Introduction

1. ! a"'#$%at$on f$#ed on 27 &%to'e(2010)$t* t*e Ne) +o(, -eg$st(! of t*e D$s"ute T($'una#.)*e(e $t)as (eg$ste(ed unde(%ase No. UNDT/2010/090. t*e A"'#$%ant %ontests t*e de%$s$on of 27 A"($# 2010 to dsmss *$m f(om se(/$%e.

2. T*e A"'#$%ant $s see,$ng0

a. -es%sson of t*e de%$s$on of 27 A"($# 20101

'. -e$nstatement $n se(/$%e)$t* t*e Un$ted Nat$ons.)$t* a## *$s ($g*ts and emo#uments.)$t* (et(oa%t$/e effe%t f(om 27 A"($# 20101

%. Pa!ment of t)o !ea(s2 net 'ase sa#a(! as %om"ensat$on fo(t*e mo(a# *a(m (esu#t$ng f(om t*e /$o#at$ons of *$s ($g*ts1

d. 3n /$e) of t*e e4%e"t$ona# %$(%umstan%es. "a!ment of add$t$ona# %om"ensat$on of t*(ee !ea(s2 net 'ase sa#a(! s*ou#d t*e Adm$n$st(at$on de%$de. "u(suant to a(t. 10. "a(a. 5. of t*e T($'una#2s 6tatute. not to (e$nstate *$m1

e. Pa!ment of %osts '! t*e -es"ondent o)$ng to a'use of t*e d$s%$"'#$na(! "(o%ess1

f.

5. ! &(de(No. 98 ;N+/2013< of 12 A"($# 2013. t*e %ase) as t(ansfe((ed to

13. &n 18 &%to'e(2013. at 2.17 ".m. ;Gene/a t$me<. Counse# fo(t*e A""#$%ant $nfo(med t*e T($'una# t*at *e *ad 'een $n an a%%$dent t*e "(e/$ous da!. t*at *e (e>u$(ed t(eatment at t*e *os"$ta# and t*at *e) ou#d t*e(efo(e 'e una'#e to attend t*e o(a# *ea($ng. ! &(de(No. 158 ;GVA/2013< of 18 &%to'e(2013. t*e T($'una# o(de(ed Counse# fo(t*e A""#$%ant to "(odu%e a med$%a# %e(tf%ate f(om t*e *os"$ta#) *e(e *e *ad (e%e$/ed t(eatment.

1:. ! &(de(No. 180 ;GVA/2013< of 22 &%to'e(2013. t*e T($'una# o(de(ed t*e -es"ondent to "(o/$de add$t$ona# do%uments %on%e(n$ng t*e de%$s$ons ta,en $n t*e f(ame) o(, of t*e d$s%$"#$na(! "(o%ess.

15. &n 29 &%to'e(2013. t*e -es"ondent (es"onded to &(de(No. 180

aut*o($t! to ta,e d$s%$"#$na(! measu(es and to dsmss staff mem'e(s. Be a#so "(odu%ed a note f(om =(. Nam'$a(. C*ef de Ca'$net of t*e 6e%(eta(!@Gene(a#. sent to t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement on 17 August 2009 to $nfo(m *e(t*at t*e 6e%(eta(!@Gene(a# *ad a""(o/ed t*e de#egat$on of aut*o($t! to t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. effe%t$/e 1 Ju#! 2009. fo(d$s%$"#$na(! de%$s$ons and t*e dsmssa# of staff mem'e(s.

19. T*e A""#$%ant f$#ed a mot$on fo(summa(! 9udgment on 15 No/em'e(2013.

20. ! &(de(No. 179 ;GVA/2013< of 18 No/em'e(2013. t*e T($'una# (e9e%ted t*e A""#$%antDs mot$on. 'ut ne/e(t*e#ess o(de(ed t*e -es"ondent to (es"ond. "o$nt '! "o$nt. to t*e $ssues of #a) (a$sed '! t*e A""#$%ant $n *$s su'msson of 15 No/em'e(2013.

21. T*e -es"ondent su'm$tted *$s (es"onse to &(de(No. 179 ;GVA/2013< on 25 No/em'e(2013 and t*e A""#$%ant (e"#$ed on 27 No/em'e(2013. (e>uest$ng. inter alia. t*at t*e T($'una# o(de(t*e 6e%(eta(!@Gene(a# to a""ea(as a)$tness %on%e(n$ng t*e de#egat$on of aut*o($t!.

22. T*e o(a# *ea($ng) as *e#d on : No/em'e(2013. attended '! Counse# fo(t*e -es"ondent ;'! /$deo%onfe(en%e< and Counse# fo(t*e A""#$%ant ;'! te#e"*one<.

