



o. 2020-UNAT-

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1. The Secretary-General Appeals Judgment No. UNAT/2020/020 dated 27 February 2020 issued by the United Nations Dispute Tribunal (UNDT) or Dispute Tribunal (ODT) found Mr. Handy's application contesting the negative comments included in his 2016-2017 electronic performance appraisal system report (A#: 5050) and his first reporting officers (SAs) and his second reporting officer (SA) to be reasonable. The reasons set out below affirm the UNDT Judgment.

2. At the material time in 2017, Mr. Handy was a Political Affairs Officer at the United Nations Multidimensional Integrated Stabilization Mission in the

Mr. Sagu'd' 'nd'ates: For'g'nal 'n -ren%&C off%'al Dngl's& translat'onG *ur'ng t&e re)'eO 1er'od! Mr. #'mon Handy d's1layed %ons'dera5le analyt'ual a5'l'ty! +noOledge of t&e en)'ronment of t&e Central Afr'ean (e1u5l'! and)ar'ous ot&er %om1eten'ies. He a%%om1l's&ed t&e a5o)e-ment'oned tas+s 'n an eff'ent manner. HoOe)er! O't& &'s many s+'lls! Mr. #'mon Handy %ould &a)e 5een &'g&ly 'nstrumental 'n &el'ng t&e , ol't'ual Affa'rs *')'s'on a%&'e)e aston's&ng results and flour's&! 'f &e &ad 5een effe%'ely 1resent 'n our team. As &'s su1er)'sor! = d'd not &a)e a full gras1 of Mr. Handy;s s%&edule. He essent'ally d'd not 1art%'1ate 'n our team meet'ngs! and =

4. The overall comments made by Mr. Handy's # (" Oere)en more %r't'%. He stated:

= ta+e note of t&e %omments and rat'ngs g')en 5y t&e tOo %olleagues O&o ser)ed su%ess')ely as - (" s)er t&'s re1ort'ng 1er'od and %ons'der t&em as not ade?uate to des%r'5e t&e 1rofess'onal 1erforman%e and t&e 5e&a)'our d's1layed 5y Mr. #'mon Handy. D)en 5efore &e resumed &'s dut'es O't& t&e *')'s'on! O&'le on s'+ lea)e! Mr. Handy sent at least one aggress')e message to %olleagues. H's fre?uent 'nfr'ngement of rules! &'s d'ff'ulty 'n Oor+'ng O't& ot&ers! 'n s&ar'ng off'ie s1a%e! 'n s&ar'ng)e&'les 'n t&e %ar-1ool! &'s d'sres1e%t for s'm1le rules su%& as 5e'ng 1resent on t'me for Oor+! o5ser)an%e of %urfeO &ours! attend %om1ulsory meet'ngs 'n%lud'ng meet'ngs &e 's su11osed to %&a'r! 'n my)'eO do not %orres1ond to a sat'sfa%tory %om1let'on of Oor+. Moreo)er &'s aggress')e remar+s o1enly d're%ted aga'nst 1eol1e &e %ons'ders as fore'gners Oould &a)e Just'f'ed unsat'sfa%tory rat'ngs 'n 1rofess'onal'sm! 'ntegr'ty and res1e%t for d')ers'ty. *ur'ng t&'s re1ort'ng 1er'od alone Mr. Handy &as %aused at least t&ree 'n%'dents one of t&em 5e'ng 'nsult'ng me! &'s # ("! * 're%tor of t&e *')'s'on. Anote&r Fs'G &as 5een for 5rea%& of %urfeO regulat'ons! and yet anot&er for unaut&or'>ed statements to t&e 1ress and for m'sre1resent'ng &'s 1os't'on 'n t&e organ'>at'on. H's tOo f'rst re1ort'ng off'ers dur'ng t&'s 1as re1ort'ng 1er'od Oere 5ot& aOare of t&e fa%ts = des%r'5e a5o)e! 't 's t&erefore my)'eO t&at Mr. Handy s&ould &a)e 5een rated as Kunsat'sfa%toryK 'n t&e %ore %om1eten%es of 1rofess'onal'sm! 'ntegr'ty and res1e%t for d')ers'ty. T&e 1erforman%e of t&'s staff mem5er O'll &a)e to 5e %losely mon'tored o)er t&e neEt re1ort'ng 1er'od O't& 1art'ular attent'on to t&e t&ree %om1eten%es ment'oned &ere a5o)e and to &'s o5ser)an%e of all rules and regulat'ons 'n%lud'ng t'me of arr'ial and 1resen%e 'n t&e off'ie. =n t&e neEt re1ort'ng 1er'od Mr. Handy O'll 5e su11orted to su5stant'ally 'm1ro)e &'s 1erforman%e and to d's1lay sat'sfa%tory le)els of 1rofess'onal'sm! of 'ntegr'ty and of res1e%t for d')ers'ty! start'ng O't& m'n'mal res1e%t for &'s %olleagues 'n e)ery area of Oor+! %ommun'at'on and Oor+'ng 'n a team! 'n%lud'ng &'s f'rst and se%ond re1ort'ng off'ers.

