

 Case No.:
 UNDT/GVA/2013/027

 Judgment No.:
 UNDT/201 /013

 Date:
 29 Janua!" 201

## Introduction

1. T e A!!"#\$ant% a fo&me& staff mem'e& ( o se&)ed du&#ng #s "ast \*eaks 'efo&e &et#&ement as an +ns!e\$to& (#t t e Jo#nt +ns!e\$t#on Un#t ,-J+U./% \$ontests t e de\$#s#on ,a/ not to g&ant #m a "ast ome "ea)e ent#t"ement% ,'/ not to g&ant #m a &e!at&#at#on g&ant ent#t"ement of 20 (ee0s on a\$\$ount of #s e#g t \*ea&s of se&)#\$e as a staff mem'e& and 24 (ee0s fo& #s ten \*ea&s as J+U +ns!e\$to&% and ,\$/ not to !a\* #m fu"" ass#gnment g&ant ent#t"ement u!on #s a!!o#ntment as an +ns!e\$to&.

## Facts

2. T e A!!"#\$ant se&)ed as 12e\$ut#)e 3e\$&eta&\*% J+U% #n Gene)a% f&om 1 No)em'e& 1994 to 31 4\$to'e& 2002. At t e end of 2002% e (as a!!o#nted as +ns!e\$to& (#t t e J+U '\* t e Gene&a" Assem'"\*% effe\$t#)e 1 Janua&\* 2003 unt#" 31 De\$em'e& 2007. 5#s a!!o#ntment as an +ns!e\$to& (as su'se6uent"\* &ene(ed fo& f#)e fu&t e& \*ea&s% unt#" 31 De\$em'e& 2012% t e date of #s &et#&ement.

3. 4n 27 August and 17  $3e!tem'e\& 2002\% t e A!!"#$ant (&ote to t e t en Ass#stant 3e$&eta&*8Gene&a" fo& 5 uman 9 esou&$es : anagement ,-A3G/459 : ./ (#t &es!e$t to #s ass#gnment and &e!at&#at#on g&ant ent#t"ements\#n )#e ( of t e fo&t $om#ng e2!#&at#on of #s $ont&a$t as 12e$ut#)e 3e$&eta&*\ J+U\ on 31 4$to'e& 2002. 4n 29 4$to'e& 2002\ t e A!!"#$ant &e$e#)ed )#a fa2 a &e!"* f&om t e t en A3G/459 : dated 2; 4$to'e& 2002. +n t #s &e!"*\ ( #$ #nd#$ated t at t e 4ff#$e of <ega" Affa#&s ,-4 < A ./\ at 5ead6ua&te&s\ ad 'een $onsu"ted on t e matte&\ t e A!!"#$ant (as #nfo&med t at e (as not ent#t"ed to &e!at&#at#on g&ant u!on #s a!!o#ntment as a J+U +ns!e$to&\ no& to fu"" ass#gnment g&ant !a*ment.$ 

4. 9ega&d#ng t e &e !at&#at#on g&ant% t e A3G/459 : &e !"\* "ette& s !e \$#f#ed t at% at t e end of #s \$ont&a\$t% e (ou"d &e"o\$ate fo& on"\* t (o mont s and &etu&n to Gene)a to ta0e u ! ne ( fun\$t#ons as an +ns !e \$to&. 5en\$e% t #s d#d not amount to -&e"o\$at#on. (#t #n t e mean#ng of Anne2 +V to t e 3taff 9egu"at#ons #n fo&\$e at t e t#me. Nonet e"ess% #s &e !at&#at#on g&ant \$&ed#ts (ou"d 'e e"d #n es\$&o ( unt#"

t e end of #s te&m as an +ns!e\$to&. 5e (ou"d t en 'e !a#d t e amounts on es\$&o (% added to an\* fu&t e& \$&ed#ts a\$\$&ued du&#ng #s se&)#\$e as an +ns!e\$to&% u! to t e ma2#mum !&o)#ded fo& #n t e 3taff 9egu"at#ons and 9u"es% #n a\$\$o&dan\$e (#t t e a!!"#\$a'"e &u"es.

;. Con\$e&n#ng t e ass#gnment g&ant% #t (as e2!"a#ned t at a&t. 14 of t e J+U 3tatute fo&esees \$om!ensato&\* and #nsu&an\$e a&&angements fo& #ts +ns!e\$to&s e6u#)a"ent to t ose of staff mem 'e&s at t e D82 "e)e". Unde& staff &u"e 107.20 ,e/ and se\$. =.1 of 3T/A+/2000/17 ,-Ass#gnment G&ant./% a staff mem 'e& ( o &etu&ns to a !&#o& dut\* stat#on (as not to 'e !a#d t e fu"" ass#gnment g&ant un"ess e/s e ad 'een a'sent fo& at "east one \*ea&. T e A !!"#\$ant (as to 'e !a#d #nstead a !&o8 &ata s a&e of t e ass#gnment g&ant \$o&&e !ond#ng to t e !e&#od e (as a (a\* f&om t e sa#d dut\* stat#on% ( #\$ #n #s \$ase (as t(o mont s.

