

Case T-43/89

Walter Gill

v

Commission of the European Communities

(Official — Invalidity pension —
Occupational disease)

Judgment of the Court of First Instance (Fourth Chamber), 6 April 1990

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Summary of the Judgment

- 1 *Officials — Social security — Insurance against accident and occupational disease — Invalidity — Separate schemes*
(*Staff regulations, Arts 73 and 78*)
- 2 *Officials — Staff Regulations — Independent interpretation*
- 3 *Officials — Social security — Invalidity pension — Occupational disease — Definition*
(*Staff Regulations, Art 78, second paragraph*)

1 The sets of rules established by Articles 73 and 78 of the Staff Regulations are different and independent of one another. Contrary to Article 73, Article 78 does not empower the institutions to lay down the conditions for the award of invalidity pensions and the application of its provisions is therefore subject only to the conditions provided for in Articles 13

to 16 of Annex VIII to the Staff Regulations, which contain neither a definition of 'occupational disease' nor a reference to the provisions of Article 73 or to the rules implementing that article

It would therefore be contrary to the scheme of the provisions concerned to

refer, for the purposes of applying the second paragraph of Article 78 of the Staff Regulations, to the definition of 'occupational disease' laid down in Article 3 of the Rules on Insurance against the Risk of Accident and Occupational Disease drawn up by common agreement of the institutions under the express power conferred by Article 73(1), especially if such a reference were to limit the rights of those concerned

- 2 Since the Staff Regulations, being an independent instrument of the Communities, must be interpreted in their own context and according to their own aims, Regulation No 1408/71, which is confined to coordinating the national laws on social security, cannot be referred to for the purpose of interpreting the term 'occupational disease' in the second paragraph of Article 78

- 3 Article 78 of the Staff Regulations must be interpreted as excluding from the scope of its second paragraph facts which occurred exclusively prior to an official's entry into the service. The official's pathological state must bear a sufficiently direct relationship with a specific and

normal risk inherent in the duties which he performed for the Communities

An institution must be presumed to have accepted the financial responsibility arising from the risk that an official's chronic lung disease, which was already established at the medical examination prior to his entry into the institution's service and which arose from the inhalation of dust down mines, would lead to invalidity, making it impossible for him to perform his duties if it assigns him to duties making it necessary for him to continue to go down mines with all the risks which ensue for his future state of health

The fact that the existence of the disease was known to the institution right from the recruitment of the official and the fact that its aggravation was entirely foreseeable in view of the nature of the duties to which the official was assigned constitute a set of concordant presumptions which are sufficient to enable the Court to conclude that the aggravation which did occur arose in the course of, or in connection with, the performance by the official of his duties with the Communities