Facts

23. A deed of sa#e)as s$gned on 1 August 1991 '! =(. =as%a(ott$. as t*e g(anto(. and =(. (uno astet. t*e A""#$%ant. as t*e g(antee. fo(an a"a(tment #o%ated at 1:0 East 58t* 6t(eet. 1:B. Ne) +o(,. N+ 10022. Un$ted 6tates.

2:. &n 22 August 1991. t*e fat*e(Ds atto(ne! (eg$ste(ed t*e deed of sa#e of t*e a"a(tment $n t*e (eg$ste(of =an*attan. N+. as a (ea# estate t(ansa%t$on. on 'e*a#f of t*e A""#$%ant.

25.

29. &n 19 Ju#! 2007. t*e A"'#$%ant su'm$tted a t*$(d (enta# su's$d! %#a$m to &B-=. dated and s$gned on 18 Ju#! 2007. fo(t*e same a"a(tment.)$t* a mont*#! (ent of U6D 5.355. fo(t*e "e($od f(om 1 August 2007 to 31 Ju#! 2008. Be atta%*ed to *$s %#a$m a t*$(d #ease. fo(t*at "e($od. dated 3 Ju#! 2007 and s$gned '! *$m and Eu(oConsu#t$ng 6.A.. %/o =(. C*($sto"'*e(6a#ad$n.)$t* a mont*#! (ent of U6D 5.355. as)e## as a %an%e##ed %*e>ue $n t*e amount of U6D 5.355 as "(oof of "a!ment of t*e (ent.

30. &n 8 August 2008. t*e A"'#$%ant su'm$tted anot*e((enta# su's$d! %#a$m to &B-=. dated and s$gned on 8 August 2008. fo(t*e same a"a(tment and)$t* a mont*#! (ent of U6D 5.729.85. fo(t*e "e($od f(om 1 August 2008 to 31 Ju#! 2009. &n%e aga$n. t*e A"'#$%ant atta%*ed to *$s %#a$m a #ease dated 3

33.

$nfo(mat$on a'out *$m. &n t*e same da!. t*e n/estgato(%a##ed =(. De/nan$.)*o. a%%o(d$ng to t*e uns$gned note to f$#e %on%e(n$ng t*e %a##. %onf$(med t*at *e d$d not)ant to "(o/$de %o"$es of t*e #ease ag(eements 'e%ause *e)as af(a$d t*at t*e A""#$%ant)ou#d not (ene) *$s #ease1 =(. De/nan$ a#so $nfo(med t*e n/estgato(t*at t*e A""#$%ant *ad %a##ed *$m and to#d *$m t*at. $f *e)as %onta%ted '! t*e n/estgato(s. *e s*ou#d not g$/e t*em an! $nfo(mat$on o(do%uments.

:0. &n 8 &%to'e(2009. t*e n/estgato(s *ad a fo##o)@u" meet$ng)$t* t*e A""#$%ant $n o(de(to a##o) *$m to (e/$e) t*e (e"o(t on t*e $nte(/$e) of 2: 6e"tem'e(2009. At t*$s meet$ng. t*e A""#$%ant s$gned t*e n/estgat$on (e"o(t of 2: 6e"tem'e(2009 and ga/e t*e n/estgato(s some do%uments. $n%#ud$ng a #ette(of 23 June 2005 s$gned '! t*e su%%esso(atto(ne! at t*e #a) off$%e (eta$ned '! t*e A""#$%antDs fat*e(fo(t*e "u(%*ase of t*e a"a(tment #o%ated at 1:0 East 58t* 6t(eet. 1:B. Ne) +o(,. N+ 10022. Un$ted 6tates. 3n t*e #ette(. t*e atto(ne! states t*at as t*e fat*e(. un#$,e t*e A""#$%ant. d$d not *a/e a so%$a# se%u($t! num'e($n t*e Un$ted 6tates at t*e t$me of t*e a"a(tment "u(%*ase. $t *ad 'een "u(%*ased t*(oug* t*e A""#$%ant. 'ut t*at t*e mone! fo(t*e "u(%*ase *ad 'een "(o/$ded '! t*e fat*e(and t*at t*e "u(%*ase *ad 'een made fo(t*e fat*e(Ds 'enef$t. A%%o(d$ng to t*e note to f$#e. t*e A""#$%ant. u"on 'e$ng $nfo(med '! t*e n/estgato(s t*at t*e! *ad (e%e$/ed %onf$(mat$on t*at =s. No(ma =ota)as not

