

Case T-13/91 R

Michael Harrison
v
Commission of the European Communities

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Summary of the Order

1. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Prima facie case*
(Rules of Procedure, Art. 83(2))
2. *Procedure — Application for legal aid — Application in respect of the interim proceedings — No prima facie case in respect of the main action — Dismissal*
(Rules of Procedure, Art. 76(3))

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
15 April 1991 *

In Case T-13/91 R,

Michael Harrison, an official of the Commission of the European Communities, residing in Southport (United Kingdom), represented by Albert Rodesch of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers at 7-11 Route d'Esch,

applicant,

* Language of the case: French

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the Chambers of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for suspension of the operation of the Commission's decision to discontinue payment of the applicant's remuneration from 19 October 1990, on the grounds that he did not return to work on 24 September 1990 after prolonged sick leave,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE
EUROPEAN COMMUNITIES,

makes the following

Order

Facts

- 1 By an application lodged at the Registry of the Court of First Instance of the European Communities on 26 February 1991, the applicant brought an action with the principal aim of obtaining the annulment of the decision of the Commission of the European Communities of 4 October 1990 to suspend payment of his remuneration from 19 October 1990 under the first paragraph of Article 60 of the Staff Regulations of Officials of the European Communities, and with the subsidiary aim of obtaining a reversal of the said decision. He also applied for legal aid.
- 2 By a separate application, lodged at the Court Registry on the same day, the applicant also sought suspension of the operation of the decision under Article 185 of the EEC Treaty and Article 83(2) of the Rules of Procedure of the Court of Justice. He also applied for legal aid.

- 3 The Commission presented its observations on the application for interim measures on 11 March 1991. The parties' oral submissions were heard on 20 March 1991.

- 4 Before the merits of the application for interim measures are considered, the facts on which the main action is based should be reviewed briefly.

- 5 After frequent periods of sick leave the applicant, who has been an official of the Commission since 11 August 1980, was subjected to the procedure under Article 59(1), fourth subparagraph, of the Staff Regulations with a view to a possible finding of invalidity. The Invalidity Committee decided, at its meeting on 16 June 1990, that the applicant was not suffering from permanent invalidity which could be considered total and such that he could not carry out the duties corresponding to a post in his career bracket and that, consequently, he was to remain at work.

- 6 This decision was communicated to the applicant on 11 July 1990 at his address in the United Kingdom, where he had been allowed, under the second paragraph of Article 60 of the Regulations, to spend five days' sick leave between 25 June 1990 and 29 June 1990.

- 7 On 6 August 1990, the Commission's medical officer sent him a letter requesting him to visit his consulting room in Luxembourg to discuss his periods of sick leave.

- 8 By letter of 10 August 1990, the Head of the Personnel Department informed him that he did not intend to renew the authorization to remain out of Luxembourg beyond 27 August 1990 unless the results of the medical officer's examination justified such a renewal.

- By letter of 25 August 1990, the applicant informed the medical service that he was unable to attend the medical examination due to be held on 28 August 1990. He supported this with a medical certificate drawn up on 20 August 1990 certifying that he was '... under investigation for visual disturbance and unable to attend work until further notice'. At the end of this sentence the doctor added, in brackets, the words 'cannot travel'.
- 0 By letter of 17 September 1990, the Head of the Personnel Department informed the applicant that the appointing authority could no longer recognize his medical certificates and that it had decided to rescind the authorization allowing him to spend his sick leave abroad. The applicant was given notice that he should return to work on 24 September 1990. He was informed that under the third sentence of the first paragraph of Article 60 of the Staff Regulations he would forfeit his remuneration if he did not return to work on that date at the latest.
- 11 By letter of 4 October 1990, the Head of the Personnel Department informed the applicant that he had given the order to suspend payment of his remuneration as from 19 October 1990, the date on which his annual leave ran out. He also requested him to attend a medical examination in Luxembourg and offered the choice of 9 October or 16 October.
- 12 Having failed to attend the medical examination on 9 October, the applicant sent the administration, on 12 October, a medical certificate dated 9 October, certifying his inability to work in Luxembourg but no longer mentioning his inability to travel.
- 13 The Commission suspended payment of the applicant's remuneration as from 19 October 1990.

- 14 The applicant lodged an administrative complaint against the decision of the Personnel Department under Article 90(2) of the Staff Regulations, which was registered on 21 December 1990 at the General Secretariat of the Commission.
- 15 By letter of 11 January 1991, a further request to attend a medical examination was sent to the applicant. In reply, he sent a further medical certificate from his doctor, certifying that he was unable to work in Luxembourg.
- 16 By telegram of 18 February 1991, the Commission informed the applicant of its intention to hold a medical examination at his parents' place of residence on 21 February 1991.
- 17 The examination was undertaken on 21 February 1991 by the Commission's medical officer and by a British doctor, instructed by the Commission, who both reached the conclusion that the applicant was fit to work as well as to travel.

