

Besluit in zaak 1520/2006/WP - Weigering om een sollicitant een extra onkostenvergoeding te geven

Besluiten

Zaak 1520/2006/WP - Geopend op 03/07/2006 - Besluit over 19/07/2007

Een Duits staatsburger kwam naar Brussel voor een sollicitatiegesprek bij het Directoraat-generaal Onderwijs en cultuur van de Commissie. Afgezien van een reiskostenvergoeding kreeg hij een dagvergoeding van 50 EUR per dag. In de klacht die hij bij de Ombudsman indiende, voerde hij aan dat hij recht had op 50 EUR extra, daar hij pas na middernacht in zijn woonplaats in Noord-Duitsland was teruggekeerd. Hij verwees naar een passage in de desbetreffende regeling, waarin wordt bepaald dat indien de persoon in kwestie na het beëindigen van het algemeen onderzoek, het sollicitatiegesprek of het medisch onderzoek niet vóór middernacht kan terugkeren in de plaats die in de oproep is vermeld, hij recht heeft op een extra vergoeding van 50 EUR.

De Commissie verklaarde dat dagvergoedingen worden toegekend per volledige dag van 24 uur. Als klager zich had gerealiseerd dat hij niet vóór middernacht thuis kon zijn, had hij in Brussel kunnen overnachten, in welk geval hij een onkostenvergoeding zou hebben gekregen in de vorm van een tweede dagvergoeding. Onder normale verkeersomstandigheden echter had hij wél op de dag van het sollicitatiegesprek weer thuis kunnen zijn. De Commissie stelde dat zij niet verantwoordelijk kon worden gehouden voor het feit dat de terugreis langer had geduurd dan voorzien. Zij merkte op dat de reisduur die klager noemde, beduidend langer was dan de tijd die normaal gesproken voor zo'n reis staat.

Na raadpleging van diverse routeplanners op internet was de Ombudsman er niet geheel en al van overtuigd dat de basisaanname van de Commissie over de benodigde terugreistijd van klager correct was. Maar afgezien daarvan was de Ombudsman van mening dat de vraag of iemand wel of niet vóór middernacht thuis kan zijn, niet in abstracte termen moet worden beantwoord, doch dat hierbij rekening moet worden gehouden met de concrete omstandigheden van het individuele geval. De door klager naar voren gebrachte argumenten ter verklaring van de langere reistijd, namelijk dat hij in de avondspits uit Brussel wegging en pauzes moest nemen omdat hij in het donker moest rijden na een vermoeiende dag in Brussel, kwamen alleszins redelijk over.

Daarom richtte de Ombudsman een voorstel voor een minnelijke schikking aan de Commissie, waarin hij haar verzocht het toekennen van een extra vergoeding aan klager in overweging te nemen.



De Commissie antwoordde dat zij gevoelig was voor de argumenten van de Ombudsman. In het belang van behoorlijk bestuur en gezien de omstandigheden van het geval alsmede het hiermee gemoeide geringe bedrag, aanvaardde zij het voorstel van de Ombudsman en zegde zij toe klager een extra vergoeding van 50 EUR te betalen.

Klager deed de diensten van de Ombudsman mee dat het aanbod van de Commissie precies beantwoordde aan zijn verwachtingen en bedankte hen voor hun inspanningen.

Strasbourg, 19 July 2007

Dear Mr D.,

On 17 and 19 May 2006, you made a complaint to the European Ombudsman against the European Commission concerning the reimbursement of the expenses you incurred when attending a medical examination and a job interview in Brussels.

On 27 and 28 June 2006, you sent further information supporting your complaint.

On 3 July 2006, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 15 September 2006. On 21 September 2006, I forwarded it to you with an invitation to make observations, which you sent on 2 October 2006.

On 22 February 2007, I addressed a proposal for a friendly solution to the Commission. In a letter of 2 March 2007, the Commission asked me for an extension of the deadline for its reply until 31 May 2007, submitting in particular that your case required complex internal discussions. On 12 March 2007, I granted the requested extension and informed you accordingly.