A%%o(d$ng to t*e uns$gned note to f$#e %on%e(n$ng t*e $nte(/$e). =s. Da'a(a den$ed *a/$ng s$gned an ag(eement)$t* t*e A"'#$%ant and stated t*at t*e s$gnatu(e on t*e #ease)as not *e(s and t*at s*e *ad ne/e((e%e$/ed o(%as*ed

:7. &n 12 Janua(! 2010. t*e Unde(@6e%(eta(!@Gene(a#. &3&6. sent a '$@)ee,#! (e"o(t to t*e 6e%(eta(!@Gene(a# $nfo(m$ng *$m t*at t*e n/estgat$on unde(ta,en '! &3&6 fo##o)$ng t*e med$a (e"o(ts a'out t*e A""#$%ant *ad 'een %om"#eted and t*at t*e n/estgat$on (e"o(t *ad 'een su'm$tted to t*e P(og(amme =anage(.

:8. ! memo(andum dated 22 ?e'(ua(! 2010. t*e &ff$%e(@$n@C*a(ge of t*e Adm$n$st(at$/e Aa) Un$t (e%ommended to t*e &3C. &B-=. to nsttute d$s%$"#$na(! "(o%eed$ngs aga$nst t*e A""#$%ant unde(se%. 5 of 6T/A3/371;-e/$sed D$s%$"#$na(! =easu(es and P(o%edu(es. a/a$#a'#e $n Eng#$s* on#!<.

:9. ! memo(andum of t*e same da!. t*e &3C. &B-=. $nfo(med t*e A""#$%ant t*at *e fa%ed %*a(ges of m$s%ondu%t fo(,no)$ng#! su'mttng $na%%u(ate %#a$ms

effe%t$/e as at t*e date of t*e A""#$%ant2s (e%e$"t of t*e #ette(. 6*e a#so $nfo(med *$m t*at. $n a%%o(dan%e)$t* staff (u#e 3.17 ;%< and t*e "(o/$s$ons of 6T/A3/2009/1. t*e &(gan$7at$on)ou#d ta,e t*e ne%essa(! a%t$on to (e%o/e(*$s $nde'tedness to t*e &(gan$7at$on fo(t*e (enta# su's$d! o/e("a!ments.

Parties' submissions

53. T*e A""#$%ant2s %ontent$ons a(e0

a. T*e n/estgat$on "(o%edu(es a""#$%a'#e at t*e Un$ted Nat$ons)e(e not fo##o)ed and *$s due "(o%ess ($g*ts)e(e /$o#ated. T*e -es"ondent fa$#ed to %ons$de(a## t*e #ega# "(o'#ems of t*e %ase1 $n "a(t$%u#a(. t*e e4%u#"ato(! e/$den%e)as not ta,en $nto a%%ount1 t*e d$sm$ssa# de%$s$on $s un#a)fu# and)as 'ased on fa#se e/$den%e and *ea(sa!. &3&6 o'ta$ned test$mon! f(om nd/$dua#s)*o)e(e '$ased aga$nst *$m1

'. B$s fo(me(domest$% "a(tne(. =s. E/e de Aenga$gne. #aun%*ed a %am"a$gn aga$nst *$m $n t*e "(ess and on t*e 3nte(net1 s*e $s a%t$ng $n 'ad fa$t* and $s not %(ed$'#e1 du($ng *$s t)o $nte(/$e)s)$t* t*e &3&6 n/estgato(s. t*e! d$d not $nfo(m *$m t*at t*e! *ad a#(ead! s"o,en)$t* =s. de Aenga$gne1 $n add$t$on. =s. de Aenga$gne does not s"ea, Eng#$s*.)*e(eas t*e uns$gned note to f$#e %on%e(n$ng *e(%on/e(sat$on)$t* t*e n/estgato(s.)*$%* t*e! d(afted. $s $n Eng#$s*1

%. T*e ot*e( )$tnesses $nte(/$e)ed '! t*e n/estgato(s a(e not %(ed$'#e e$t*e(1 t*e! made fa#se statements and t*e &3&6 n/estgat$on (e"o(t (e#$es ma$n#! on t*$s e/$den%e1 un#ess *e $s g$/en t*e o""o(tun$t! to %(oss@e4am$ne =s. E/e de Aenga$gne and t*e ot*e( )$tnesses *ea(d '! &3&6. a## of t*e$(test$mon! s*ou#d 'e d$s%a(ded1

d. Be $s not t*e o)ne(of t*e a"a(tment #o%ated at 1:0 East 58t* 6t(eet. 1:B. Ne) +o(,. N+ 10022. Un$ted 6tates. T*$s $s esta'#$s*ed '! t*e management mandate t*at *$s fat*e(s$gned $n 1991 %on%e(n$ng t*e a"a(tment.)*$%*)as o)ned '! *$s fat*e(. and '! t*e #ette(s of 23 June 2005 and 25 &%to'e(2005 f(om *$s fat*e(2s #a)!e(s1

