# UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2015/12 !"#g\$e% No.: UNDT/2015/0'5

UNDT/2015/0'5 2 A"g"s\(\) 2015

Da&e: O()g)%a\*:

E%g\*)s+

Before: !"#ge Ro, a% Do, %)%g

Registry: Ge%e-a

Registrar: Re%. /. Va(gas /.

/ ELPIGNANO

-.

## SECRETAR 01GENERAL O2 T3E UNITED NATIONS

JUDGMENT

Counsel for Applicant: / a()sa / a4\*e%%a%5 OSLA

Counsel for Respondent:

S&e-e% D)e&()4+5 ALS/O3R / 5 UN Se4(e&a()a&A\*)s&e( C" \$ \$)%g5 ALS/O3R / 5 UN Se4(e&a()a&

- 10. Pakagka! s 5 and , of t e suggested #nfokmat#on \$#k\$u"ak !ko2#de t e fo""o / #ng<
  - 5. 5n oldel to ; ua"#f6 fol \$ons#delat#on fol #ntelna" 2a\$an\$#es. staff+mem%els #n t e genela" sel2#\$e \$ategol6 must %e le\$lu#ted t loug t e esta%"#s ed le\$lu#tment !lo\$edules of t e Un#ted Nat#ons and G must fu"f#" among ot el t #ngs. t e esta%"#s ed le; u#lement of m#n#mum sen#ol#t6 #n glade.
  - ,. T e esta%"#s ed &e; u#&ement of m#n#mum sen#o&#t6 #n g&ade #s as fo""o / s<

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- 11. A"ong t e same "#nes. !a&ag&a ! @ of t e Gu#de"#nes ) ( e2#e / of F"#g#%#"#t6-&eads<
  - @. T e m#ss#on8s Pe&sonne" \*e\$t#on \$ondu\$ts a f#&st s\$&een#ng fo& e"#g#%#"#t6 of a!!"#\$ants. \*taff mem%e&s a&e e"#g#%"e fo&!&omot#on #f t e6<

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)%- fu"f#"" esta%"#s ed m#n#mum sen#o&#t6 &e;u#&ement as out"#ned %e"o / <

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fol ! & omot#on to  $G^*+$ , and  $G^*+7$  + foul 6eals

- 12. 5n 2002. Adm#n#st&at#2e 5nst&u\$t#on \*T/A5/2002/4 )\*taff se"e\$t#on s6stem/as !&omu"gated. 5n se\$. 5.3. #t !&o2#ded t at 3HtI#me+#n+g&ade e"#g#%#"#t6 &e;u#&ements fo&me&"6 #n use s a"" no "onge& %e a!!"#\$a%"e47 se\$. 3 def#ned t e s\$o!e of a!!"#\$at#on of t #s adm#n#st&at#2e #nst&u\$t#on and #t d#d not e=\$"ude G\* staff #n m#ss#ons.
- 13. 5n 200,. t e a%o2e+&efe&&ed #nst&u\$t#on / as su!e&seded %6 Adm#n#st&at#2e 5nst&u\$t#on \*T/A5/200,/3 )\*taff se"e\$t#on s6stem-. 5ts se\$. 5.1 st#!u"ated t at 3HeI"#g#%#"#t6 &e;u#&ements &ega&d#ng t#me+#n+g&ade o& t#me+#n+!ost t at /e&e fo&me&"6 #n use s a"" no "onge& %e a!!"#\$a%"e47 se\$. 3. / #\$ def#ned t #s

mst&u\$t\$=0.8 s\$0!e of a!!"\$at\$=0. d\$#d not. on\$e aga\$#n. e=\$"ude G\* staff \$#n\$ m\$=s\$=0.8 cm. e=\$"ude G\* staff \$#n\$ m\$=0.8 cm. e=0.8 cm. e=0.8