On 4 June 2007, the Commission sent the original French version of its reply. It sent a translation of it into German on 18 June 2007. I forwarded it to you on the same day with an invitation to make observations.

In a telephone conversation with the legal officer in charge of your case on 26 June 2007, you stated that the offer the Commission had made in its reply to my proposal for a friendly solution corresponded exactly to the result you had hoped to achieve. You thanked my services for their efforts.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

On 15 March 2006, the complainant, a German citizen, underwent a medical examination and was also interviewed at the Commission's Directorate-General for Education and Culture in Brussels. The medical examination took place at 08.00. The interview finished at 16.50. The complainant applied for the reimbursement of his expenses in connection with the trip to



Brussels, indicating that he had left his place of residence near Oldenburg in Northern Germany at 09.00 on 14 March 2006 and that he had arrived in Brussels at 15.00 on the same day. He had left Brussels at 17.30 on 15 March 2006 and had arrived home at 00.30 on 16 March 2006.

The relevant rules for the reimbursement of expenses in the complainant's situation are the "Rules concerning the global reimbursement of travel and subsistence expenses for persons not connected with the Commission, who have been invited by it for a competition, a job interview or a medical examination" (1) ("the Rules"). Article 8(3) of the Rules provides:

" Where the distance between the place of residence and the place where the competition, the interview or the medical examination is being held exceeds 150 km, a daily allowance of EUR 50 is granted.

This daily allowance of EUR 50 (for every full 24-hour period) is only granted for the day(s) necessary in order to conduct the competition, the interview or the medical examination.

It also covers the costs for a night spent at the place of the competition, the interview or the medical examination. If the person concerned is unable to return before midnight to the place indicated in his invitation after the conclusion of the competition, the interview or the medical examination, he is entitled to receive an additional contribution of EUR 50. " (2)

On 10 April 2006, the Commission transferred the amount of EUR 211.60 to the complainant's bank account. In an e-mail to the Commission of 18 April 2006, the complainant remarked that, since it had been agreed with the person in charge at the Commission's Directorate-General for Administration that he would be granted two daily allowances of EUR 50, the remaining amount of EUR 111.60 seemed far too low for a return ticket between Brussels and the train station closest to his place of residence. On 20 April 2006, the competent official in the Commission's Office for administration and payment of individual entitlements ("PMO") replied that the Commission's travel agency had determined that Oldenburg was the train station closest to this place. A second class return ticket from Oldenburg to Brussels cost EUR 161.60. Since the daily allowance was only granted for every full 24-hour period, he had been granted a single allowance of EUR 50. Thus, the amount that had been transferred was correct.

In an e-mail of 20 April 2006, the complainant objected to this calculation. He stated that he had already had to spend a night in a hotel in Brussels, the expenses for which were covered by the daily allowance. However, in view of the time of the interview, the traffic in Brussels and the required breaks from driving, he had not been able to return home before midnight. He argued that, if he had taken the train, he would only have arrived in Oldenburg around 07.00 on 16 March 2006. Therefore, he asked to be granted a second daily allowance. Still on the same day, the Commission reiterated that the daily allowance was granted for every full 24-hour period. In the complainant's case, eight and a half hours were missing from a second 24-hour period.

By e-mail of 21 April 2006, the complainant pointed out that, according to the third paragraph of Article 8(3) of the Rules, he was entitled to receive an additional contribution if he were not able to return home before midnight of the day of the interview. In its reply of the same day, the



Commission stated that daily allowances and additional contributions were only granted for every full 24-hour period. As to the complainant's argument that he had not been able to return home before midnight, the Commission stated that, if a candidate considered that he could not return home on the same day, he could spend an additional night in a hotel, which would justify granting an additional contribution if the candidate had actually incurred additional costs. However, this had not been the case for the complainant.

In an e-mail of 27 April 2006, the complainant insisted that he should be granted an additional contribution.

By e-mail of 17 and 19 May 2006, the complainant turned to the European Ombudsman. He argued that the Rules were contradictory since they provided, on the one hand, that daily allowances were only granted for every full 24-hour period, but, on the other, that an additional contribution was granted if a candidate were unable to return to his place of residence before midnight. The complainant considered that the latter provision should prevail over the former one. In his view, the Commission's suggestion that he could have stayed in Brussels for another night was cynical, since this would have obliged him to take another day of his annual leave.