e. T*e n/estgat$on)as o"ened)$t*$n a med$a@*!"ed and "o#t%$7ed

Translated from French

d. Un$ted Nat$ons n/estgat$on "(o%edu(es must g$/e staff mem'e(s t*e o""o(tun$t! to defend t*emse#/es and $n t*$s %ase t*e A""#$%ant *ad t*at o""o(tun$t!1 du($ng t*e "(e#$m$na(! n/estgat$on. *e)as "(o"e(#! $nte(/$e)ed and t*e n/estgato(s $nfo(med *$m of t*e fa%ts on)*$%* t*e a##egat$ons aga$nst *$m)e(e 'ased and s*o)ed *$m t*e (e#e/ant do%uments. $n%#ud$ng t*e nota($7ed deed fo(t*e a"a(tment on East 58t* 6t(eet1

e. At t*at stage of t*e "(o%ess. t*e A""#$%ant *ad no ($g*t to t*e ass$stan%e of %ounse# and t*e 9u($s"(uden%e of t*e fo(me(Un$ted Nat$ons Adm$n$st(at$/e T($'una# $n Sokoloff. T jt (romT $ccDT

name fo(*$s fat*e(s 'enef$t 'e%ause. un#$,e t*e A"'#$%ant. *$s fat*e(d$d not *a/e a so%$a# se%u($t! num'e($n t*e Un$ted 6tates1

,. T*e(e $s suff$%$ent e/$den%e to esta'#$s* t*at t*e A"'#$%ant.)$t* o( )$t*out t*e %o##us$on of =(. 6a#ad$n and =s. Da'a(a. fa'($%ated t*e #ease ag(eements 'et)een *$m and Eu(oConsu#t$ng 6.A.. a %om"an! $n)*$%* *e and/o(*$s domest$% "a(tne(*e#d s*a(es. so as to ena'#e *$m to $nf#ate *$s (enta# "a!ments1 t*e(e $s a#so e/$den%e to su"'o(t t*e %on%#us$on t*at t*e A"'#$%ant. fo(a## o("a(t of t*e "e($od du($ng)*$%* *e (e%e$/ed (enta# su's$d! a##o)an%es fo(t*$s a"a(tment.)as not #$/$ng at East 58t* 6t(eet and t*at *e *ad #eased t*e a"a(tment to a t*$(d "a(t! at t*e ma(,et (ate1 t*e A"'#$%ants e4"#anat$ons $n t*at (ega(d a(e not %(ed$'#e and do not (efute t*at %on%#us$on1

#. T*e e/$den%e a#so #eads to t*e %on%#us$on t*at t*e A"'#$%ant fa'($%ated t*e #ease ag(eement fo(t*e a"a(tment at 825 o)e(6t(eet at an $nf#ated (enta# "($%e)*$#e *e)as (es$d$ng e#se)*e(e1

m. Conse>uent#!. $t *as 'een esta'#$s*ed t*at 'et)een 3 August 2005 and

6e%(eta(!@Gene(a# fo(=anagement effe%t$/e 1 Ju#! 2009. T*$s aut*o($t!) as not de#egated to =s. Iane $n *e(nd/$dua# %a"a%$t!. as $n t*at %ase t*e 6e%(eta(!@Gene(a#) ou#d *a/e ment$oned *e('! name. A du#! des$gnated &3C (e"#a%es t*e a'sent nd/$dua# $n o(de(to fu##! e4e(%$se t*at "e(son2s aut*o($t! and %a((! out a## t*e fun%t$ons of t*e off$%e1 %onse>uent#!. $n o(de(to ensu(e t*e good fun%tonng of t*e off$%e. *e o(s*e *as fu## aut*o($t! and e/en an o'#$gat$on to ta,e a## de%$s$ons t*at #$e) $t*$n t*e (em$t of t*e a'sent nd/$dua#. e/en ma9o(ones su%* as dsmssa# de%$s$ons1

o. T*e -es"ondent t*e(efo(e %on%#udes t*at t*e dsmssa# de%$s$on $s #a) fu# and (e>uests t*at t*e a"'"#$%at$on 'e (e9e%ted $n $ts ent$(et!.