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- 17. 9n 2: 9\$to%e& 2012. t e D#&e\$to&. UNG\*C. add&essed to a"" UNG\*C staff a do\$ument ent#t"ed Administrative Instruction 12/26-01 on t e su%>e\$t of 3F"#g#%#"#t6 &e;u#&ements of m#n#mum sen#o&#t6 #n g&ade4. 'e st&essed t at t e B#e"d Pe&sonne" D#2#s#on )3BPD4-. DB\*. #n 'ead;ua&te&s. ad d#&e\$ted UNG\*C to fu""6 #m!"ement t e Gu#de"#nes. / #\$ esta%"#s ed t e e"#g#%#"#t6 &e;u#&ements of m#n#mum sen#o&#t6+#n+g&ade7 en\$e. e ad2#sed a"" UNG\*C staff t at \$and#dates not meet#ng su\$ &e;u#&ements / ou"d not %e !"a\$ed aga#nst a #g e& "e2e" !os#t#on. 'e added t at t e 3 June 200@ e=\$e!t#ona" / a#2e& "#m#ted to one s!e\$#f#\$ !os#t#on s ou"d not %e &ega&ded as 3a %"an?et aut o&#Jat#on4 to %e a!!"#ed to a"" s#m#"a& \$ases. and t at 3an6 \$u&&ent !&a\$t#\$e H / asI to %e d#s\$ont#nued4.
- 1@. 9n 27 Aa6 2014. a !ost fo& 'uman (esou&\$es Ass#stant) $G^*+,-$ . (efe&en\$e Ve&#f#\$at#on Un#t. UN01/UNG\*C. / as ad2e&t#sed %6 VA No. VA+13+14)04,-. /#t 2, June 2014 as t e dead"#ne fo& a!!"#\$at#ons. 5n #ts f#na" se\$t#on. t e VA stated t at 3\text{H}Inte&na" \$and\text{#dates} at t e  $G^*+5$  "e2e" a&e e"#g#%"e to a!!"6 afte& \$om!"et#on of fou& 6ea&s of se&2#\$e at t e  $G^*+5$  "e2e"4.
- 1:. 9n 3 June 2014. t e A!!"#\$ant a!!"#ed to Tem!o&a&6 Jo% 9!en#ng )3TJ94-TJ9 13+14 )04@-. 'uman (esou&\$es Ass#stant )G\*+,-. (efe&en\$e Ve&#f#\$at#on Un#t. UN01/G\*C. T #s TJ9 d#d not \$onta#n an6 t#me+#n+g&ade &e;u#&ement. 9n 21 June 2014. e / as not#f#ed of #s se"e\$t#on fo& t #s TJ9.
- 20. 9 n 2, June 2014. t e A!!"#\$ant a!!"#ed fo& VA+13+14)04,-.
- 21. As f&om Ju"6 2014. and fo""o / #ng #s se"e\$t#on fo& TJ9+13+14 )04@-. t e A!!"#\$ant too? u! #s fun\$t#ons as 'uman (esou&\$es Ass#stant)G\*+,-. (efe&en\$e Ve&#f\$\$at#on Un#t. UN01/G\*C on a tem!o\$a&6 ass#gnment.
- 22. 5n &es!onse to t e A!!"#\$ant8s ema#"; ue&6 of 24 Ju"6 2014. fo""o / ed+u! %6 ema#"s of 15 \*e!tem%e& 2014 and 3 Be%&ua&6 2015. t e C #ef 'uman (esou&\$es 9 ff#\$e&. UNG\*C. #nfo&med #m. on 4 Be%&ua&6 2015. t at a2#ng &e\$e#2ed d#&e\$t#on f&om BPD. 3 $\mathbb{H}$ t e6I must a!!"6 t e t#me #n g&ade &e; u#&ements fo& &e\$&u#tment of G staff4. 9n t e same da6. t e A!!"#\$ant soug t \$"a&#f#\$at#on as to / et e&. as a &esu"t. e ad %een dete&m#ned to %e not e"#g#%"e fo& VA+13+14 )04,-. 5n &e!T f D14.1872 0 4.9 1 1 (t)0.8743 260275574 (!)9.6985f!t -. %efA

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! h62.873046(1)--3.66653(e).69849(#)-9.29514(%)-1.566523(n)-8979(P)-37.77856(n)-h997

e. T e Gu#de"#nes / e&e o&#g#na""6 add&essed to f#e"d m#ss#ons. a"t oug su\$ m#ss#ons needed to #m!"ement t em %6 / a6 of #nfo&mat#on \$#&\$u"a&. T e Gu#de"#nes / e&e add&essed to s!e\$#f#\$ ent#t#es %6 name. un"#?e mo&e

