JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
20 November 1996

Case T-135/95

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v
Commission of the European Communities

(Officials – Actions for annulment – Unauthorized absence from service – Articles 59 and 60 of the Staff Regulations – Medical certificates – Incapacity for work

Application for: Annulment of the decision of 6 September 1994 applying Article 60 of the Staff Regulations of Officials of the European Communities to the applicant, as confirmed by the decision of the Commission notified on 4 April 1995, rejecting the applicant's complaint.

Decision: Application dismissed.

Abstract of the Judgment

Facts and procedure

The applicant, an official of the Commission in Grade C 1, departed on annual leave in July 1992 to Spain, her country of origin, and did not resume her work at the end of her leave in August 1992. She sent sickness certificates to the Commission certifying that she suffered from fibromyalgia. Those certificates, which did not bear a doctor's stamp, were regularized in December 1992. However, the Commission refused to accept them as valid inasmuch as they referred to the same illness as that in respect of which the Invalidity Committee had found the applicant fit for work.

On 23 December 1992 the Commission decided to apply to the applicant the provisions of Article 60 of the Staff Regulations of Officials of the European Communities (the Staff Regulations) and to suspend her remuneration with effect from 1 January 1993. By judgment of 26 January 1995, the Court of First Instance annulled that decision on the ground that the Commission did not accept the medical certificates submitted by the applicant and considered that her absence was unjustified without having, however, previously arranged for her to undergo a medical examination as required by Article 59 of the Staff Regulations.

See: T-527/93 *O* v *Commission* [1995] ECR-SC II-29

Until 26 July 1993 the applicant continued to justify her absence from work by sending to the Commission sickness certificates attesting to her fibromyalgia. Since the applicant's absences until that date had not been made subject to a medical check, the Commission did not consider them to be unauthorized. From 27 July 1993 and until 20 January 1994 the applicant sent to the Commission medical certificates concerning other illnesses related to a termination of pregnancy. Those

certificates were accepted, in accordance with the opinion of the medical service, as justifying the applicant's sick leave during that period.

The applicant was called on two occasions to undergo medical checks in Brussels, for which she did not attend, sending, on each occasion, a certificate from her doctor to the effect that she was unable to travel.

Following the applicant's second refusal to travel to Brussels, the Commission medical service arranged for her to be examined on 16 March 1994, in Spain, by a panel of doctors composed of two psychiatrists and two psychologists. According to the findings of the report drawn up by that panel on 24 March 1994, the applicant was suffering from a form of 'general anxiety' which did not, however, prevent her from travelling to Brussels. The applicant was made aware of the findings of that report by a letter of 11 April 1994 sent to her counsel by the Secretary of the Commission's Disciplinary Board. Subsequently, the entire report was made available to a doctor of the applicant's choosing, as is clear from a letter of 18 April 1994 sent to her counsel by the Chairman of the Disciplinary Board.

After the examination of 16 March 1994 and having been informed of the findings of the report, the applicant sent to the Commission a series of medical certificates. The first, dated 30 May 1994, certified that the applicant was undergoing medico-psychiatric treatment and that her condition required continued medical checks. The second, dated 20 June 1994, certified that her 8 to 9-week pregnancy was proceeding normally. The third certificate, dated 14 July 1994, attested to the need to interrupt her treatment on account of her pregnancy but stated that in any event psychotherapy was to continue as the form of treatment for stabilizing her mental state and removing her symptoms. The fourth certificate, dated 21 July 1994, attested to her treatment during the third month of pregnancy and to the fact that she was not able to travel. Finally, a fifth certificate, dated 1 September 1994, certified that she was continuing to undergo psychiatric treatment intended to alleviate the symptoms of depression which had become more serious since her

pregnancy and which gave rise to bouts of anxiety due, in part, to the medication she had previously been taking.

