of merit and priority points corresponding to the promotion threshold — Deduction from the total number of points accumulated by an official who has been promoted
(Staff Regulations, Arts 29 and 45)

2. Officials — Appointing authority — Powers — Exercise — Distribution of business — Exceptions — Sub-delegation — Lawfulness — Conditions
(Staff Regulations, Art. 2)

1. The term 'promotion' used in Article 29(1)(a)(iii) of the Staff Regulations must be read in the light of the definition set out in Article 45 of the Staff Regulations and must therefore be consistent with the implementing provisions adopted on that basis. Candidatures for promotion under Article 29(1)(a) of the Staff Regulations must be considered in accordance with the provisions of Article 45 of the Staff Regulations, which necessarily includes Article 2(3) of the general implementing provisions for Article 45 of the Staff Regulations, adopted by the Commission in 2004, which expressly provides that, following a promotion, the number of points corresponding to the promotion threshold must be deducted from the aggregate number of points accumulated by the promoted official.

If that were not the case, officials promoted under Article 29 of the Staff Regulations would be able to use the large number of merit and priority points they had acquired in a lower grade in order to gain further promotion, which would contradict Article 45 of the Staff Regulations, according to which the merits of an official must be compared, for the purpose of promotion, with those of colleagues in the

same grade. Furthermore, those officials would have a greater chance than colleagues promoted solely on the basis of Article 45 of the Staff Regulations of gaining further promotion rapidly, contrary to the principle of equal treatment, which is a general principle of European Union law, enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union.

(see paras 36, 37)

See:

C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others* [2010] ECR I-8301, para. 54

T-22/92 *Weissenfels* v *Parliament* [1993] ECR II-1095, para. 66; T-302/02 *Kenny* v *Court of Justice* [2003] ECR-SC I-A-235 and II-1137, para. 56

2. A sub-delegation or deviation from the criteria for division of the powers conferred by the Staff Regulations on the appointing authority cannot render void an act done by the administration unless such sub-delegation or deviation involves the possibility of adversely affecting one of the guarantees given to officials by the Staff Regulations or the principles of good administration in staff management. A decision taken by the Commission under Article 2 of the Staff Regulations involves a distribution of business within the Commission's services, rather than a rigid division of powers, non-observance of which could entail the nullity of acts done outside the limits laid down.

(see para. 49)

See:

T-23/96 *De Persio* v *Commission* [1998] ECR-SC I-A-483 and II-1413, para. 111; T-40/07 P and T-62/07 P *de Brito Sequeira Carvalho* v *Commission* and *Commission* v *de Brito Sequeira Carvalho* [2009] ECR-SC I-B-1-89 and II-B-1-551, para. 155