

(\$) * * + , \$

1. A) mad S)ua"- \$a, enda 5(r. \$a, enda6 7as a staff mem-er of t)e Un"ted Nat"ons C)"ldren& 9und 5UN:C; 96 ser&"ng at t)e Afg)an"stan Countr, %ff"3e. * e 7as d"sm"ssed from ser&"3e after t)e 3on3lus"on of a d"s3"pl"nar, pro3ess+ 7)"3) 7as prem"sed upon t)e 3)arge t)at)e)ad m"sstated t)e trut) on)"s <- appl"3at"on to t)e post)e t)en o33up"ed. * e f"led an appl"3at"on 7)t) t)e Un"ted Nat"ons 1"spute Tr"-unal 51"spute Tr"-unal or UN1T63) alleng"ng t)e d"sm"ssal de3"s"on+ and on 22 Septem-er 2020+ t)e UN1T "ssued Judgment No. UN1T=2020=101+^d re<e3t"ng)"s appl"3at"on and f"nd"ng t)at t)e d"s

6. On 1/ June 2017, UN:C; 9 placed (r. \$a, enda on adm"n"strat"e lea&e 7"t)out pa, 5A! 4%\$6 pend"ng t)e 3omplet"on of "ts "n&est"gat"on "nto allegat"ons t)at t)e latter)ad -rea3)ed)"s o-l"gat"ons under Staff Rule 1.55a6 -, fa"l"ng to pro&"de trut)ful "nformat"on on)"s <- appl"3at"on 5A! 4%\$ 1e3"s"on6.

0. In a letter dated 1A August 2017, t)e ! egal Counsel for :%(3onf"rmed to UN:C; 9 t)at (r. \$a, enda)ad "ndeed -een t)e su-@3t of an "n&est"gat"on "nto m"s3ondu3t for Ca3ts 3onst"tut"ng fraud or a-use of assets or funds, lead"ng to f"nan3"al loss to t)e %rgan"#at"onD. T)e :%(! egal Counsel also "nformed UN:C; 9 t)at (r. \$a, enda)ad -een ser&ed 7"t) a formal Not"3e of Allegat"ons 5NoA6 on 26 Januar, 2010+ 7)"3) e s"gned on 22 Januar, 2010 3onf"rm"ng re3e"pt. (r. \$a, enda 7as formall, "nter&"e7ed -, t)e :%(&%ff"3e of t)e :nspe3tor >eneral on A1 Januar, 210f Ju5(J) -3. 73907(a56557945(f) -1. 018()) da56557945(f3(l)3. 87971(

12. On 22 September 2020, the UNAT issued the impugned Judgment, finding (inter alia) that the Appellant's request for management and other relief was not submitted in a timely manner.

THE UNITED NATIONS APPEALS TRIBUNAL

"intent"onall, m"sstated t)e trut) on)'s appl"3at"on. As su3)+)e d"d not up)old t)e)"g)est standards of "ntegr"t, reEu"red of "nternat"onal 3"&l ser&ants.

25. Regard"ng (r. \$a, enda s 3la"m t)at t)e full NoA do3ument s)o7s)e 7as not t)e su-«e3t of an "n&est"gat"on+ t)e Se3retar,->eneral argues to t)e 3ontrar,+ t)at "n 3lear and unam-"guous terms+ t)e full NoA s)o7s t)at (r. \$a, enda 7as "ndeed t)e su-«e3t of

26. T)e Respondent also su-m"ts t)e UN1T d"d not onl, rel, on t)e s3reens)ot of t)e NoA -ut anal,#ed all t)e e&"den3e atta3)ed to t)e 3ase re3ord 7)en 3on3lud"ng t)at at t)e t"me of)'s appl"3at"on+ (r. \$a, enda 7as alread, a7are t)at)e 7as t)e su-«e3t of an "n&est"gat"on. T)e

On the same day, the respondent acknowledges the existence of a fast-track process and the success of the alleged war crimes.

A0.

AA. The approval of)'s resignation and the e@t 3learan3e form relating to the de&"3es and documents)e possessed as a staff member of :%(are not proof that)e)ad -een 3leared of an, 3)arges against)'m and "n no 3ase t)'s 3ould <ust"t,)'s statement to UN:C; 9 t)at)e)ad ne&er -een t)e su-@3t of an, pr"or "n&est"gat"on for m"s3ondu3t.