The complainant made the following allegations:

- The Commission wrongly refused to grant him an additional contribution, given that he was not able to return to his place of residence before midnight of the day of his medical examination and interview.
- The Commission failed to reply to his e-mail of 27 April 2006.

The complainant claimed that he should be granted an additional contribution.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission explained that, when it came to calculating the daily allowances, it based itself on the time the candidates indicated on their application forms in order to determine their total travel time. Daily allowances were granted for every full 24-hour period. The time indicated by the candidates was checked against the supporting documents supplied and, in case of a car journey, against information available on specialised websites for road travel. The complainant had declared that the outward journey had taken him six hours (from 09.00 to 15.00), and that the return journey had taken him seven hours (from 17.30 to 00.30). The estimated travel time calculated on the specialised websites varied between 4.16 and 4.34 hours. Thus, the travel time he had indicated was much longer than the time estimated for such a journey. On the basis of the times indicated by the complainant, his total travel time amounted to 39.30 hours. According to the Rules, this period comprised one full 24-hour period, which meant that the complainant was entitled to receive one daily allowance.

Concerning the complainant's argument that, since he had arrived home after midnight, he was entitled to receive an additional contribution, the Commission argued that, in case a candidate considered that he would not be able to return home before midnight, he could stay at the place



of the interview for another night for which he would be reimbursed in the form of a second daily allowance. However, in the present case, the complainant had considered that he would be able to return home before midnight, which would have been possible in normal traffic conditions. The Commission argued that it could not be held responsible for the fact that the return travel had taken longer than envisaged.

The Commission added that the Rules sometimes created difficulties of interpretation concerning the general definition of daily allowances granted for every full 24-hour period. This was why the Commission mainly took the overall travel time into account in order to calculate the number of daily allowances to grant and thus to ensure equality concerning the time of return. If a candidate found that he was obliged to stay another night at the place of the interview, which caused him extra costs, he would be granted an additional contribution.

The Commission considered that it had applied Article 8(3) of the Rules in an entirely correct manner. It added that, if it had decided exceptionally to grant the complainant an additional contribution, this would have been discriminatory towards other candidates who, in similar conditions, might have chosen to stay another night in Brussels and would have received an additional contribution, even though, in fact, they would thus have incurred extra costs, which were often a lot higher than the amount reimbursed.

Concerning the alleged failure to reply, the Commission stated that the complainant had asked for clarifications by e-mail of 20 April 2006. The Commission had replied on the same day. On 21 April 2006, the complainant had repeated his request to be granted an additional contribution. On the same day, the Commission had sent him a very detailed reply on the method it used for calculating daily allowances. On 27 April 2006, the complainant had again requested to be granted an extra allowance. The Commission stated that, since this last e-mail had not contained any new aspect or argument, it had not considered it appropriate to reply.

The complainant's observations

In his observations, the complainant maintained his complaint. He recalled that he had had to travel to Brussels already on 14 March 2006 and submitted that, if one were to follow the Commission's logic of granting daily allowances only for every full 24-hour period, candidates who travelled to Brussels from a distance of more than 150 km and who were able to travel back to their place of residence before midnight would not receive any allowance at all. The complainant considered that, as a result of these considerations, the daily allowance rule made sense only if it were based on calendar days. Otherwise, the third paragraph of Article 8(3) would be superfluous.

The complainant also stated that he considered the Commission's suggestion that he could have stayed in Brussels for another night to be impertinent since he would have had to use another day of leave and since the additional costs he would have incurred would have greatly exceeded the sum reimbursed.

Furthermore, the complainant argued that the material on which the Commission had based its travel time calculation was not convincing. A travel time of 4.30 hours between his place of residence and Brussels did not take into account the necessary breaks from driving and



presupposed ideal circumstances. However, after the interview, he had had to return to his hotel and to take his car. Subsequently, he had had to leave Brussels during the evening rush-hour traffic. Due to a long day spent in Brussels and due to the fact that he was travelling by night, he had had to take breaks along the way. Therefore, the travel time calculated by the route finder could not be understood to reflect the actual travel time.