The applicant was informed by letter of the Commission's Directorate-General for Personnel of 6 September 1994 that the certificates which she had previously submitted were not accepted by the medical service and that, accordingly, her absence, both from her place of employment and from her work, was still to be regarded as unauthorized for the purposes of Article 60 of the Staff Regulations.

On 23 November 1994 the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the abovementioned decision of the Commission treating her absence as unjustified, notwithstanding the fact that on 25 July she had sent the medical certificate dated 21 July 1994.

In the meantime, the applicant underwent a fresh medical examination which took place at her private address in Spain on 25 October 1994. In the opinion of the doctor who examined the applicant, there was no clinical reason to justify a finding that she was incapable of working. None the less, 'in view of her family circumstances as well as of [her] advanced pregnancy', it was suggested that, 'for purely humanitarian rather than medical reasons', the applicant should be declared unfit for work with effect from 25 October 1994 until the end of her maternity leave.

By decision notified to the applicant on 4 April 1995, her complaint was rejected on the ground that the medical examination which she underwent on 16 March 1994 did not reveal any factor such as to enable the Commission's medical service to conclude that she was incapable, for health reasons, of resuming her duties or of travelling. According to that decision, none of the certificates produced by the

applicant since 20 January 1994 stated that she was, on account of illness, unable to travel and that, where they did so state, those certificates made no mention of the dates of such incapacity. In those circumstances, in the absence of a valid reason for her absence from work, the applicant should be considered absent without leave for the period from 16 March 1994 to 6 September 1994, or until 25 October 1994, the date on which the applicant underwent a fresh medical examination carried out, on behalf of the Commission, in Spain.

Finally, according to the same decision, the applicant travelled to Brussels on 20 May 1994 in connection with an administrative inquiry and departed again for Spain without having requested, in respect of the days following her visit, annual leave or permission to spend sick leave at a place other than that of her employment.

Findings of the Court

It is clear from the contested decision of 6 September 1994, confirmed by the decision of 4 April 1995 rejecting the applicant's complaint, pursuant to Article 60 of the Staff Regulations, that it was adopted on the basis of the applicant's unjustified absence both from the place of her employment and from her work from 16 March to 6 September 1994, and indeed until 25 October 1994 (paragraph 28).

The applicant complains that the Commission failed to give reasons for the contested decision and infringed Articles 59 and 60 of the Staff Regulations (paragraph 29).

So far as concerns the complaint of lack of reasons, in its decision of 6 September 1994 the Commission explained that the absence of the applicant was unauthorized within the meaning of Article 60 of the Staff Regulations because the certificates of incapacity for work which she had previously sent had not been accepted by the medical service. Although the Commission did not provide in that decision a detailed explanation of the reasons for which those certificates were not accepted by the medical service, the fact remains that the defendant institution explained the reason for which the applicant's absence from work was considered to be unauthorized. Accordingly, the decision of 6 September 1994 cannot be considered to be vitiated by a lack of a statement of reasons but, at most, by an inadequate statement of reasons (paragraph 30).

Secondly, although the decision of 6 September 1994 did not make it possible for the applicant to know the precise reasons for which the medical service had rejected the medical certificates which she had sent, the Commission did, none the less, explain in its decision of 4 April 1995 rejecting her complaint that the diagnosis obtained after the examination of 16 March 1994 did not reveal any factor which made it possible to conclude that the applicant was unable to resume her duties or to travel and also stated that the certificates at issue did not declare whether the applicant was unfit to work and did not indicate the dates of the alleged periods of incapacity. Accordingly, the Commission must be held to have provided the applicant, in the course of the pre-litigation procedure, with a statement of reasons sufficient for her to judge whether the decision to reject her complaint was well founded and whether it was appropriate to bring proceedings before the Court (paragraph 31).

So far as concerns the complaint of infringement of Articles 59 and 60 of the Staff Regulations, where an official claims to be suffering from an illness or to have suffered an accident rendering him unfit for work, he must, according to Article 59 of the Staff Regulations, notify his institution of his incapacity as soon as possible and at the same time state his present address and produce a medical certificate justifying his absence if he is absent for more than three days. The administration may refuse to accept such a medical certificate as valid and find that the absence of the official concerned is unauthorized only if it has subjected him beforehand to a

medical examination, the findings of which take effect for administrative purposes only as from the date of that examination (paragraph 32).