Decision

- 18 Under Article 83(2) of the Rules of Procedure of the Court, applicable *mutatis mutandis* to the procedure before the Court of First Instance, it is for the applicant to state the circumstances giving rise to urgency as well as the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.
- 19 According to the applicant, the decision of the Personnel Department notified to him on 4 October 1990 is a flagrant breach, firstly, of Article 9 of the Rules on Sickness Insurance for Officials of the European Communities, inasmuch as it calls into question the official's free choice of doctor and of treatment centre and, secondly, of Article 59 of the Staff Regulations, which he had complied with by giving his institution notice of his unavailability and of his whereabouts as soon as possible. It was therefore not justifiable and improper to suspend, with no prior medical recommendation, the payment of his remuneration from 19 October 1990, given that the British doctor consulted had firmly advised against travel abroad until his health improved.

- 0 The applicant considers that such a decision is highly damaging to him. There is, in his view, an urgent need for a suspension of the operation of the Commission's decision since the applicant is currently without resources.
- 11 The defendant argues that the application should be dismissed. It points out that the only method by which an institution can check the bona fide nature of an absence covered by a medical certificate is to carry out an examination. The examination having been carried out on 21 February 1991 and the applicant having been declared fit to return to work, it follows, in the defendant's view, that since that date the applicant has been on leave without justification unless he provides medical evidence to the contrary.
- 22 As for the period 28 August 1990 to 21 February 1991, the defendant points out that the applicant's alleged inability to travel in order to undergo a medical examination in Luxembourg was mentioned on only one certificate, namely that of 20 August 1990. In addition, the fact that the applicant did not undergo the various medical examinations which he was requested to attend and that he stayed in the United Kingdom without the permission of the appointing authority (permission which expired on 27 August 1990) necessarily led to the latter deducting the days of unauthorized absence from his annual leave entitlement, and, after this had run out, suspending payment of his remuneration.
- 23 In the light of the above circumstances of fact and of law, it should be noted first of all that the applicant's argument based on an infringement of Article 9 of the Rules on Sickness Insurance for Officials of the European Communities is irrelevant. The present case does not concern the official's freedom to choose his doctor or treatment centre (choices which the applicant has, in any event, long since been making) but rather the application of the sick leave provisions in the Staff Regulations.

- 24 By virtue of the second subparagraph of Article 59(1) of the Staff Regulations, an official who declares himself unable to work because of sickness and who has produced a medical certificate to this effect may be required to undergo a medical examination arranged by the institution. In the present case, the applicant would appear, at first sight, not to have provided sufficient evidence of his inability to travel to Luxembourg in order to undergo the medical examination arranged by the Commission. The medical certificate of 20 August 1990, which indicates that the applicant is to undergo tests for visual disturbances and states that he cannot travel, is not drafted in sufficiently conclusive words to be considered, on its own, proof of inability to travel for an indefinite period. None the less, the Commission apparently agreed that the applicant could remain away from Luxembourg until 24 September. As for the medical certificate of 9 October 1990, it makes no mention of inability to travel. Thus the documents before the Court would not seem, at first sight, to provide sufficient evidence that the applicant was justified in failing to fulfil his obligation to undergo a medical examination arranged by the defendant under the second subparagraph of Article 59(1) of the Staff Regulations.
- 25 Moreover, it should be noted that the documents before the Court, in particular the medical certificates, do not at first sight provide any basis for questioning, in the light of Article 60 of the Staff Regulations, the Commission's decision, notified to the applicant by letter of 17 September 1990, rescinding the authorization to spend his sick leave away from Luxembourg, requesting that he return to work on 24 September and informing him that he would forfeit his remuneration if he failed to do so.
- 26 It follows from the above that the applicant has failed to make out a prima facie case suggesting that his main application is well founded. Thus, without its being necessary to go into the question of urgency and irreparable damage, there are grounds for dismissing this application.
- 27 As for the applicant's request for legal aid, it should be noted that, contrary to the requirements of the second subparagraph of Article 76(1) of the Rules of Procedure of the Court of Justice, the request did not include any information showing the applicant's hardship and, in particular, did not include a certificate

from the authorized body proving his lack of funds. Furthermore, Article 76(3) of the Rules of Procedure of the Court of Justice provides that, before deciding on the grant of total or partial legal aid, or on its refusal, the Chamber must examine whether there is manifestly no cause of action. In this case, the applicant was unable to show that the main action was prima facie well founded. In those circumstances, the request for legal aid is refused in relation to the present application.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

by way of interim decision,

hereby orders as follows:

- (1) The application is dismissed;**
- (2) The applicant's request for legal aid is refused;**
- (3) Costs are reserved.**

Luxembourg, 15 April 1991.

H. Jung
Registrar

J. L. Cruz Vilaça
President