The complainant added that, had he used public transport, he would also have had to travel to Brussels on 14 March 2006 in order to be on time for the medical examination and could have returned at the earliest by taking a night train, which would have arrived in Oldenburg around 07.00 on 16 March 2006.

The complainant also reported that, in a similar case in April 2005, when he had undergone a medical examination at 08.00 and an interview until after 17.00, he had been granted a second daily allowance. He stated that, as far as he knew, the Rules had not changed in the meantime, only the allocation of duties within the Commission had.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The issues in dispute between the Commission and the complainant

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegations and claims. This view was based on the following considerations:

1 As regards the Commission's alleged failure to reply to the complainant's e-mail of 27 April 2006, the Ombudsman recalled that it is good administrative practice to reply to correspondence from citizens speedily and in a way that is as useful to them as possible. In the present case, the Commission appeared to have replied to the complainant's e-mails of 18, 20 and 21 April 2006 promptly and to have set out its position rather clearly. However, the Ombudsman considered that these circumstances did not allow the Commission simply to ignore further correspondence from the complainant. The Ombudsman took the view that, if the Commission considered that the content of the complainant's further e-mail was repetitive, it would have been good administrative practice to inform the complainant accordingly and to announce that the correspondence with him would be discontinued unless he provided new relevant information or new arguments. However, the Ombudsman noted that, in its opinion on the present case, the Commission once again explained in some detail its position on the complainant's request, which he had reiterated in his e-mail of 27 April 2006. Since the Ombudsman was going to propose a friendly solution to the substantive problem raised in this e-mail, he came to the preliminary conclusion that, if a friendly settlement could be reached, it would not be necessary to pursue this aspect of the complaint further.

2 As regards the Commission's refusal to grant the complainant an additional contribution, the Ombudsman noted that, according to Article 8(3) of the Rules, an additional contribution of EUR 50 is granted " *if the person concerned is unable to return before midnight to the place indicated in his invitation* ". The Ombudsman considered that, in order to assess the merits of the



complainant's position, what needed to be examined was how to establish whether a person was "unable to return" ("*n'est plus en mesure de rentrer* ") before midnight.

In this respect, the Commission appeared to suggest an abstract approach. It argued that the travel time indicated by the complainant was much longer than the estimated travel time (between 4.16 and 4.34 hours according to specialised websites). The Ombudsman consulted several route planning websites. In addition to estimates approximating the ones referred to by the Commission, he also found estimates of longer travel times, with one route planning website providing an estimated travel time of six hours. Therefore, even if the Commission's abstract approach were followed, the Ombudsman was not entirely convinced that the Commission's basic assumption concerning the time it should have taken the complainant to drive home was correct.

However, the Ombudsman considered that the question as to whether a person was able to return home before midnight or not should not be assessed in abstract terms, but should instead take into account the concrete circumstances of the individual case. For example, in the case of a candidate returning home by train, the Ombudsman considered that, if the train were scheduled to arrive at the candidate's nearest train station before midnight, but in fact was delayed and thus arrived at the station after midnight, the candidate would effectively be unable to return home before midnight.

In the present case, the complainant argued that it had taken him seven hours to drive home after the interview, so that he had arrived home at 00.30 on the next day. Leaving aside the fact that, in view of the above, this time did not appear to be excessive, the arguments the complainant brought forward in order to justify the longer travel time, namely, that he had to leave Brussels in the evening rush hour and that he had had to take breaks along the return journey because he was driving at night and after an exhausting day in Brussels, did not appear unreasonable.

Furthermore, the Ombudsman noted that the Commission had not contested the complainant's submission that he in fact arrived at home after midnight of the day following the day of the interview. Furthermore, it had not been contested that, if the complainant had travelled home by train, he would not have been able to arrive home before midnight, but would have arrived in Oldenburg, at the earliest, around 07.00 on the next day.

