
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2015/0 !

"#\$%&' No.: UNDT/2015/0(!

Introduction

1. In 11 January 2015, the Applicant filed a formal P#o*u#ement Ass)stant (G,5-)n t&e United Nations Po'u(at)on .und +/UN.PA0- P#o*u#ement 1e#2)*es 3#an*& +/P130- Af#)*a team 4ased)n Co'en&agen f)(ed an a' '()*at)on *&a((enging UN.PA de*)s)on not to #e2)e5 &e# *om'(a)nts of /m)s*ondu*t0 aga)nst f)2e P13 Af#)*a team mem4e#s name(\$ 6 #s. V. P#o*u#ement Ass)stant 6 #s. 7. Cont#a*t Asso*)ate 6 #s. 8. Cont#a*t)ng and Adm)n)st#at)2e Ass)stant 6 s. 9. P#o*u#ement Ass)stant and 6 #. :. P#o*u#ement Ass)stant.

Facts

2. In 2 January 2013, the Applicant entered t&e se#2)*e of UN.PA)n t&e Af#)*a team P13 on a one,\$ea# tem'o#a#\$ a' 'o)ntment +/TA0-. ;ffe*t)2e 23 1e'tem4e# 2013 s&e 5as '(a*ed on 1'e*)a(<ea2e 5)t& .u((Pa\$ +/1<7 .P0- and 5as se'a#ated f#om UN.PA u'on t&e e=')#at)on of &e# TA on 26 January 201>.

3. In 13 1e'tem4e# 2013, t&e Applicant sent an ema)(unde# t&e su4?e*t /unet&)*a(and &a#mfu(a*t)ons f#om 6 s. 7.A aga)nst me0 to t&e ne5(\$ a' 'o)nted Buman Cesou#*es Asso*)ate of UN.PA Co'en&agen *o'(\$)ng &e# su'e#2)so#s at P13.

>. 3\$ ema)(of 5 August 201>, t&e Applicant addressed to an Dn2est)gations Ana(\$st! ff)*e of Aud)t and Dn2est)gations 1e#2)*es +/ !AD10% fo#me#(\$ t&e D)2)s)on of !2e#s)g&t 1e#2)*e +/D! 10-- UN.PA a *om'(a)nt aga)nst 6 s. 7. 1&e d) t&e same on 22 August 201> #ega#d)ng *om'(a)nts aga)nst 6 s. 8. 6 s. 9. and 6 #. :. a#gu)ng t&at t&ese staff mem4e#s 5e#e /*onstant(\$ 4u(((\$)ng0 &e# and /a' '(\$)ng effo#ts)n o#de# to dest#o\$ @&e#A *a#ee#)n P130.

5. Dn a' &one *on2e#sat)on 5)t& !AD1 on 10 1e'tem4e# 201>, *onf)#med 4\$ ema)(of 16 1e'tem4e# 201>, t&e Applicant 5as not)f)ed t&at !AD1 5ou(d not 4e t#)gge#)ng an)n2est)gation)nto &e# /*om'(a)nts of &a#assment 4u(((\$)ng and a4use of aut&o#t\$ aga)nst 12 staff mem4e#s at P130) s)n*e !AD1 &ad /*on*(uded)ts

'#e(m)na#\$ #e2)e5 of t&e matte# and @&adA found t&at a fu(()n2est)gat)on @5asA not 5a##anted0% t&e#fo#e *ons)de#)ng t&e matte# /*(osed0.

6. 3\$ ema(of 20 1e'tem4e# 201>% t&e A ' '()*ant su4m)tted a #eEuest fo# management e2a(uat)on aga)nst !AD1 de*)s)on not to t#)gge# an)n2est)gat)on)nto 6 #s. 7.Fs 4e&a2)ou#. 1&e #e*e)2ed a #e'(\$ to &e# #eEuest on 31 !*to4e# 201> f#om t&e ;=e*ut)2e D)#e*to#% UN.PA% 4\$ 5&)*& s&e 5as not)f)ed t&at !AD1 de*)s)ons 5e#e /outs)de t&e s*o'e of #e2)e5 4\$ UN.PA management0.

7. !n 10 No2em4e# 201>% s&e su4m)tted anot&e# #eEuest fo# management e2a(uat)on% t&s t)me aga)nst !AD1 de*)s)on not to t#)gge# an)n2est)gat)on)nto t&e 4e&a2)ou# of 6 #s. 8.% 6#. :. and anot&e# *o((eague.

