

ORDER OF THE COURT OF FIRST INSTANCE (Single Judge)
9 March 2000

Case T-29/97

Alain Libéros
v
Commission of the European Communities

(Temporary servant – Classification in grade – Professional experience)

Full text in French II - 185

Application for: annulment of the Commission's decision of 15 March 1996 adopting the applicant's definitive classification in Grade A 7 and the Commission's decision of 5 November 1996 rejecting the applicant's administrative complaint.

Held: The application is dismissed. The parties shall bear their own costs.

Summary

1. Officials – Actions – Action against the decision rejecting a complaint – Time-limits – Action brought out of time on the basis of information provided by the institution – Excusable error – Effects – Maintenance of the period prescribed for bringing an action

(Staff Regulations, Arts 90 and 91)

2. Officials – Recruitment – Nomination in grade and classification in step – Internal directive of an institution on the applicable criteria – Legal effects – Determination of the date chosen for the evaluation of professional experience as the date on which a post is offered – Whether permissible

(Staff Regulations, Art. 31(2))

1. Failure to comply with the time-limits laid down in Article 90(2) of the Staff Regulations is not an obstacle to the admissibility of a prior administrative complaint or the action brought against the rejection of that complaint where the person concerned has made an excusable error. The concept of excusable error must be strictly construed and can cover only exceptional circumstances in which, in particular, the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to a pardonable confusion in the mind of a party acting in good faith and exercising all reasonable diligence.

There is excusable error of a kind that will preserve the period prescribed for bringing an action where an action is brought out of time owing to incorrect information provided by the institution concerned which is likely to give rise to confusion on the part of the applicant.

(see paras 30 to 32)

See: T-33/89 and T-74/89 *Blackmann v Parliament* [1993] ECR II-249, paras 35 to 36; C-195/91 P *Bayer v Commission* [1994] ECR I-5619, paras 34 to 36; T-68/96 *Polyvios v Commission* [1998] ECR II-153, para. 43

2. The exercise of the discretion conferred on the appointing authority by Article 31(2) of the Staff Regulations may be regulated by internal directives. There is nothing, in principle, to prevent the appointing authority from laying down, by means of an internal decision of a general nature, rules for the exercise of the discretion conferred on it by the Staff Regulations. Such a directive must be regarded as a guiding rule of conduct which the administration imposes on itself and from which it cannot depart without stating its reasons for doing so, under pain of infringing the principle of equal treatment.

An internal decision of a general nature concerning classification in grade and step which expressly states that the date chosen for the purpose of calculating the professional experience taken into account for classification is the date on which the post is offered is consistent with the purposes of the Staff Regulations, both for administrative reasons and for substantive reasons. First, it is not possible to take account, when making an offer of employment, of any professional experience that may be acquired in the period between the date on which that offer is made and the date on which the candidate takes up his post. Second, there is normally very little time between the offer of employment being made and its being sent to the candidate or between its being sent and the offer being accepted or refused. Third, the time when the contract is signed and the time when the person concerned takes up his post are not generally very far apart. Last, to require the institution to

review the terms of the offer of employment after it had been accepted by the person concerned in order to take account of professional experience acquired between the time when the offer was made and the time when he actually takes up his post would allow him to postpone taking up his post in order to obtain a better classification, without objective reason or the possibility of effective control by the institution.

(see paras 49 to 55)

See: T-92/96 *Monaco v Parliament* [1997] ECR-SC I-A-195 and II-573, para. 46