

Case T-80/92

Mariette Turner

v

Commission of the European Communities

(Official — Compulsory reassignment — Non-material damage —
Claim for compensation)

Judgment of the Court of First Instance (Fifth Chamber), 16 December 1993 II - 1467

Summary of the Judgment

1. *Officials — Transfer — Reassignment — Criteria for distinguishing — Conditions applying to both*
(Staff Regulations, Arts 4, 7(1) and 29)
2. *Officials — Individual decision — Notification — Decision taking effect before date of notification — Assessment in the light of the principle of legal certainty*
(Staff Regulations, Art. 25)
3. *Officials — Organization of departments — Assignment of staff — Administration's discretion — Extent — Review by the Court — Limits — Official's duty of cooperation and loyalty*
(Staff Regulations, Art. 7)
4. *Officials — Decision adversely affecting an official — Statement of reasons — Obligation — Scope*
(Staff Regulations, Art. 25)
5. *Officials — Actions — Pleas in law — Misuse of powers — Concept*
6. *Officials — Assignment — Administration's duty to have regard to the interests of officials — Scope — Review by the Court — Limits*

1. In determining whether a measure is a transfer or a reassignment, the Court cannot be bound by the legal classification adopted by the parties.

appointing authority agreed to postpone the date on which the decision actually took effect.

In that regard, it is clear from the general scheme of the Staff Regulations that there is a transfer in the strict sense of the term only where an official is transferred to a vacant post. It follows that any transfer, properly so-called, is subject to the formalities prescribed by Articles 4 and 29 of the Staff Regulations. In contrast, those formalities do not apply when an official is reassigned with his post because such a transfer does not give rise to a vacant post.

However, decisions to reassign are subject, just as transfers, as regards the protection of the rights and legitimate interests of the officials concerned, to the rules of Article 7(1) of the Staff Regulations inasmuch as in particular the reassignment of officials may take place only in the interests of the service and in conformity with the principle of equivalence of posts.

3. The Community institutions enjoy a broad discretion to organize their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition, however, that the staff are assigned in the interests of the service and in conformity with the principle that assignment must be to an equivalent post. Any problems which might be caused to an official's department by his departure, the benefit to his new department which might be obtained from his reassignment and the effects which the change might have on the relationship between the two departments and outside persons are considerations which are governed by that same discretionary power. Having regard to the extent of the institutions' discretion in evaluating the interests of the service, the review undertaken by the Community judicature must be confined to the question whether the appointing authority remained within reasonable limits and did not use it in a manifestly wrong way.

2. The fact that a decision to reassign an official formally took effect before being notified to that person could not prejudice the legal certainty to which he could lay claim where he had been informed that he would probably be reassigned in the near future, that decision could not by its very nature have practical effect before being notified to him, and the

When the administration assesses the likely consequences for the service of a decision to reassign an official, it is entitled to expect that official to act in accordance with the fundamental duty of loyalty and cooperation that all officials owe to the authority they serve.

4. The purpose of the obligation laid down in Article 25 of the Staff Regulations to state the grounds on which decisions adversely affecting officials are based is to enable the Community judicature to review the legality of the decision and to provide the official concerned with sufficient information to determine whether the decision is well-founded or whether it is defective, making it possible for its legality to be challenged. That requirement is satisfied when the measure against which an action may be brought has been adopted in circumstances known to the official concerned, which enable him to apprehend the scope of a measure which concerns him personally.
5. The concept of misuse of powers refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.
6. The administration's duty to have regard to the interests of officials reflects a balance between reciprocal rights and obligations created by the Staff Regulations for relations between the public authority and public service employees. The requirements of the duty to have regard to the interests of officials cannot, however, prevent the appointing authority from adopting the measures reassigning officials it believes necessary in the interests of the service since the filling of each post must be based primarily on the interests of the service. Having regard to the extent of the discretion of the institutions in evaluating the interests of the service, the review undertaken by the Community judicature must therefore be confined to the question whether the appointing authority remained within reasonable limits and did not use it in a manifestly wrong way.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
16 December 1993 ^{*}

In Case T-80/92,

Mariette Turner, formerly an official of the Commission of the European Communities, residing in Brussels, represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

^{*} Language of the case: French.