Page: of 31

- >. \*e\$. 2., of \*T/A5/2010/3 !&o2#des t at 3HmIanua"s /#"" %e #ssued to !&o2#de gu#dan\$e4. %ut t at #n \$ase of 3#n\$ons#sten\$6 %et / een t e manua"s and t e te=t of t e G #nst&u\$t#on. t e !&o2#s#on of t e #nst&u\$t#on s a"" !&e2a#"4. Bu&t e&mo&e. t e A!!ea"s T&#%una" as &u"ed t at not on"6 must #nfe&#o& #ssuan\$es not su!e&sede su!e&#o& ones. %ut t e6 must not add su%stant#2e &e; u#&ements. un"ess e=!&ess"6 !e&m#tted to do so. T e&efo&e. t e Gu#de"#nes \$annot %e t e %as#s fo& an add#t#ona" &e; u#&ement7
- ?. T e Adm#n#st&at#on8s a!!&oa\$ amounts to d#s\$&#m#nat#on. 5t !ena"#ses UNO1 "o\$a""6+&e\$&u#ted staff 2#s+L+2#s e=te&na" \$and#dates D not su%>e\$t to t#me+#n+g&ade &e; u#&ements D and staff #n 'ead; ua&te&s. / e&e t#me+#n+g&ade &e; u#&ements a&e not a!!"#ed7
- ". As !e& !a&ag&a! 5.5.1.,.1 ) K o&? F=!e&#en\$e- of t e 5ns!#&a (e&&u#te&&s A anua") (e"ease 3.0 of 10 9 \$to%e& 2012-<

#f t e &e; u#&ed e=!e&#en\$e H#n a Jo% 9!en#ngI #s too s!e\$#f#\$. t #s ma6 e"#m#nate !e&fe\$t"6 su#ta%"e a!!"#\$ants / o "a\$? a na&&o/"6 def#ned &e; u#&ement. Too na&&o/ a des\$&#!t#on \$ou"d a"so "ead to \$on\$e&ns t at t e >o% o!en#ng as %een ta#"o&ed to su#t a !a&t#\$u"a& a!!"#\$ant.

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a. T e #nstant a!!"#\$at#on #s !&ematu&e and t us #&&e\$e#2a%"e. A f#na" de\$#s#on as not %een ta?en #n t e \$ontested VA. T e dete&m#nat#on t at t e A!!"#\$ant #s #ne"#g#%"e fo& \$ons#de&at#on #s a !&e!a&ato&6 ste! and. as su\$. not a!!ea"a%"e unde& t e T&#%una"8s \*tatute. T e A!!ea"s T&#%una" e"d #n Ivanov 2013+UNAT+37@ t at on"6 one adm#n#st&at#2e de\$#s#on \$om!"etes t e se"e\$t#on !&o\$ess7 #.e.. t e se"e\$t#on of t e su\$\$essfu" \$and#date. and t #s #s t e de\$#s#on t at ma6 %e \$ontested %6 ot e& \$and#dates. A"" ot e& de\$#s#ons /#t #n t e se"e\$t#on !&o\$ess a&e !&e!a&#ng t e f#na" se"e\$t#on and do not amount to a \$ontesta%"e adm#n#st&at#2e de\$#s#on7

%. G#2en t at !&e!a&ato&6 de\$#s#ons \$an on"6 %e d#s!uted #n "#g t of t e f#na" de\$#s#on. unt#" a f#na" se"e\$t#on de\$#s#on as %een made. t e&e #s no adm#n#st&at#2e de\$#s#on \$a&&6#ng "ega" \$onse;uen\$es fo& t e A!!"#\$ant8s te&ms of a!!o#ntment7