Consideration

UNDT proceedings

55. ! Judgment Bastet UNDT/2012/198 of 11 De%em'e(2012. t*e 9udge t*en $n %*a(ge of t*e %ase $n Ne) +o(, de%$ded t*at t*e a"'"#$%at$on) as (e%e$/a'#e. 3t

t*e T($'una# %ons$de(s $tse#f suff$%$ent#! $nfo(med as at t*e date of t*e "(esent 9udgment.

Lawfulness of the decision

58. To %ontest t*e de%$s$on to dsmss *$m f(om se(/$%e. t*e A"'#$%ant ma$nta$ns. inter alia. t*at t*e de%$s$on) as ta,en '! an unaut*o($7ed off$%$a#.

57. As at 27 A"($# 2010. t*e date on) *$%* t*e A"'#$%ant) as $nfo(med of *$s dsmssa# f(om se(/$%e. t*e a"'#$%a'#e te4ts on d$s%$"#$na(! measu(es) e(e (egu#at$on 10.1 ;a< of t*e 6taff -egu#at$ons ;6T/6G /2009/8<. a%%o(d$ng to) *$%* CT*e 6e%(eta(!@Gene(a# ma! $m"ose d$s%$"#$na(! measu(es on staff mem'e(s) *o engage $n m$s%ondu%tC1 and (u#es 10.1 to 10.3 of t*e 6taff -u#es ;6T/6G /2009/7<.) *$%* "(o/$de as fo##o) s0

> Rule 10.1
>
> Misconduct
>
> ;a< ?a$#u(e '! a staff mem'e(to %om"#!) $t* *$s o(*e(o'#gatons unde(t*e C*a(te(of t*e Un$ted Nat$ons. t*e 6taff -egu#at$ons and 6taff -u#es o(ot*e((e#e/ant adm$n$st(at$/e $ssuan%es o(to o'se(/e t*e standa(ds of %ondu%t e4"e%ted of an $nte(nat$ona# %$/$# se(/ant ma! amount to m$s%ondu%t and ma! #ead to t*e nsttut$on of a d$s%$"#$na(! "(o%ess and t*e $m"os$t$on of d$s%$"#$na(! measu(es fo(m$s%ondu%t.
>
> ;'< H*e(e t*e staff mem'e(?s fa$#u(e to %om"#!) $t* *$s o(*e(o'#gatons o(to o'se(/e t*e standa(ds of %ondu%t e4"e%ted of an $nte(nat$ona# %$/$# se(/ant $s dete(m$ned '! t*e 6e%(eta(!@Gene(a# to %onst$tute m$s%ondu%t. su%* staff mem'e(ma! 'e (e>u$(ed to (e$m'u(se t*e Un$ted Nat$ons e$t*e("a(t$a##! o($n fu## fo(an! f$nan%$a# #oss suffe(ed '! t*e Un$ted Nat$ons as a (esu#t of *$s o(*e(a%t$ons. $f su%* a%t$ons a(e dete(m$ned to 'e) $#fu#. (e%,#ess o(g(oss#! neg#$gent.
>
> ;%< T*e de%$s$on to #aun%* an n/estgat$on $nto a##egat$ons of m$s%ondu%t. to nsttute a d$s%$"#$na(! "(o%ess and to $m"ose a d$s%$"#$na(! measu(e s*a## 'e) $t*$n t*e d$s%(et$ona(! aut*o($t! of t*e 6e%(eta(!@Gene(a# o(off$%$a#s) $t* de#egated aut*o($t!.

Rule 10.2

Disci linar! measures

;a< D$s%$"#$na(! measu(es ma! ta,e one o(mo(e of t*e fo##o)$ng fo(ms on#!0

;$< H($tten %ensu(e1

;$$< Aoss of one o(mo(e ste"s $n g(ade1

;$$$< Defe(ment. fo(a s"e%$f$ed "e($od. of e#$g$'$#$t! fo(sa#a(! $n%(ement1

;$/< 6us"ens$on)$t*out "a! fo(a s"e%$f$ed "e($od1

;/< ?$ne1

;/$< Defe(ment. fo(a s"e%$f$ed "e($od. of e#g'$#$t! fo(

58. ?u(t*e(mo(e. 6T/A3/371 of 2 August 1991 t*en $n effe%t. fo( ) *$%* t*e(e $s no off$%$a# ?(en%* t(ans#at$on. st$"u#ates $n "a(a. 9 ;%< t*at0

> 6*ou#d t*e e/$den%e %#ea(#! nd%ate t*at m$s%ondu%t *as o%%u((ed. and t*at t*e se($ousness of t*e m$s%ondu%t) a((ants $mmed$ate se"a(at$on f(om se(/$%e. (e%ommend to t*e 6e%(eta(!@Gene(a# t*at t*e staff mem'e('e summa($#! d$sm$ssed. T*e de%$s$on) $## 'e ta,en '! o(on 'e*a#f of t*e 6e%(eta(!@Gene(a#.

