

Case T-144/02

Richard J. Eagle and Others

v

Commission of the European Communities

(Staff employed at the JET Joint Undertaking — Application of a legal status different from that of members of the temporary staff — Compensation for material damage sustained)

Judgment of the Court of First Instance (First Chamber), 12 July 2007 . . . II - 2726

Summary of the Judgment

1. *Procedure — Introduction of new pleas during the proceedings*
(*Rules of Procedure of the Court of First Instance, Art. 44*)
2. *Officials — Actions — Unlimited jurisdiction*

3. *Officials — Actions — Unlimited jurisdiction*
4. *Officials — Actions — Unlimited jurisdiction*

1. Claims with supporting figures lodged in a compensation action, after the delivery of an interlocutory judgment in which the Court of First Instance ordered the Community to make good the loss suffered by staff members of an EAEC joint undertaking by reason of the application of a legal status different from that of members of the temporary staff, amended to take account of the method for calculating the loss suffered laid down in the interlocutory judgment, cannot be held inadmissible since they represent a permissible amplification of the claims contained in the application, especially inasmuch as, first, the Court of First Instance determined the criteria necessary in order to calculate the damage for the first time in its interlocutory judgment and, second, the exact composition of the damage and the precise method of calculating the compensation payable had not yet been debated.

applicant, it must necessarily be possible to adjust the quantum of the individual claims of each applicant after that judgment.

(see paras 21, 22)

2. In a compensation action, after the delivery of an interlocutory judgment in which the Court of First Instance ordered the Community to make good the loss suffered by staff members of the Joint European Torus (JET) Joint Undertaking by reason of the application of a legal status different from that of members of the temporary staff, the classification in grade and step of each applicant at the beginning of the liability period must be decided in the light of his actual recruitment, the said period lasting, for each applicant, for five years from the effective date of the earliest contract concluded or renewed with the undertaking, that date being no more than five years before the submission of his request for compensation.

Since the interlocutory judgment laid down the period for which compensation is due, the elements which go to make it up and the method to be followed in determining the exact amount of damages accruing to each

Whilst the Court of First Instance limited each applicant's right to com-

compensation to a period of no more than five years, it nevertheless held that, from the outset, that is to say, from their first employment, the parties concerned should have been recruited as temporary staff, the unlawful conduct having persisted throughout the duration of the joint undertaking. Consequently, the situation of each applicant at the start of the liability period must not be deemed equivalent to that on first recruitment, but dealt with having regard to the fact that, from his first engagement as a member of the contract staff, the party concerned should have been recruited as a member of the temporary staff, which means taking into account, where appropriate, the 'career' he had up to the start of the liability period. Such a method of 'career reconstruction' must include the promotions from which each applicant could have benefited.

Concerning promotions during the liability period, it is in relation to the situation of the actual members of the project team at JET that the Court of First Instance considered that the applicants had been kept in a legal position in which they suffered discrimination constituting a culpable illegality and that they had, consequently, suffered loss. Consequently, the 'comparable position' of temporary staff members of the EAEC which must serve as the point of comparison in order to determine the career progressions from which the applicants would have benefited is that — where appropriate more favourable —

of the actual members of the project team at JET.

(see paras 49-51, 64, 67)

3. In an interlocutory judgment in which the Court of First Instance ordered the Community to make good the loss suffered by staff members of the Joint European Torus (JET) Joint Undertaking by reason of the application of a legal status different from that of members of the temporary staff, the Court of First Instance held the applicants' loss lay in the difference between the salaries and related benefits which the persons concerned would have received if they had worked for the JET project as members of the temporary staff and the salaries and related benefits which they actually received as members of the contract staff.

It follows, first, that in order to determine the net Community income that each applicant would have received during the liability period determined by the Court of First Instance if he had been recruited as a member of the temporary staff, it is necessary to take into account all the advantages to which the party concerned would have been entitled, having regard to the criteria concerning his personal and professional situation in respect of which he was able

to provide written evidence. Conversely, it is not necessary to include the claims for expenses which would have been received for missions, since at JET all subsistence costs were reimbursed, whilst there was little or no daily allowance. Secondly, in order to determine the net national revenue received by each applicant as a member of the contract staff during the liability period, it is necessary to take into account the entire salary that the parties concerned received on that basis, in particular, the daily allowance which certain of the applicants may have received for having to commute to the JET premises.

(see paras 76-78)

4. In an interlocutory judgment in which the Court of First Instance ordered the Community to make good the loss suffered by staff members of the Joint European Torus (JET) Joint Undertaking by reason of the application of a legal status different from that of members of the temporary staff, the Court of First Instance held that, from the outset, the applicants should have been recruited as temporary staff and that the unlawful conduct lasted longer than the liability period determined by the Court of First Instance. That finding necessarily entails account being taken of the fact that the applicants were able to acquire pension rights for the entire period that each of

them actually worked at JET, but compensation for any such rights is limited to the liability period.

Consequently, in order to determine that part of the damages corresponding to pension rights, it is necessary to consider, for each of the applicants, the date of their first actual recruitment at JET, where appropriate before the liability period, the damages being due in respect of the loss of pension rights for a maximum of five years corresponding to the liability period. Those five years do not therefore constitute the only years of entitlement to rights. It is the whole period of employment for each applicant at JET which entitles him to pension rights, the respective rights then being reduced in proportion to the ratio of the liability period to his total period of employment.

Moreover, it is necessary to consider whether the damages due in respect of pension rights may not be lower than the actuarial value of the reserves built up in the name of each applicant by workers' and employers' contributions in respect of the maximum of five years corresponding to the liability period.

Where, conversely, an applicant, because in particular he has worked at JET for fewer than 10 years, would not in any event, under the provisions of the Staff Regulations, be entitled to a service pension but only to a severance grant, compensation in respect of the loss of that grant, reduced in proportion to the ratio of the liability period to his total

period of employment, constitutes the alternative which must necessarily be granted to him.

(see paras 89-92)