=. A\$\$okd#ng to t e A!!"#\$ant% e &e!eated"\* &e6uested to 'e sent 4 < A ad)#\$e &efekked to #n t e \$ommun#\$at#on of 2; 4\$to'e& 2002% 'ut s#n\$e e ne)e& &e\$e#)ed #t% e de\$#ded to '&#ng u! t e matte& aga#n at t e end of #s te&m as J+U +ns!e\$to&. T e A!!"#\$ant t us d#d not \$ontest t e 2; 4\$to'e& 2002 de\$#s#on of t e A3G/459:.

dated 1= No)em'e& 2012 of t e A3G/459:. 5e &e\$e#)ed a &e!"\* on 7 : a&\$ 2013% '\* ( #\$ : 1Uu! e"d t e \$ontested de\$#s#on.

Bo""o (#ng t e su'm#ss#on of t e a!!"#\$at#on 'efo&e t #s T&# 'una"% dated
June 2013% t e 9es!ondent f#"ed #s &e!"\* on 12 Ju"\* 2013.

14. ?\* 4&de& No. ; ,GVA/2014/% #ssued on 14 Janua&\* 2014% t e T&#'una" #nd#\$ated #ts )#e ( t at t e !&esent \$ase \$ou"d 'e de\$#ded on t e !a!e&s% and ga)e t e !a&t#es t e o!!o&tun#t\* to su'm#t o'se&)at#ons t e&eon '\* 20 Janua&\* 2014. None of t e !a&t#es su'm#tted o'se&)at#ons.

Parties' submissions

1;. T e A ! ! "#\$antAs ! & #n\$#! a" \$ontent#ons a & eC

a. 5 e as a &#g t to a f#ft ome "ea)e ent#t"ement as unde& t e J+U 3tatute +ns!e\$to&s a&e ent#t"ed to ome "ea)e on\$e e)e&\* t(o \*ea&s of 19. +n t e \$ase at and t e A!!"#\$ant d#d not su'm#t #s &e6uest fo& management e)a"uat#on 'efo&e 11 Be'&ua&\* 2013. T e T&# 'una" f#nds t at unde& a"" !oss#'"e !e&s!e\$t#)es t e A!!"#\$ant m#ssed t e a!!"#\$a'"e statuto&\* dead"#nes.

20. T e A!!"#\$ant (as f#&st #nfo&med of t e de\$#s#on not to !a\* #m &e!at&#at#on g&ant% ( #"e o"d#ng #s \$&ed#ts #n es\$&o ( unt#" #s f#na" se!a&at#on% and to !a\* #m ass#gnment g&ant fo& on"\* t(o mont s% on 2; 4 \$to 'e& 2002. At t e t#me% t e A!!"#\$ant ad t e o!!o&tun#t\* to \$ontest t e sa#d de\$#s#on unde& t e fo&me& #nte&na" >ust#\$e s\*stem. T e f#&st ste! fo& do#ng so% as !e& fo&me& staff &u"e 111.2 t en #n fo&\$e% ( as to &e6uest t e &e)#e ( of t e adm#n#st&at#)e de\$#s#on '\* t e 3e\$&ta&\*8Gene&a" (#t #n t(o mont s of #ts not#f#\$at#on. 5 o (e)e% t e A!!"#\$ant d#d not fo&ma""\* \$ a""enge t #s de\$#s#on at t e t#me #t (as made. +n fa\$t% e e2!&ess"\* states #n #s a!!"#\$at#on t at e made a \$ons\$#ous \$ o#\$e to &a#se t e #ssue on"\* at t e end of #s se&)#\$e as J+U +ns!e\$to&% t at #s% \*ea&s afte& 'e\$om#ng a (a&e of t e &e"e)ant de\$#s#on. I et% e)en t en% t e A!!"#\$ant fa#"ed to &e6uest management e)a"uat#on unde& staff &u"e 11.2, \$/ t en #n fo&\$e.

21. As to t e de\$#s#on to &e>e\$t #s &e6uest fo& a "ast ome "ea)e% t e A!!"#\$ant (as #nfo&med t e&eof as ea&"\* as 29 June 2010. Aga#n% e d#d not !&esent a t#me"\* management e)a"uat#on &e6uest. Afte& e &a#sed ane( t e same 6ue&\*% t e Adm#n#st&at#on &e#te&ated #ts !os#t#on on 13 June 2012% t &oug a deta#"ed ema#" sent '\* t e 3en#o& 5 uman 9esou&\$es 4 ff#\$e&% 5 9 : 3% UN4G. A"t oug e e2!&essed d#sag&eement #n #s ne2t \$o&&es!onden\$e% t e A!!"#\$ant on\$e mo&e fa#"ed to su'm#t a &e6uest fo& management e)a"uat#on. 5 e #nstead (&ote to t e A3G/4 5 9 : as0#ng e& to &e\$ons#de& t e ea&"#e& de\$#s#ons% &e"at#ng to #s &e!at&#at#on and ass#gnment g&ant.

22. T e A!!"#\$ant onh"

2; 4\$to'e& 2002 \$on\$e&n#ng t e &e"o\$at#on and ass#gnment g&ant and on

s\*stem% \$annot 'e (a#)ed unde& A&t#\$"e 7,3/ of t e 3tatute of t e D#s!ute T&# 'una" ,UNDT 3tatute/% due to a s!e\$#f#\$ !&o #'#t#on #n t #s &es!e\$t \$onta#ned #n A&t#\$"e 7,3/. ,Ajdini et al. 20118UNAT8 107D see a"so Costa 20108UNAT803=% Barned 20118UNAT81=9% Muratore