4e&a2)ou# of &e# *o((eagues% 5&o 5e#e /s'#ead)ng s(ande#s% 4u(((\$)ng%
&a#assment and so on0 aganst &e#)s e2)dent 4ased on a((t&e '#oof s&e
a(#ead\$ su4m)tted on man\$ o**as)ons#

4. Be# *ase)s not 4e)ng t#eated se#)ous(\$ 4\$ UN.PA% and &e# manage#s
t#eated &e# 4ad(\$ as 5e((%)nstead of s&o5)ng &e# su' 'o#t and)nteg#at)ng &e#
)nto t&e P13 team# and

*. As s&e a(#ead\$ #eEusted t&e ma=)mum *om'ensat)on)

*om'(a)nts 5e#e t)me,4a##ed as)t 5as *onf)#med t&t t&e\$ #efe##ed to)n*)dents t&t o**u##ed '#)o# to 22 1e'tem4e# 2013% 5&)*&)s not 5)t&n t&e s)=,mont& t)mef#ame '#o2)ded fo# 4\$ se*. ".3.1 of t&e Po()*\$H

d. Dn add)t)on to t&e a4o2e% t&e A''()*ant d)id not d)s*&a#ge t&e 4u#den of '#o2)ng t&t s&e suffe#ed an\$ damage f#om t&e *ontested de*)s)onsH

e. Dn 2)e5 of t&e)s% t&e Ces'ondent asIs fo# t&e a''()*at)on to 4e #e#e*ted.

Consideration

13. At t&e outset%)t)s ne*essa#% fo# t&e T#)4una(to dete#m)ne 5&)*& de*)s)ons a#e 4e)ng *a((enged 4\$ t&e A''()*ant and &a2e 4een du(\$ su4m)tted to)t. T&e T#)4una(notes t&t t&e de*)s)on 4\$!AD1 not to t#)gge# an)n2est)gat)on)nto t&e A''()*antFs *om'(a)nts aga)nst &e# *o((eagues and to *(ose t&e matte#% 5as *ommun)*ated to t&e A''()*ant)n 5#)t)ng on 16 1e'tem4e# 201>. Df)s t&e)s de*)s)on t&t t&e A''()*ant *ontests)n &e# a''()*at)on to t&e T#)4una(% 5)t& #es'e*t to t&e a((eged *om'(a)nts f)(ed aga)nst &e# *o((eagues 6 #s. V.% 6 #s. 7.% 6 #s. 8.% 6 #s. 9. and 6 #. :.

Request for management evaluation

1>. As fa# as 6 #s. 7.)s *on*e#ned% t&e A''()*ant su4m)tted &e# #eEuest fo# management e2a(uat)on on 20 1e'tem4e# 201>% and 5)t& #es'e*t to &e# *om'(a)nts aga)nst 6 #. :. and 6 #s. 8.% on 10 No2em4e# 201>. Con*e#n)ng 6 #s. 9.% t&e #e'(\$ sent 4\$ t&e ;=e*ut)2e D)#e*to#% UN.PA% to t&e A''()*ant 4\$ ema)(of 15 De*em4e# 201>)nd)*ates t&t t&e (atte# &ad f)(ed a #eEuest fo# management e2a(uat)on *on*e#n)ng t&t *o((eague on 31 !*to4e# 201>.

15. Dn a((of t&e a4o2e fou#)nstan*es% t&e A''()*ant du(\$ *om'())ed 5)t& t&e #eEu)#ement of t)me(\$ #eEuest)ng management e2a(uat)ons and f)(ong a''()*at)ons 4efo#e t&e T#)4una(% 'u#suant to staff #u(e 11.2+*-

om '(a)nt f(ed afte# t&e s)=,mont& t)me (m)t% 5&)&)s a ' '()*a4(e to ea*& t\$'e of
*om '(a)nants J 4e)t UN.PA /Pe#sonne(and/o# fo#me# Pe#sonne(0 J)s to 4e
*ons)de#ed unt)me(\$.

23. T&e A ' '()*ant *annot su**essfu((\$ a#gue t&at s&e on(\$ a*Eu)#ed effe*t)2e
Ino5(edge of t&e 4u((\$ng aga)nst &e#)n A'#)(201>% 5&en do*uments 5e#e
'#odu*ed 4\$ t&e Ces' ondent)n t&e *onte=t of ot&e# '#o*eed)ngs)n 5&)*& s&e 5 as
)n2o(2ed 4efo#e t&s T#)4una(. Dn deed% se*. ".3.1 of UN.PA Po()*\$ does not #efe#
to t&e date of t&e /Ino5(edge0 of t&e (ast)n*)dent% 4ut to t&e o**u##en*e of t&e
fa*tua()n*)dent)tse(f.

2>. 3ased on t&e a4o2e% t&e T#)4una(*on*(udes t&at t&e A ' '()*antFs *om '(a)nts
5e#e not #e*e)2a4(e 4\$!AD1% and t&at !AD1 #efusa(to *ondu*t an)n2est)gat)on
)nto t&ese *om '(a)nts d) not #esu(t)n a 4#ea*& of an\$ of t&e A ' '()*antFs #)g&ts. Dt
fo((o5s t&at t&e T#)4una(*annot 4ut #e?e*t t&e '#esent a ' '()*at)on.

Conclusion

25. Dn 2)e5 of t&e fo#ego)ng% t&e T#)4una(D ; CDD ; 1G

T&e a ' '()*at)on)s #e?e*ted)n)ts ent)#et\$.

+1)gned-

Judge T&omas <aIe#

Dated t&s 2"t& da\$ of June 2015

; nte#ed)n t&e Cee ; 1g