See: C-18/91 P *V* v *Parliament* [1992] ECR I-3997, para. 34; *O* v *Commission*, cited above, para. 36

According to the findings of the medical report drawn up on 24 March 1994 following the examination of 16 March 1994, the applicant was able to travel to Brussels. By letter of 11 April 1994 the Secretary General of the Disciplinary Board of the Commission informed the applicant of its findings. Accordingly, as from the date on which she became aware of the abovementioned findings, the applicant was required, pursuant to the abovementioned provisions of Article 59 and of Article 60 of the Staff Regulations, according to which an official may not, except in case of sickness or accident, be absent without prior permission, to travel to her place of employment in Brussels in order to resume her duties. In the event that she was unable to do so, she was required to obtain and send to the Commission medical certificates expressly declaring that she was unfit to work or travel (paragraph 33).

After becoming aware of the findings of the abovementioned medical report, the applicant did not send such certificates to the Commission after being absent for more than three days, in compliance with the second paragraph of Article 59 of the Staff Regulations. However, the duty of the Community institutions to arrange a medical examination necessarily has as its corollary a duty on the part of the officials concerned, if Articles 59 and 60 of the Staff Regulations are not to be rendered ineffective, to submit to those institutions certificates showing with sufficient clarity and beyond all argument the incapacity which they may intend to invoke (paragraph 34).

See: T-13/91 R *Harrison* v *Commission* [1991] ECR II-179

So far as concerns the ground based on the applicant's absence from her place of employment, the conclusion that she was not fit to travel was not supported by the certificates produced by her following the examination she underwent on 16 March 1994, the only exception being the certificate of 21 July 1994, which, taken together with the preceding certificates and the subsequent certificate of 1 September 1994, showed that she was temporarily unfit to travel to Brussels, where in any event she should have been either until the date on which the certificate of 21 July 1994 was sent, or afterwards and until the date on which the certificate of 1 September 1994 was sent. Accordingly, the Commission was right, in its decision of 6 September 1994, in refusing to call in question the findings of the medical report following the examination undergone by the applicant on 16 March 1994 which found her fit to travel and, therefore, to be present at her place of employment in Brussels (paragraph 37).

As regards the ground of the decision of 6 September 1994 to the effect that the applicant's absence from her work was unauthorized in the absence of any medical certificate stating that she was unfit for work, it is not open to her to complain that the Commission refused to call in question the findings which its medical service considered it could make on the basis of the report drawn up following the medical examination of 16 March 1994, according to which the applicant was also fit for work. Moreover, corroboration of the findings of the Commission's medical service can be found in those of a fresh medical examination, which related to the same illness as that mentioned in the certificate of 21 July 1994 and which the applicant underwent on 25 October 1995. According to those findings, there was no medical evidence to justify the applicant's incapacity to work. It was only because of 'family circumstances and for purely humanitarian rather than medical reasons' that the Commission found that the applicant was unfit for work with effect from the date of that examination, 25 October 1995, and until the end of her maternity leave (paragraph 38).

See: 42/74 and 62/74 *Vellozzi* v *Commission* [1975] ECR 871, paras 25 and 26

Finally, and in any event, since she failed to travel to Brussels, although she was fit to do so, either before or after the certificate of 21 July 1994 was sent, the applicant was guilty, to that extent, of being absent without leave from her place of employment and, as a result, from her work (paragraph 39).

In those circumstances, when the Commission adopted on 6 September 1994 the decision to apply to the applicant the provisions of Article 60 of the Staff Regulations, it was justified in doing so on the ground that the applicant was absent without authorization both from her place of employment and from her work (paragraph 40).

Operative part:

The application is dismissed.