! erits

- \$. 5n g#2#ng fu"" and fa#& \$ons#de&at#on to \$and#dates. t e Adm#n#st&at#on #s %ound %6 t e te&ms of t e VA #n ; uest#on. T e Adm#n#st&at#on as %&oad d#s\$&et#on #n se"e\$t#on and a!!o#ntment de\$#s#ons and #ts a\$ts a2e a !&esum!t#on of &egu"a&#t6. 5t #s not fo& t e T&#%una" to su%st#tute #ts o/n >udgment fo& t at of t e \*e\$&eta&6+Gene&a"7 #t \$an \$ondu\$t a "#m#ted >ud#\$#a" &e2#e / of t e se"e\$t#on e=e&\$#se to 2e&#f6 #f a \$and#date / as fu""6 and fa#&"6 \$ons#de&ed. / #\$ #n\$"udes a &e2#e / as to / et e& a \$and#date met t e s!e\$#f#ed e"#g#%#"#t6 &e; u#&ements7
- d. T e e"#g#%#"#t6 &e; u#&ement \$onta#ned #n t e VA at #ssue / as "a / fu". T at / as \$onf#&med #n se2e&a" >udgments f&om t e fo&me& Un#ted Nat#ons Adm#n#st&at#2e T&#%una" )3UNAdT4- ) / rubant and \*ight , thers No. 3@: )1:@7-. Oayyar No. 43@ )1:@@-. a/an No. : , : )2000--7

Case No. UNDT/GVA/2015/124

Judgment No. UNDT/2015/075

n.

Case No. UNDT/GVA/2015/124

Judgment No. UNDT/2015/075

3,. T e (es!ondent su%m#ts t at t e A!!ea"s T&#%una" e"d #n Ivanov 2013+ UNAT+37@ t at t e on"6 adm#n#st&at#2e de\$#s#on / #\$ \$om!"etes t e se"e\$t#on !&o\$ess #s t e se"e\$t#on of t e su\$\$essfu" \$and#date. and a"" ot e& de\$#s#ons / #t #n t e !&o\$ess do not amount to \$ontesta%"e adm#n#st&at#2e de\$#s#ons. 'o / e2e&. afte& \$a&efu" &ead#ng of t e Ivanov

\$and#date #s t e on"6 t6!e of de\$#s#on t at ma6 enta#" d#&e\$t "ega" \$onse; uen\$es fo& an6 of t e \$and#dates.

- 3:. Bull el. #t #s / olt not#ng t e A!!ea"s Tl#wuna"8s Judgment 8 han/ee 2015+UNAT+527. 5n t #s \\$ase. t e A!!"#\\$ant \\$ a""enged t e de\\$#\\$m not to s olt"#st #m foll #ntell2#e / on t e glounds t at e fe"" s old of t e e=!ell#en\\$e le;u#\lement. 5ndeed. t #s Judgment. / #"e not e=!less"6 stat#ng so. a!!ealls to e;uate t e effe\\$ts of sa#d de\\$#\\$#s#on /#t t ose of a non+se"e\\$t#on. \*!e\\$#f#\\$a""6. #n #ts ;uotat#on of t e f#\left\\$st #nstan\\$e >udgment at !allagla! 4,. t e A!!ea"s Tlement at "udes to 3t e de\\$#\\$#on not to se"e\\$t e A!!"#\\$ant foll t e \\$ontested !ost. %6 not s old"#st#ng #m to %e #n2#ted foll an #ntell2#e / 4. and. at !allagla! 4:. #t \left\\$efells stla#g tfoll / all to t e 3de\\$#\\$#on not to se"e\\$t All. D an>ee4.
- 40. At t e 2e&6 m#n#mum. #t s ou"d %e st&essed t at t e A!!ea"s T&#%una" \$e&ta#n"6 d#d not f#nd t at t e de\$#s#on \$ontested %6 A&. D an>ee / as not su%>e\$t to >ud#\$#a" &e2#e/. as #t ente&ed #nto t e me&#ts of #s \$"a#m aga#nst #t. 'o/e2e&. "#?e #n t e \$ase at %a&. t e #m!ugned de\$#s#on / as ta?en as !a&t of t e &e\$&u#tment !&o\$edu&e. and ad t e effe\$t of e=\$"ud#ng t e \$on\$e&ned staff mem%e& f&om fu&t e& \$ons#de&at#on at a stage / e&e t e f#na" se"e\$t#on de\$#s#on ad not 6et %een made.
- 41. Boû t ese &easons. t e T&#%una" #s sat#sf#ed t at t e !&esent a!!"#\$at#on fa""s /#t #n #ts >u&#sd#\$t#on and #s t e&efo&e &e\$e#2a%"e. As su\$ . #t /#"" !&o\$eed to e=am#ne #ts me&#ts.