59. 3n t*e $nstant %ase. t*e A""#$%ant) as $nfo(med '! #ette(of 27 A"($# 2010 s$gned '! t*e &3C. &B - =. $n Ne) +o(, t*at t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. on 'e*a#f of t*e 6e%(eta(!@Gene(a#. *ad de%$ded to $m"ose t*e d$s%$"#$na(! measu(e of dsmssa# f(om se(/$%e. 3t s*ou#d 'e "o$nted out t*at t*e #ette(does not nd%ate t*e date on) *$%* t*e d$sm$ssa# de%$s$on) as a%tua##! ta,en. T*e A""#$%ant a(gues f$(st#! t*at on t*e date on) *$%* t*e d$sm$ssa# de%$s$on) as ta,en t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement *ad not (e%e$/ed "(o"e(de#egat$on of aut*o($t! f(om t*e 6e%(eta(!@Gene(a#. At t*e T($'una#s (e>uest. t*e -es"ondent. to 9ust$f! t*at t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement *ad du#! (e%e$/ed su%* de#egat$on of aut*o($t! tende(ed $nto e/$den%e a #ette(dated 30 Ju#! 2009 add(essed to t*e 6e%(eta(!@Gene(a# f(om t*e Ass$stant 6e%(eta(!@Gene(a#. &B - =. t*(oug* t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. $n) *$%* $t $s "(o"osed t*at t*e 6e%(eta(!@Gene(a# s*ou#d de#egate *$s d$s%$"#$na(! aut*o($t!. $n%#ud$ng t*e aut*o($t! to d$sm$ss staff mem'e(s. to t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. and $n add$t$on. a note s$gned '! =(. Nam'$a(. t*e t*en C*ef de Ca'$net of t*e 6e%(eta(!@Gene(a#. $nfo(m$ng =s. Iane. t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. t*at t*e 6e%(eta(!@Gene(a# *ad a""(o/ed t*at de#egat$on of aut*o($t!. T*e T($'una# %ons$de(s t*at t*e(e $s no (eason to dou't t*e #atte(do%ument and t*at t*e 6e%(eta(!@Gene(a# d$d $ndeed) $s* to de#egate t*at aut*o($t! to t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. Bo) e/e(.) *$#e su%* de#egat$on does e4$st. t*e T($'una# notes t*at at t*e mate($a# t$me of t*e fa%ts. $t *ad not 'een off$%$a##! "u'#$s*ed t*(oug* an! of t*e means gene(a##! used '! t*e Adm$n$st(at$on to "u'#$s* off$%$a# do%uments t*at a(e enfo(%ea'#e aga$nst staff mem'e(s. 3n a matte(as $m"o(tant as d$s%$"#$na(! measu(es aga$nst staff mem'e(s. "a(t$%u#a(#! t*e$(d$sm$ssa#. $t $s $m"e(at$/e t*at t*e! s*ou#d *a/e ,no) #edge of t*e te4ts t*at aut*o($7e t*e nd/$dua#s $m"os$ng

su%* measu(es to ta,e t*ose de%$s$ons. De#egat$ons of aut*o($t! a(e $m"o(tant de%$s$ons 'e%ause t*e! a#te(t*e aut*o($t! %onfe((ed on staff mem'e(s '! t*e (egu#at$ons. 3n t*e $nstant %ase. 6T/A3/371 of 2 August 1991.)*$%*)as off$%a##! "u'#$s*ed. "(o/$des $n "a(a. 9 ;%< %$ted a'o/e t*at a dsmssa# de%$s$on)$## 'e ta,en C'! o(on 'e*a#f of t*e 6e%(eta(!@Gene(a#C. &ff$%a# "u'#$%at$on of t*e 6e%(eta(!@Gene(a#s de%$s$on to de#egate *$s aut*o($t! to dsmss staff mem'e(s)as t*e(efo(e ne%essa(! $n o(de(fo(t*at de%$s$on to ta,e effe%t and ena'#e =s. Iane. t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. to e4e(%$se t*at aut*o($t!. 6$n%e no su%* "u'#$%at$on o%%u((ed. t*e d$sm$ssa# de%$s$on)ou#d *a/e 'een un#a)fu# on t*at g(ound a#one e/en *ad t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement s$gned $t *e(se#f.