10. " n 14 #e1tem5er 2017! Mr. Handy f'led a re?uest for management e)aluat'on of t&e de%'s'on to aOard &'m an o)erall rat'ng of Asu%essfully meets 1erforman%e eE1e%tat'onsB for

12. On 2 January 2013, Mr. Handy filed an appeal with the UNAT to contest the decision to award him a BBB overall rating for his 2011-2017 performance. He consistently included Ad's 1st ranking comments in the same file, A#.

12. In Judgment No. UNAT/2020/8020 dated 27 February 2020, the 5-member Tribunal found Mr. Handy's appeal inadmissible. It held that the Administrative Tribunal's decision to consider the merits of the appeal was a nullity because the negative overall comments in Mr. Handy's 2011-2017 file, A# constituted an administrative decision, as they detracted from the favorable overall rating and had direct legal consequences on Mr. Handy affecting his right to re-employment and his right to a fair and balanced performance evaluation, and causing him adverse career consequences. The UNAT included that Mr. Handy's 2011-2017 file, A# was unlawful and ordered that it be amended so that the overall comments no longer detract from the overall rating, and that Mr. Handy be all his due process rights restored. But the UNAT left it to the decision-makers to decide as to what they should have done.

14. The Administrative Tribunal appealed the above UNAT Judgment on 27 April 2020, and Mr. Handy filed an answer on 2 June 2020.

10. The Administrative Tribunal requests that the Appeals Tribunal annul the impugned UNAT Judgment in its entirety.

11. The Administrative Tribunal submits that the 5-member Tribunal erred in law and exceeded its jurisdiction by finding that Mr. Handy's appeal was inadmissible. It applied the wrong legal standard in determining that the negative comments in Mr. Handy's 2011-2017 file, A# constituted a re-employment decision. There is no support in either Judgment No. 2014-UNAT-400 or Judgment No. 2016-UNAT-400: that comments about the need to improve core values and competencies are inconsistent with the BBB overall rating. It constituted an administrative decision or turn the file, A# into an administrative decision.

17. The Secretary-General contends that the UNAT erred in fact in finding that the negative comments in Mr. Handy's 2014-2017 e, A# and direct legal consequences for his terms of employment as such and an e, A# derived from his right to contest the negative comments) a the rebuttal process and his right to a fair performance appraisal and caused him adverse career consequences. Contrary to the UNAT's analysis, staff members do not have an absolute right to rebut their e, A#es in all circumstances. Under section 10.1 of #T8A=820108, Mr. Handy did not have a right to rebut his 2014-2017 e, A# because he had received a BBB overall rating. (e)'ng comments about the need to improve Oas part and parcel of Mr. Handy's terms of appointment and the regulatory framework governing

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22. It is true that a good final rating of O&A is a favourable decision does not constitute an administrative decision by itself to take a direct and negative impact on a staff member's rights and accordingly there is no legal basis pursuant to Article 291.9a of its statute for a staff member to file an appeal with the United Nations Tribunal.⁴

24. Nevertheless, as already noted, the determination on O&A is a separate decision of

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@0. Accordingly, the appeal fails.

@1. The appeal is dismissed and Judgment No. UN* T820208020 is affirmed.