3 As to the Commission's argument that the complainant could have stayed in Brussels for another night, the Ombudsman noted that the relevant provision of the Rules does not mention an overnight stay as a requirement in order to be granted an additional contribution. Furthermore, it seemed that the Commission also grants an additional contribution if the candidate stays for an extra night, but without incurring any extra costs, for example if he stayed with friends or family at the place of the interview.

4 The Commission also argued that additional contributions, much as daily allowances for the day(s) of the competition, the interviews or medical examinations, were only granted for every full 24-hour period. However, the Ombudsman considered that, if this were the intended



meaning of the relevant provision of the Rules, its actual wording did not reflect this intention. The only condition the provision establishes for granting an additional contribution appeared to be that the candidate be unable to arrive home before midnight. Therefore, the Ombudsman took the view that granting additional contributions for full 24-hour periods only could not be reconciled with the wording of the provision.

5 The Commission further argued that granting the complainant an additional contribution would be discriminatory towards other candidates, even if this were to be done on an exceptional basis. The Ombudsman was not convinced by the Commission's line of argument. Assuming that all candidates were informed in the same way about the reimbursement of their travel and subsistence expenses, the Ombudsman considered that other candidates in the complainant's situation might well have interpreted the Rules in the same way as the complainant. Furthermore, the Ombudsman considered that the fact that the Commission may have applied an incorrect interpretation of the relevant provision in other cases did not mean that it could rely on such an interpretation in the complainant's case.

6 The Ombudsman further noted that, in its opinion on the present case, the Commission acknowledged that the provision in question sometimes created difficulties of interpretation concerning the definition of daily allowances. The Commission itself thus appeared to consider that this provision is not entirely clear. However, in that case, and particularly since the provision directly concerns persons outside the Commission, the Ombudsman took the view that the Commission should not interpret it to the detriment of the persons concerned.

7 The Ombudsman was mindful of the Commission's obligation to ensure that Community funds are spent economically. Therefore, he considered that it was legitimate for the Commission to establish strict rules on the award of additional contributions to persons taking part in competitions, interviews and medical examinations. However, the Ombudsman emphasised that, as long as the Rules are not changed, they must be applied correctly as they are.

8 On the basis of the above considerations, the Ombudsman's provisional conclusion was that, in view of the rules in force, the Commission's failure to grant the complainant an additional contribution could be an instance of maladministration.

The possibility of a friendly solution

Article 3(5) of his Statute directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complainant. The Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The Commission could consider granting the complainant an additional contribution.

The Commission's reply

In its reply to the Ombudsman's proposal, the Commission stated that it was sensitive to the Ombudsman's arguments in favour of finding a friendly solution in order to complete the handling of the complaint without mobilising further resources. In the interest of good administration and taking into account the circumstances of the present case, as well as the very minor amount of money at issue, the Commission accepted the Ombudsman's proposal



and committed itself to paying the complainant an additional contribution of EUR 50.

The complainant's observations

In a telephone conversation with the legal officer in charge of his case, the complainant stated that the Commission's offer corresponded exactly to the result he had hoped to achieve. He thanked the Ombudsman's services for their efforts.

THE DECISION

1 Refusal to grant an additional contribution

1.1 On 15 March 2006, the complainant, a German citizen, underwent a medical examination and was also interviewed at the European Commission's Directorate-General for Education and Culture in Brussels. He was reimbursed for his travel expenses and was granted a daily allowance of EUR 50 for the day of the medical examination and the interview, in line with the relevant provision of the "Rules concerning the global reimbursement of travel and subsistence expenses for persons not connected with the Commission, who have been invited by it for a competition, a job interview or a medical examination" (3) ("the Rules"). However, the complainant considered that, since he had returned home after midnight of the day of the interview, he should be granted an additional contribution of EUR 50. He also alleged that the Commission had failed to reply to an e-mail he had sent on 27 April 2006.

1.2 In its opinion, the Commission explained that daily allowances were granted for every full 24-hour period. According to the time the complainant had indicated on his application, his total travel time had amounted to 39.30 hours. Since this period comprised one full 24-hour period, he was entitled to receive one daily allowance.