80. =o(eo/e(. a%%o(d$ng to t*e -es"ondent t*e de%$s$on to dsmss t*e A""#$%ant)as ta,en '! =(. Ad#e(ste$n on 15 A"($# 2010)*$#e *e)as t*e &3C des$gnated '! t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement '! memo(andum of 5 A"($# 2010. T*e T($'una# notes t*at no de%$s$on of 15 A"($# 2010)as su'm$tted and t*e(efo(e t*e on#! do%ument t*at m$g*t 'e %ons$de(ed t*e de%$s$on ta,en '! =(. Ad#e(ste$n $s t*e memo(andum of 22 =a(%* 2010 sent '! t*e &3C. &B-=. to t*e 6e%(eta(!@Gene(a# t*(oug* t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement. a do%ument t*at s*ou#d %onta$n t*e s$gnatu(e of =(. Ad#e(ste$n as &3C des$gnated '! t*e Unde(@6e%(eta(!@Gene(a# fo(=anagement.)$t* a stam" (ead$ng CA""(o/ed on 'e*a#f of t*e 6e%(eta(!@Gene(a#C.

81. T*e T($'una# o'se(/es. f$(st. t*at $t *ad to "(ess t*e -es"ondent t)$%e 'efo(e *e f$na##! %on/e!ed t*e name of t*e off$%a#)*o *ad a%tua##! ta,en t*e %ontested de%$s$on. and se%ond. t*at unt$# t*at $nfo(mat$on)as %on/e!ed $t)as $m"oss$'#e fo(t*e A""#$%ant to ,no) t*e name of t*e "e(son)*o *ad de%$ded to d$sm$ss *$m.)*$%* $n t*e T($'una#s /$e) $s a /$o#at$on of an essent$a# ($g*t. A## adm$n$st(at$/e de%$s$ons s*ou#d $n%#ude not on#! t*e date and t*e de%$s$on@ma,e(s s$gnatu(e 'ut a#so *$s o(*e("os$t$on and $n %ase $t $s $nde%$"*e(a'#e f(om t*e manua# s$gnatu(e. t*e name s*ou#d 'e ment$oned $n a## #ette(s.

82. T*e T($'una# de%$ded a'o/e t*at t*e dsmssa# de%$s$on)as un#a)fu# on t*e so#e g(ound t*at t*e de%$s$on to de#egate aut*o($t! fo(d$sm$ssa# to t*e Unde(@

6e%(eta(!@Gene(a# fo(=anagement *ad not 'een "u'#$s*ed. Ne/e(t*e#ess. $t must a#so e4am$ne anot*e(a(gument "ut fo( )a(d '! t*e A"'"#$%ant. to)$t. t*at t*e

T*$s $s a d$s%(et$ona(! de%$s$on t*at (e>u$(es /e(! %a(efu# %ons$de(at$on and an assessment of t*e g(a/$t! of t*e m$s%ondu%t $n/o#/ed. A%%o(d$ng to t*e -es"ondent. t*e %ontested de%$s$on) as ta,en '! =(. Ad#e(ste$n on 15 A"($# 2010. !et =s. Iane (etu(ned to t*e off$%e on 18 A"($# 2010. T*e(e) as no u(gent need fo(t*$s de%$s$on to 'e ta,en on 15 A"($# 2010. T*e T($'una# f$nds t*at t*e de%$s$on to dsmss t*e A""#$%ant) as ta,en '! an unaut*o($7ed nd/$dua# and t*at on t*at g(ound as) e## $t $s un#a) fu# and s*ou#d 'e (es%$nded.

85. T*e T($'una# o'se(/es. #ast#!. t*at) *e(eas 6T/A3/371 of 2 August 1991 $n effe%t on t*e date of t*e %ontested de%$s$on st$"u#ates t*ose off$%$a#s) *o a(e aut*o($7ed to 'e "a(t of t*e d$s%$"#$na(! "(o%ess. $n t*e $nstant %ase none of t*ose off$%$a#s) as "e(sona##! $n/o#/ed $n t*e de%$s$on@ma,$ng. T*e (e%ommendat$on dated 22 ?e'(ua(! 2010 to nt$ate t*e d$s%$"#$na(! "(o%ess) as s$gned '! t*e &3C of t*e Adm$n$st(at$/e Aa) Un$t. &B-=. and add(essed to t*e &3C. &B-=. &n t*e same da!. $t) as t*at &3C. &B-=.) *o $nfo(med t*e A""#$%ant t*at a d$s%$"#$na(! "(o%ess *ad 'een nsttuted aga$nst *$m and. as noted a'o/e. t*e same) as t(ue of t*e de%$s$on of 22 =a(%* 2010. T*us. t*(oug*out t*e d$s%$"#$na(! "(o%ess. a## t*e ma9o(de%$s$ons %on%e(n$ng t*e A""#$%ant. sta(t$ng) $t* t*e (e%ommendat$on to nt$ate t*e d$s%$"#$na(! "(o%ess and end$ng) $t* t*e de%$s$on to $m"ose a d$s%$"#$na(! measu(e.) e(e ta,en '! &3Cs. T*$s %#ea(#! s*o) s t*at t*e out%ome of t*e %u((ent C"(a%t$%eC $n t*e &(gan$7at$on of des$gnat$ng off$%e(s@$n@%*a(ge $s t*at *$g*#! $m"o(tant de%$s$ons a(e not a%tua##! 'e$ng ta,en '! t*e nd/$dua#s aut*o($7ed to ta,e t*em. des"$te t*e fa%t t*at a "e(sona# assessment of a g$/en s$tuat$on m$g*t 'e (e>u$(ed.