43. K#t t #s #n m#nd. t e T&#%una" / #"" fo\$us on / et e& t e Gu#de"#nes. and #n !a&t#\$u"a&t t e t#me+#n+g&ade &e;u#&ement !&es\$&#%ed t e&e#n. / e&e 2a"#d. #n fo&\$e and a ! !"#\$a%"e to UN0 1 at t e t#me of t e \$ontested de\$#s#on.

### 5na!!"#\$a%#"#t6 of t e Gu#de"#nes to UN01

- 44. T e Gu#de"#nes do not \$onta#n an6 !&o2#s#on de"#m#t#ng t e#& s\$o!e of a!!"#\$at#on #n te&ms of ent#t#es \$o2e&ed. 'o/e2e&. t e#& t#t"eDas /e"" as t e t#t"e of t e Te&ms of (efe&en\$e and t e suggested #nfo&mat#on \$#&\$u"a& #ssued toget e&/#t t emD!u&!o&ts t at t e6 a!!"6 to 3esta%"#s ed m#ss#ons4.
- 45. No def#n#t#on of 3esta%"#s ed m#ss#on4 #s found #n t e te=t of t e Gu#de"#nes. o\( \) an6 / e\( \) e #n #ts a\( \)\$om!an6#ng do\( \)\$uments. 5nstead. t e Gu#de"#nes enume\( \)\$ate f#2e esta\( \)"#s ed m#ss#ons\( \) UNT\( \)\*9. UND\( \)9B. UNB5CAP. UNA\( \)9G5P. UNB50. T ese a\( \) e #ndeed t e on\( \)6 f#2e ent#t#es to / ose CA\( \)9s t e Gu#de"#nes / e\( \)e \( \)\$#\( \)\$\und{a}\( \)\$u"ated #n\( \)1::..
- 4,. 5t #s not#\$ea%"e t at UN01 / as not on t #s "#st. a"t oug #t / as a"&ead6 #n e=#sten\$e fo& mo&e t an a 6ea& / en t e Gu#de"#nes / e&e \$#&\$u"ated. T e T&#%una" 2#e / s t #s as a st&ong #nd#\$at#on t at t e aut o&#t6 f&om / #\$ t e Gu#de"#nes emanated d#d not #ntend at t at t#me to a2e t em a!!"6 to UN01.
- 47. Aan6 6ea&s "ate&. Adm#n#st&at#2e 5nst&u\$t#on \*T/A5/2003/3 )\*!e\$#a" !ost
  a""o / an\$e fo& f#e"d m#ss#on staff- !&o2#ded a def#n#t#on of 3esta%"#s ed m#ss#on4.

  As !en%""a\$""nd""e\*s"e"s.

  nd #nns5-3.66523(a)-3.17732(5892(n)9.69228.0755 f D14.18721s)-5.3

peace Seeping operations; special political missions and other field presences.

57. Ne#t e& #s UN01 a f#e"d !&esen\$e. A\$\$o&d#ng to Anne= 5 of \*T/5C/2014/4. 5ta"6 #s a \$ount&6 / e&e dut6 stat#ons a&e \$"ass#f#ed #n t e 'ead;ua&te&s )'-\$atego&67 t at #s. "o\$at#ons 3 / e&e t e Un#ted Nat#ons as no de2e"o!menta" o&

head#uarters duty stations such as the =nited 0 ations -ogistics <ase; <rindisi o& t e Un#ted Nat#ons Pea\$e?ee!#ng Bo&\$e. C6!&us.)em! as#s added-

