Case No. UNDT/GVA/2015/003

Judgment No. UNDT/2015/003

## Introduction

- 1. B a!!"#\$at#on f#"ed on 12 Janua% 2015& t'e A!!"#\$ant& a staff mem(e% of t'e Un#ted Nat#ons Ass#stan\$e ) #ss#on #n Afg'an#stan \*+UNA) A,-\$ontests +.'#s su!e%/#so% 'a/#ng0 %e\$ent" made some negat#/e \$omments a(out .'#s0!e%fo%man\$e& %e\$ommend#ng te%m#nat#ng .'#s0 \$ont%a\$t 1#t' UNA) A,.
- 3. A"t'oug' #n %es!onse to an ema#" 'e 'ad sent on 11 Janua% 2015& t'e A!!"#\$ant 1 as as3ed ( t'e 6eg#st% on 12 Janua% 2015 to f#"e a \$om!"eted a!!"#\$at#on fo%m t'%oug' #ts e"e\$t%on#\$ e7#"#ng s stem& 1 #t' su!!o%t#ng do\$uments& #n\$"ud#ng t'e \$ontested de\$#s#on and a %e8uest fo% management e/a"uat#on& t'e A!!"#\$ant d#d not su(m#t su\$' su!!o%t#ng do\$uments 1 'en 'e f#"ed t'e !%esent a!!"#\$at#on "ate% t'at da .

## Consideration

4. A\(\frac{1}{2}\) #\$ 9 of t'e T\(\frac{1}{2}\) #(una":s 6u"es of P\(\frac{1}{2}\) 0/#des;

Summary judgement

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?. T'e s\$o!e of t'e T%#(una":s <u%#sd#\$t#on #s \$"ea%" dete%m#ned and "#m#ted (a%t. 2.1\*a- of #ts @tatute\ 1 '#\$' !\%o/#des:

- 1. T'e D#s!ute T%#(una" s'a"" (e \$om!etent to 'ea% and !ass <udgment on an a!!"#\$at#on f#"ed ( an #nd#/#dua"& as !%o/#ded fo% #n a%t#\$"e 3& !a%ag%a!' 1& of t'e !%esent statute& aga#nst t'e @e\$%eta% =Gene%a" as t'e C'#ef Adm#n#st%at#/e Aff#\$e% of t'e Un#ted Nat#ons:
- \*a- To a!!ea" an adm#n#st%at#/e de\$#s#on t'at #s a""eged to (e #n non=\$om!"#an\$e 1#t' t'e te%ms of a!!o#ntment o% t'e \$ont%a\$t of em!"o ment.
- B. ) o\(\text{eo}/e\)\(\text{tstaff \(\text{\u}\) u = 11.2\(\text{a}\)-\(\text{t}\) on ) anagement \(\text{e}/a\)\(\text{uat\(\text{ton}\)}\) \(\text{ton}/\(\text{#des};\)

A staff mem(e% 1#s'#ng to fo%ma"" \$ontest an adm#n#st%at#/e de\$#s#on a""eg#ng non=\$om!"#an\$e 1#t' '#s o% 'e% \$ont%a\$t of em!"o ment o% te%ms of a!!o#ntment& #n\$"ud#ng a"" !e%t#nent %egu"at#ons and %u"es !u%suant to staff %egu"at#on 11.1\*a- s'a""& as a f#%st ste!& su(m#t to t'e @e\$%eta% =Gene%a" #n 1 %#t#ng a %e8uest fo% a management e/a"uat#on of t'e adm#n#st%at#/e de\$#s#on.

- C. Add#t#ona"" & a%t. C.1\*\$- of t'e T\#(una":s @tatute st#!u"ates t'at an a!!"#\$at#on s'a"" on" (e \%e\\$e#/a("e \#f t'e a!!"\\$ant 'as !\%e/\#ous" su(m\#tted t'e \\$ontested adm\#n\#st\%at\#/e de\\$\#s\#on fo\% management e/a\"uat\#on\& 1 'e\%e \%e8u\#\%ed.
- 9. T'e T\#(una" \%e\\$a""s t'at as !e\% a\%t. 2.1\\*a- of \#ts @tatute\% 8uoted a(o/e\% fo\% an a!!"\#\\$at\#on to (e \%e\\$e\#/a("e\% t'e \\$ontested de\\$\#s\#on 'as to (e an +adm\#n\#st\%at\#/e de\\$\#s\#on, unde\% t'e !\%o/\#s\#ons of t'e T\\#(una":s @tatute. T'e A!!ea"s T\\#(una" 'as ado!ted t'e def\#n\#t\#on of an adm\#n\#st\%at\#/e de\\$\#s\#on \\*seeh

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t'at t'e a\%e ta3en ( t'e Adm\#n\#st\%at\#on\% t'e a\%e un\#\"ate\%a\" and of \#nd\#/\#dua\" a!!\"\\$at\#on\% and t'e \\$a\% d\#\%e\\$t \"ega\" \\$onse\\$uen\\$es.

10. T'e A!!"#\$ant \$'a""enges some +negat#/e \$omments, '#s su!e%/#so% a""eged" made #n '#s !e%fo%man\$e e/a"uat#on and a %e\$ommendat#on to te%m#nate '#s \$ont%a\$t. E/en #f su\$' negat#/e \$omments and an a""eged %e\$ommendat#on to te%m#nate t'e A!!"#\$ant:s a!!o#ntment 1e%e made& t'e do not \$onst#tute adm#n#st%at#/e de\$#s#ons as !e% t'e a(o/e def#n#t#on& s#n\$e t'e do not \$a\% an d#%e\$t "ega" \$onse8uen\$es. T'e%efo%e& #n t'e a(sen\$e of an adm#n#st%at#/e de\$#s#on& t'e !%esent a!!"#\$at#on #s not %e\$e#/a("e ratione materiae.

11. 2n add#t#on& #t #s o(/#ous f%om t'e A!!"#\$ant:s su(m#ss#on t'at 'e d#d not %e8uest management e/a"uat#on of 1 'at 'e 1 ants to \$ontest. 7a#"u%e to fo""o1 t'e esta("#s'ed!%o\$edu%e a"so %ende%s t'e a!!"#\$at#on #%%e\$e#/a("e.

12. T'e fo%ego#ng #s 1#t'out !%e<ud#\$e to t'e !oss#(#"#t fo% t'e A!!"#\$ant to f#"e a ne 1 a!!"#\$at#on 1#t' t'e T%#(una" at a "ate% stage& s'ou"d 'e %e\$e#/e an adm#n#st%at#/e de\$#s#on t'at 'e \$an \$ontest& and afte% 'a/#ng !%o!e%" gone t'%oug' t'e management e/a"uat#on !%o\$ess& #f so %e8u#%ed.

## Conclusion

13. 2n /#e1 of t'e fo%ego#ng& t'e T%#(una" DEC2DE@;

T'e a!!"#\$at#on #s %e<e\$ted.

\*Signed-

Judge T'omas Fa3e%

Dated t'#s 15<sup>t'</sup>