Prejudice

88. Pu(suant to a(t. 10. "a(a. 5. of $ts 6tatute.) *en t*e T($'una# o(de(s t*e (es%sson of a de%$s$on %on%e(n$ng te(m$nat$on $t s*a## a#so set an amount of %om"ensat$on t*at t*e (es"ondent ma! e#e%t to "a! as an a#te(nat$/e to t*e (es%$ss$on of t*e %ontested adm$n$st(at$/e de%$s$on. 3f t*e Adm$n$st(at$on e#e%ts to a""#! t*e (es%sson o(de($t must (e$nstate t*e A""#$%ant and ma!. as $t deems ne%essa(!. $m"ose anot*e(d$s%$"#$na(! measu(e $n a%%o(dan%e) $t* "(o"e("(o%edu(e.

87. T*$s T($'una# must set t*e %om"ensat$on to 'e "a$d '! t*e Adm$n$st(at$on s*ou#d $t e#e%t t*e a#te(nat$/e. T*e A""ea#s T($'una# *as (u#ed on t*e %($te($a t*at t*e 9udge must a""#! $n sett$ng su%* %om"ensat$on.)*$%* $s to 'e %ons$de(ed %om"ensat$on fo(t*e mate($a# damage to t*e A""#$%ant. 3t $s ne%essa(! to %ons$de(f$(st t*e natu(e of t*e un#a)fu# a%t$on and t*en t*e %ausa# #$n, 'et)een t*e un#a)fu# a%t$on and t*e mate($a# damage suffe(ed.

88. T*e T($'una# found a'o/e t*at t*e de%$s$on to dsmss t*e A""#$%ant)as un#a)fu# o)$ng to a "(o%edu(a# defe%t. to)$t. t*e #a%, of aut*o($t! of t*e de%$s$on@ma,e(. T*$s $s a me(e fo(ma# defe%t t*at does not ne%essa($#!)a((ant

78. 6T/A3/2000/18 ; - enta# su's$d$es and dedu%t$ons< of 23 Janua(! 2001.) *$%*) as $n effe%t at t*e t$me of t*e a##eged m$s%ondu%t. st$"u#ates $n se%. 2. "a(a. 2.1. t*at CNo (enta# su's$d! s*a## 'e "a$d to staff) *o #$/e $n t*e$(o) n *omes o(do not "a! (ent fo(t*e$(d) e##$ngs.C

77. As noted a'o/e. t*e A"'#$%ant %ou#d not $gno(e t*at *e) as t*e off$%$a# o) ne(of t*e a"a(tment on East 58t* 6t(eet '! /$(tue of a nota($7e

a. T*e de%$s$on to dsmss t*e A"'#$%ant $s (es%$nded on t*e g(ounds of "(o%edu(a# defe%t1 s*ou#d t*e -es"ondent e#e%t to (es%$nd t*e de%$s$on. a## e/$den%e (e#at$ng to t*e d$s%$"#$na(! "(o%eed$ngs s*a## 'e (emo/ed f(om t*e A"'#$%ant2s f$#e1

'. 6*ou#d t*e -es"ondent e#e%t not to e4e%ute t*e a'o/e (es%sson o(de(. no %om"ensat$on s*a## 'e "a$d to t*e A"'#$%ant and t*e e/$den%e (e#at$ng to t*e d$s%$"#$na(! "(o%eed$ngs s*a## (ema$n $n t*e f$#e1

%. A## ot*e("#eas of t*e A"'#$%ant a(e (e9e%ted.

;Signed<

Judge Jean@?(anKo$s Cous$n

Dated t*$s 18t* da! of De%em'e(2013

Ente(ed $n t*e -eg$ste(on t*$s 18t* da! of De%em'e(2013

;Signed<

-enL =. Va(gas =.. -eg$st(a(. Gene/a