- ,0. T e T&#%una" #s m#ndfu" t at t e \*9P on 9n+%oa&d#ng of staff fo& UN !ea\$e o!e&at#ons e=!"#\$#t"6 \$#tes UN0P among t e 3esta%"#s ed m#ss#ons4. 'o/e2e&. / #"e t #s \*9P #n\$"udes UN01 #n #ts enume&at#on )\*e\$t#on F-. #t \$ont&ad#\$ts #tse"f %6 \$#&\$ums\$&#%#ng at t e same t#me t e mean#ng of 3m#ss#ons4 to UN !ea\$e?ee!#ng o!e&at#ons and s!e\$#a" !o"#t#\$a" m#ss#ons )\*e\$t#on A-. / #\$ . as demonst&ated #n t e ana"6s#s a%o2e. a&e d#st#n\$t f&om UN01. 5n an6 \$ase. t e \*9P \$annot !&e2a#" o2e& adm#n#st&at#2e #nst&u\$t#ons and ot e& %#nd#ng #ssuan\$es of su!e&#o& "ega" fo&\$e. su\$ as \*T/A5/2010/3. $^2$
- ,1. 'a2#ng dete&m#ned t at UN01 #s not an 3esta%"#s ed m#ss#on4. #t fo""o/s t at t e Gu#de"#nes \$ou"d not %e a!!"#\$a%"e to UN01.

#### !" "#\$%\$"&

- ,2. 5t #s t e Adm#n#st&at#on&s !os#t#on t at t e Gu#de"#nes / e&e a!!"#ed #n t e !&esent se"e\$t#on e=e&\$#se as t e se"e\$t#on s6stem esta%"#s ed %6 \*T/A5/2010/3 does not \$02e& G\* staff #n UN01. t e&e%6 \$&eat#ng a lacuna of "a/ t at ne\$ess#tated to %e f#""ed !&o2#s#ona""6. unt#" t e &e;u#&ed no&mat#2e ad>ustments / e&e made.
- \*e\$. 3.1 of \*T/A5/2010/3 sets t e #nst&u\$t#on8s s\$o!e to<

t e se"e\$t#on and a!!o#ntment of a"" staff mem%e&s to / om t e 9 &gan#Jat#on as g&anted o& !&o!oses to g&ant an a!!o#ntment of one 6ea& o& "onge& unde& t e \*taff (u"es at t e G+5 and a%o2e "e2e"s #n t e Gene&a" \*e&2#\$e \$atego&6

/ elleas se\$. 3.2s!e\$#f#\$a""6 e=\$"udes. among ot ell \$ategold#es of le\$lu#tments<

) - A!!o#ntment and se"e\$t#on of staff #n t e Genea" \*e2#\$e \$atego6 #n !ea\$e?ee!#ng o!eat#ons and s!e\$#a" !o"#t#\$a" m#ss#ons.

<sup>&</sup>lt;sup>2</sup> (efe& to !a&ag&a! s @4 to @7 %e"o/.

,4. 5n e=am#n#ng / et e& UN01 fa""s unde& t e e=\$e!t#on !&o2#ded fo& #n se\$. 3.2) - of \*T/A5/2010/3. t e T&#%una" &e\$a""s t at an6 e=\$e!t#on #s to %e \$onst&ued st&#\$t"6 and na&&o / "6 ) 7asmani 2010+UNAT+011. 3ran  $\theta$  guyen UNDT/2015/002-. K#t t #s #n m#nd. #t ta?es note of t e Adm#n#st&at#on8s

esta%"#s ment of a 3su%s#d#a&6 !ane"4 fo& t e a!!o#ntment and !&omot#on of G\* staff7 !a&ag&a! 5 #nst&u\$ts t at t e m#ss#on8s Pe&

Case No.