As to the complainant's argument that he had not been able to return home before midnight, the Commission argued that he could have stayed in Brussels for another night for which he would have received reimbursement in the form of a second daily allowance. However, the complainant had considered that he would be able to return home before midnight, which would have been possible in normal traffic conditions. The Commission argued that it could not be held responsible for the fact that the return travel had taken longer than envisaged. It noted that the time the complainant had indicated, that is, seven hours for the return travel, was much longer than the time estimated for such a journey, which, according to specialised websites, was between 4.16 and 4.34 hours.

The Commission added that the Rules sometimes created difficulties of interpretation concerning the general definition of daily allowances, which were granted for every full 24-hour period. This was why the Commission mainly took the overall travel time into account, in calculating the number of daily allowances to grant and thus in seeking to ensure equality concerning the time of return. The Commission submitted that, if it had decided exceptionally to grant the complainant an additional contribution, this would have been discriminatory towards other candidates who, in similar conditions, might have chosen to stay another night in Brussels. These other candidates would have received an additional contribution, even though, in fact, they would thus have incurred extra costs, which were often a lot higher than the amount reimbursed. The Commission therefore took the view that it had applied Article 8(3) of the Rules



in an entirely correct manner.

1.3 In his observations, the complainant disagreed with the Commission's suggestion that he could have stayed in Brussels for another night because, according to him, this would have obliged him to take another day of leave and because the additional costs would have greatly exceeded the reimbursed sum. Furthermore, he argued that the estimated travel time between Brussels and his place of residence to which the Commission had referred presupposed ideal circumstances without taking into account necessary breaks from driving and could thus not be understood as actual travel time.

1.4 After careful consideration of the opinion and observations, the Ombudsman addressed a proposal for a friendly solution to the Commission, asking it to consider granting the complainant an additional contribution. As regards the Commission's alleged failure to reply to an e-mail from the complainant, the Ombudsman came to the provisional conclusion that, taking into account the circumstances of the case, it would not be necessary to pursue this aspect of the complaint further if a friendly settlement could be reached in relation to the substantive issue raised by the complainant.

1.5 The Commission replied that it was sensitive to the Ombudsman's arguments in favour of finding a friendly solution in order to complete the handling of the complaint without mobilising further resources. In the interest of good administration and taking into account the circumstances of the present case, as well as the very minor amount of money at issue, the Commission accepted the Ombudsman's proposal and committed itself to paying the complainant an additional contribution of EUR 50.

1.6 The complainant informed the Ombudsman's services that the Commission's offer corresponded exactly to the result he had hoped to achieve. He thanked the Ombudsman's services for their efforts.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution has been agreed between the European Commission and the complainant in relation to the substance of the complaint.

In view of this outcome, the Ombudsman considers that it is not necessary for him to pursue the complainant's allegation concerning the Commission's alleged failure to reply to an e-mail further.

The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,



P. Nikiforos DIAMANDOUROS

(1) " *Dispositions en matière de remboursement forfaitaire des frais de voyage et de séjour des personnes étrangères à la Commission convoquées par elle pour un concours, un entretien ou une visite médicale ou de remboursement de ces frais* ".

(2) Translation by the Ombudsman's services. The French version of these provisions, which was made available to the Ombudsman, reads:

"Si le lieu de résidence est situé à une distance supérieure à 150 km du lieu où se tient le concours, l'entretien ou la visite médicale, il est accordé une contribution forfaitaire journalière de 50 EUR.

Cette contribution forfaitaire journalière (tranche de 24 heures entières) de 50 EUR est accordée exclusivement pour la ou les journée(s) nécessaire(s) au déroulement du concours, de l'entretien ou de la visite médicale.

Elle couvre également les frais nécessaires pour une nuit passée au lieu du concours, de l'entretien ou de la visite médicale. Si après la fin du concours, de l'entretien ou de la visite médicale, l'intéressé n'est plus en mesure de rentrer au lieu indiqué dans la convocation avant minuit, il a droit à une contribution supplémentaire de 50 EUR. "

(3) " *Dispositions en matière de remboursement forfaitaire des frais de voyage et de séjour des personnes étrangères à la Commission convoquées par elle pour un concours, un entretien ou une visite médicale ou de remboursement de ces frais* ".