

Case T-34/91

Edward P. Whitehead

v

Commission of the European Communities

(Inadmissibility)

Order of the Court of First Instance (Third Chamber), 11 May 1992 II - 1725

Summary of the Order

1. *Officials — Actions — Prior administrative procedure — Conduct*
(*Staff Regulations of Officials, Arts 90 and 91*)
2. *Officials — Actions — Conditions governing admissibility — Mandatory nature — Powers of the Court*
(*Staff Regulations of Officials, Arts 90 and 91*)
3. *Officials — Actions — Act adversely affecting an official — Concept — Preparatory measure — Exclusion*
(*Staff Regulations of Officials, Arts 90 and 91*)
4. *Officials — Actions — Prior administrative complaint — Concept*
(*Staff Regulations of Officials, Art. 90(2)*)

1. Articles 90 and 91 of the Staff Regulations make the admissibility of an action brought by an official conditional on the proper observance of the prior administrative procedure laid down in those articles. If an official wishes the appointing

authority to take a decision relating to him, the administrative procedure must be opened by a request from that official to the authority to take the decision which he seeks, in accordance with Article 90(1) of the Staff Regulations. It is only against

a decision rejecting that request, which, in the absence of a reply from the administration, is deemed to have been given after a period of four months, that the person concerned may, within a further period of three months, submit a complaint to the appointing authority in accordance with Article 90(2). On the other hand, where a decision has already been taken by the appointing authority and it adversely affects the official, he must use the complaints procedure provided for in Article 90(2) if he intends to seek the annulment, reversal or withdrawal of the decision which adversely affects him.

2. The rules laid down by Articles 90 and 91 of the Staff Regulations are mandatory and the parties may not waive them. It is thus for the Court of First Instance alone, whatever the position adopted by the parties, to determine whether there is indeed an act adversely affecting the official, which thus constitutes the starting point of the pre-litigation phase provided for in Article 90(2) of the Staff Regulations, and, to determine the legal nature of the documents sent by the official to the institution to which he belongs. The classification of a letter as a request or complaint is a matter for the Court alone and is not in the discretion of the parties.
3. Only acts which are capable of directly and immediately affecting an official's legal situation and his position under the Staff Regulations can be regarded as adversely affecting him. Such an act must

emanate from the appointing authority and be in the nature of a decision.

A measure, addressed to an official by his immediate superior, and not by the appointing authority, and informing him of his pending reassignment, does not constitute such an act. It is to be regarded as a measure preparatory to the decision to reassign him which, adopted by the appointing authority, constitutes the decision adversely affecting him against which it is for him to submit an administrative complaint under the conditions laid down in Articles 90(2) and 91 of the Staff Regulations.

4. In order for an official's act to be regarded as a prior administrative complaint for the purposes of Article 90(2) of the Staff Regulations, it is necessary that, even without express reference to that provision, it should show sufficiently clearly the official's desire to obtain satisfaction on his complaints.

That is not the case where an official sends to the administration a request for information and a hearing which, having none of the formal characteristics of a complaint, has not, as required by Article 90(3) of the Staff Regulations, been forwarded through official channels to the appointing authority and is not, by virtue of its content and object, in the nature of a complaint.