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935

7@. 5t #s \$"ea& t at #n 2002. Adm#n#st&at#2e 5nst&u\$t#on \*T/A5/2002/4 su!e&seded \*T/A5/413 and set u! a ne / staff se"e\$t#on s6stem. 5ts se\$. 5.3 une;u#2o\$a""6 !&es\$&#%ed t at 3t#me+#n+g&ade e"#g#%#"#t6 &e;u#&ements fo&me&"6 #n use s a"" no "onge& %e a!!"#\$a%"e4. Bou& 6ea&s "ate&. Adm#n#st&at#2e 5nst&u\$t#on \*T/A5/200,/3 su!e&seded \*T/A5/2002/4 and &e+\$&afted t e &eg#me of staff se"e\$t#on. Aga#n. #ts se\$. 5.1 \$"ea&"6 s!e\$#f#ed< 3F"#g#%#"#t6 &e;u#&ements &ega&d#ng t#me+#n+g&ade o& t#me+#n+!ost t at / e&e fo&me&"6 #n use s a"" no "onge& %e a!!"#\$a%"e4.

- 7:. No e=!"#\$#t e=\$e!t#ons / e&e "a#d do / n to an6 of t e t / o \$#ted !&o2#s#ons. and not #ng #n t e#& !"a#n / o&d#ng suggested t at t e6 / e&e meant to su!!&ess t#me+#n+g&ade &e; u#&ements fo& \$e&ta#n \$atego&#es of staff on"6. / #"st ma#nta#n#ng t em fo& ot e&s. su\$ as  $G^*$  "o\$a""6+&e\$&u#ted staff se&2#ng at m#ss#ons.

\*T/A5/200,/3 and / e&e not &e#nstated. An6 su\$ &e#nstatement / ou"d a2e to %e \$"ea& and !&e\$#se. \*u\$ #s not to %e found.

@3. K #"e t e t#me+#n+g&ade &e;u#&ements set out #n t e Gu#de"#nes ma6 a2e %een #n "#ne /#t t e adm#n#st&at#2e #ssuan\$e go2e&n#ng se"e\$t#on !&o\$edu&es #n fo&\$e f&om 1::, unt#" 2002. #t #s no / a%undant"6 \$"ea& t at su\$ &e;u#&ements a2e %een a%o"#s ed %6 t e a%o2e+&efe&en\$ed adm#n#st&at#2e #nst&u\$t#ons. To t #s e=tent. t e Gu#de"#nes a2e %een. and st#"" a&e. at odds /#t t e &e"e2ant adm#n#st&at#2e #nst&u\$t#ons su\$\$ess#2e"6 !&omu"gated s#n\$e 2002.

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&e; u#&ements of se\$. 5 of \*T/\*G1/200:/4 a2e %een met7 t at #t as

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Judgment No. UNDT/2015/075

@@. T e fo&ego#ng #s \$ons#stent / #t se\$. 2., of \*T/A5/2010/3<

T #s #nst&u\$t#on sets out te!&o\$edu&es a!!"#\$a%"e f&om te %eg#nn#ng to te end of te staff se"e\$t#on!&o\$ess. Aanua"s /#"" %e #ssued tat!&o2#de gu#dan\$e on te &es!ons#%#"#t#es of tose \$on\$e&ned fo\$us#ng on te ead of de!a&tment/off#\$e/m#ss#on. te #&#ng manage&. te staff mem%e&/a!!"#\$ant. te \$ent&a" &e2#e / mem%e&s. te &e\$&u#te&. name"6. te 9ff#\$e of 'uman (esou&\$es Aanagement)9'(A-. te B#e"d Pe&sonne" D#2#s#on of te De!a&tment of B#e"d \*u!!o&t. e=e\$ut#2e off#\$es and "o\$a" uman &esou&\$es off#\$es as /e"" as te o\$\$u!at#ona" g&ou! manage& and e=!e&t !ane". 2hould there be any inconsistency bet@een the manuals and the te+t of the present instruction; the provisions of the instruction shall prevail)em! as#s added-.