A/. I esp"te (r. \$a, enda&s pers"stent 3la"ms t)at)e 7as ne&er "n&ol&ed "n a formal "n&est"gat"on+t)e total"t, of t)e e&"den3e on t)e re3ord s)o7s Eu"te t)e oppos"te. :t s)ould also -e noted t)at -ot) part"es agreed t)at no oral)ear"ng 7as reEu"red and t)at t)e UN1T 3ould ad<ud"3ate t)e matter -ased on t)e re3ord.¹² Under t)ese 3"r3umstances+ 3ontrar, to (r. \$a, enda&s 3ontent"on+t)ere 7as no need for t)e UN1T to order t)at more documents -e added to t)e re3ord. T)erefore+ "t follo7s t)at t)e UN1T 7as 3orre3t "n "ts f"nd"ng t)at t)e facts 7ere esta-l"s)ed a33ord"ng to t)e appropriate standard of 3lear and 3on&"n3"ng e&"den3e.^{1A}

A5. Ne@t+ 7)en determ"n"ng 7)et)er t)e facts+ as esta-l"s)ed+ amounted to m"s3ondu3t+ t)e UN1T -ased "ts 3on3lus"on on and Staff Regulat"on 1.25-6^{1/}

THE UNITED NATIONS

and upon evaluating the alleged misconduct against the applicable legal standards, the UNAT was correct in determining that the failure to disclose relevant information amounted to misconduct (7) of course barred the possible sanction of termination of appointment.

70. There is an additional component (7) reinforces the UNAT's finding of misconduct. It bears recall that the ("estigation was also intended to allegations of fraud and abuse of assets or funds. Honesty, and integrity, are core values expected of international civil servants, and allegations of "impropriety, in those respects should be thoroughly investigated. It is even more significant in the present instance as (r. \$a, and a copy of the post of 9th Assistant Secretary-General (r. \$a, and a copy of the dossier, process at () and not concluded at the time (r. \$a, and a copy of the present case is not the outcome of the ("estigation - rather the fact that)e was clearly, informed in January, 2010 that there was an "estigation into)s alleged misconduct - before)e)ad applied for the UN:C; 9 Post in April 2010.¹²

71. It follows that)en (r. \$a, and a copy of the)s application for the UN:C; 9 Post)e was full, aware of the ongoing "estigation against)m and , et)e ()ed the ()nd "atting that)e)ad not been the subject of an "estigation for misconduct -,)s former employer.)ad (r. \$a, and a copy of the)e correct information the result of)s selection ()ell)e - been different. The misrepresentation therefore,)ad "improperly, influenced the outcome of the recruitment process, (7) resulted in (r. \$a, and a copy of the selection. The)rganisation was never afforded the benefit of a full and accurate picture of (r. \$a, and a copy of the)ad, .)en)e UNAT was correct in its finding that the)e)ad our amounts to misconduct as)e del-erately, failed to provide correct information to UN:C; 9D.¹²

72.

actually, revealed that after the ad substantiated the allegations, it held part of (r. 5a, and the final entitlements to recover monies lost in an alleged embezzlement scheme.

4) Whether or not (r. 5a, and the intended purpose for resigning) is postulated and applied to the position at UN: C; 97 as to escape an, disciplinary, measure, it cannot be determined with certainty. But the previous possible misconduct (allegation) submitted to an investigation at the time is not the issue here.

17. Regardless of the outcome of the previous investigation, the Tribunal is of the view that the duty to give correct information in the application to UN: C; 97 is not relevant in this regard. UN: C; 97(12) - 4. 4794-3. 04

K 4)en <udg"ng t)e &al"d"t, of t)e Se3retar,->eneral&s e@er3"se of d"s3ret"on "n adm"n"strat"&e matters+ t)e 1"spute Tr"-unal determ"nes "f t)e de3"s"on "s legal+ rat"onal+pro3edurall, 3orre3t+ and proport"onate. T)e Tr"-unal 3an 3ons"der 7)et)er rele&ant matters)a&e -een "gnored and "rrele&ant matters 3ons"dered+ and also e@am"ne 7)et)er t)e de3"s"on "s a-surd or per&erse. ' ut "t "s not t)e role of t)e 1"spute Tr"-unal to 3ons"der t)e 3orre3tness of t)e 3)o"3e made -, t)e Se3retar,->eneral amongst t)e &ar"ous 3ourses of a3t"on open to)"m. Nor "s "t t)e role

As the Appeals Tribunal has previously established, substantial procedural irregularities can render a decision final, unreviewable and thus not subject to appeal.

/? : indeed according to Article 25 of the Appeals T

(0

5/. (r. \$a, enda& appeal "s d"sm"ssed+ and Judgment No. UN1T=2020=101 "s up)eld.

%r"gnal and Aut)or"tat"&e Lers"on: ; ngl"s)

1 ated t)"s 22^t) da, of %3to-er 2021.

Judge * alfeld+ \$res"d"ng
Ju"# de 9ora+ ' ra#"l

Judge (urp) ,
Cape To7n+Sout) Afr"3a

Judge . n"er"m
* am-urg+ >erman,

; ntered "n t)e Reg"ster on t)"s 1/^t) da, of 1 e3em-er 2021 "n Ne7 MorB+ Un"ted States.

4e"3)eng ! "n+Reg"strar