@:. 5n fa\$t. as a matte& of !&#n\$#!"e. gu#de"#nes. \*9Ps and "#?e do\$uments a&e %&oug t #nto e=#sten\$e fo& t e so"e !u&!ose of #m!"ement#ng #g e& &u"es. 16 natu&e. t e6 a&e not des#gned to su%s#st d#s\$onne\$ted f&om. and %e6ond t e du&at#on of. t e su!e&#o& #nst&ument t at t e6 #m!"ement. As t e (es!ondent &#g t"6 !ut #t. t e Gu#de"#nes ad 3t e#& o&#g#n and &at#ona"e4 #n \*T/A5/413. and !&e\$#se"6 fo& t at. s ou"d a2e d#sa!!ea&ed /#t #t. U!on t e su!e&sed#ng of adm#n#st&at#2e #nst&u\$t#ons u!on / #\$ an6 gu#de"#nes a&e %ased. t ose gu#de"#nes

emedies

- :2. 'a2#ng \$on\$"uded t at t e #m!ugned de\$#s#on /as un"a/fu". #t #s a!!&o!&#ate to &es\$#nd su\$ de\$#s#on. 1 ea&#ng #n m#nd t at t e &e\$&u#tment!&o\$ess as not 6et \$ome to an end. as #t /as !ut on o"d as #nte&#m &e"#ef o&de&ed %6 t e T&#%una". t #s &es\$#ss#on #m!"#es t at. "a\$?#ng an6 2a"#d &eason fo& t e A!!"#\$ant to %e deemed #ne"#g#%"e. e must %e fu&t e& \$ons#de&ed fo& se"e\$t#on to t e !ost ad2e&t#sed unde& VA+13+14 )04,- on e;ua" foot#ng /#t ot e& \$and#dates.
- :3. G#2en t at t e A!!"#\$ant /#"" no / %e fu""6 \$ons#de&ed fo& se"e\$t#on. e as not suffe&ed an6 "oss of o!!o&tun#t6 o& an6 ot e& demonst&a%"e damage t at s ou"d t&#gge& \$om!ensat#on.
- :4. Bullt elmole. t #s #s not a \$ase / elle t e Tlemuna" #s under an ow"#gat#on to set \$om!ensat#on as an a"tellnat#2e to less#ss#on!ulsuant to alt. 10.5 of #ts \*tatute. as t e \$ontested adm#n#stleat#2e desms#on does not \$onselln 3a!!o#ntment. !lomot#on oll tellm#nat#on4. T e Tlemuna" #s / e"" a / alle t at t e desms#on at #ssue #s \$"ose"6 lemated to a !otent#a" !lomot#on. 'o/e2ell. t #s 2ell6 desms#on. #.e.. desmalfent t e A!!"#\$ant #ne"#g#%"e foll VA+13+14 )04,-. #s not one to a!!o#nt and/oll !lomote anot ellsand#date to t e "#t#g#ous!ost. oll not to se"est/a!!o#nt t e A!!"#\$ant. %ut lat ellone!lee2ent#ng t e A!!"#\$ant flom \$om!et#ng as a \$and#date foll t e !ost. / #\$ #s d#ffellent #n natulle and sso!e. 5n t #s legalled. t e e=\$"us#on of t ese s!es#f#\$ \$ategoll#es of \$ases \$onst#tutes an e=\$e!t#on to t e molle generla"!o/ell \$onfelled on t e Tlemuna" to oldell unsond#t#ona" less#ss#on of desms#ons and. as sus . #t must %e #ntell!leted lestll#\$t#2e"6 )see 7asmani 2010+UNAT+011. Abu-/a@aila 2011+UNAT+11@. . remades 2012+UNAT+271-.
- :5. T e T&#%una" / #"" t us not a / a&d an6 f#nan\$#a" \$om!ensat#on.
- :,. 5n 2#e / of t e fo&ego#ng. t e T&#%una" DFC5DF\*<
  - a. T e \$ontested de\$#s#on #s un"a / fu" #n "#g t of t e a!!"#\$a%"e &u"es and !&#n\$#!"es7

%. T e \$ontested de\$#s#on #s &es\$#nded. and t e A!!"#\$ant must %e fu&t e& \$ons#de&ed and g#2en a fa#& \$ an\$e to \$om!ete fo& t e "#t#g#ous!ost7 and

\$. No f#nan\$#a" \$om!ensat#on #s a / a&ded.

)2igned-Judge (o/an Do/n#ng Dated t #s 24<sup>t</sup> da6 of August 2015

Fnte&ed #n t e (eg#ste& on t #s 24<sup>t</sup> da6 of August 2015)2igned-(en0 A. Va&gas A.. (eg#st&a&. Gene2a