

1. The Applicant contests his non-selection for the post of Chief Counsel and Translation Unit (TU) (P4), with the United Nations Office at Nairobi (UN-NO) advertised under Job Opening (J-110AN/UN-N11526) (NA2) - 32.

2.

6. On 18 June 2011, the author of the report, as advised, that on 11 June 2011, as the deadline for a statement. The author stated on 91 July 2011.

B. On 22 June 2011, the dates for the J- , were released to the Chief PC :

1. The author and another date under, sent a comment based on the report, on 5 June 2011, although due to technical problems the author's comment, had to be resumed on 28 June 2011.

@. On 2 June 2011, the author submitted a signed copy of the Departmental Panel's recommendation on the date of the 'e/' of the 'TU' UN - N , who had been appointed as - '\$C' T ; : D for the position as the one date , who met with the 'te' 'a' 'd do , in a most satisfactory manner. On 7 at an undetermined date , as a)Committee/Ana's 'e' of 'f' led in 2ns 'a' 'ef'ing the different commentaries and statements.

10. Upon retirement of the then Chief 'TU' the same 'e/' 'TU' , who , as a head of 'e' forming as - '\$C' T ; : . Name - '\$C' 'TU' UN - N from 1 November 2011 until 20 December 2011.

11. 37 memorandum dated 20 December 2011, the :eta Cent' 'e/' , Committee)C 'C' UN - N for , added to the Chief DC : the minutes of the discussion on the dates for the J- at stake requesting him to proceed , with the selection of the date and subsequent to for , and a , then onomatopoeia to the 'o' human resources office to assess the administration/e details of the selection.

12. On 22 December 2011, the Chief DC : selected the 'e/' 'TU' then a simultaneous as - '\$C' 'TU' and - '\$C' T ; : UN - N D for the post of Chief 'TU' UN - N.

19. More than two years later, as of the beginning of 2014, the author continued to show , that the post , as under consideration. On 28 January 2014, the author requested an update on the /a# to the Director's 3 us'ness 'e'eng'ng Gou & UmoEa (United Nations ; 'P' PoE , who for , added his message to the

Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

22. Pursuant to Articles Nos. 122 (GVA/2015+ of 11 June 2015) and 126 (GVA/2015+ of 21 September 2015 and 20 October 2015) (GVA/2015+ of

.. At the time of the decision on the selected and date, as discharging the duties of the posts

" . ' uss'an ' e/"se% (P\$4+& , "th ' TU& UN - N&#

"" . - ff"#e"\$n\$Cha%ge () - \$"\$C*+& ' TU& UN - N&# afte% %et"%ement of the fo%me% "n#um.ent "n m"d\$2011&#

"" .

Case No.

UNDT/GVA/2014/064

90. In the Tribunal's view, it is undisputed that the successful candidate headed the functions of the "temporary post as - \$Ck ' TUk %"o to h's selet'onk "t s fu!7 laus". It is to be assumed that he continued to head the selet'onk & es e#a!7 s"n#e the ema!s e=#hanged d'd not ment'on h's fun#t"ona! t"tle. In the absence of a notification of the de#"s'onD, h"#h the A !"#ant, as ent"led to e= e#tD and s"n#e "n the meant"me& 2ns "a, %ong!7 %ef!e#ted that the %e#%u"ment %o#ess, as st"!! o en& the A !"#ant had no %e!"a. It means to <no, that a f"na! se!e#t'on had been made.

91. It is undisputed that no date earlier than 1B A %! 2014 has to be considered as the date, when the A !"#ant came to <no, a. out h's non\$se!e#t'on and& #ount'ng f%om th's date& he %es e#ted a! statuto%7 t"me !"#m"ts.

92. It is undisputed that under art. 2.1(a) of the Tribunal's Statute the Tribunal is competent to refer, e=#!us"/e!7 adm"n"st"at"/e de#"s"ons affe#t'ng the #on#e#ned staff mem.ber's terms of employment. The matter is a case of a g"/en #ase "s def"ned .7 the s e#"f"# de#"s'on o% de#"s"ons that an a !"#ant #hose to a ea!. In this #ase& su#h de#"s'on "s the A !"#ant's non\$se!e#t'on fo% the ost of Ch"efk ' TUk UN - N& ad/e#t"sed unde% the J - %efe%en#ed "n a#a. 1 a. o/e.

99. According to the Tribunal's summons regarding the other %e#%u"ments a#e not su. Ee#t to Eud"#"a! s#%ut"n7 "n these %o#eed"ngs. The Tribunal understands that the A !"#ant put them fo%, a&d & to %o/"de some #onte=t and .a#<g%ound& . ut, "shes to unde%! "ne that "t #annot and, "!! not e=am"ne them.

94. : "m"!a!7& the Tribunal's not the %o e% "nst3.66653(%)2.5788(%)0.879.1872 0 T dD(469849(e) - 14

), "th the ass"stan#e of the e=e#ut"/e o% !o#a! human %esou%#es off"#e*. An ema"! e=#hange , "th the %e#%u"te%#s sho , that the Ch"ef& T ; :& a %o/ed the #heat"on of the J- . ? hen "t , as t"me& u%suant to se#. B.2 of the "nst%u#t"on& to %e!ease the %e\$s#%eened #and"da#"es to the 8"%ng >anage&& the Ch"ef& PC :& too< o/e% as the %"ma%7 8"%ng >anage%. 2ns "%a sho ,s the Ch"ef& PC :& as the %"ma%7 %es ons" .!e among the !"st of)%e#%u"te%#s* fo% the sele#t"on %o#ess & , ho "s <no , n to usua!!7 .e the 8"%ng >anage&& although "t "s "m oss".!e to <no , , "th an7 #e%ta"nt7 , hen th"s #hange , as "nt%odu#ed "n the s7stem.

40. ? h"!e :T/A2/2010/9 does not #ate% fo% a sha%ed e=e#%se of the 8"%ng >anage%Cs autho%"t7& "t does not fo%.d "t and the >anua! %o/"des fo% the e="sten#e of a mu!t" !e 8"%ng Team& , "th a %"ma%7 8"%ng >anage% as the ma"n off"#e% %es ons" .!e fo% the %o#edu%e.

41. 2n sum& "f the #ho"#es made "n ass"gn"ng and d"s#ha%g"ng the 8"%ng >anage%Cs fun#"ons m"ght seem e#u!"a& the7 do not %e/ea! an7 fla , "n the %o#edu%e. The %e#o%d "nd"#ates that e"the% the Ch"ef& T ; :& o% the Ch"ef& PC :& fu!"!!ed the dut'es fa!!"ng , "th"n the 8"%ng >anage%Cs %em"t sa/e fo% the t%ansm"tta! of a %e#ommendat"on to the Ch"ef& DC :& fo% f"na! de#"s"on (see a%as. B4 to B6 .e!o , +.

42. The A ea!s T%".una! %u!ed "n 2011\$UNAT\$122 that off"#a! a#ts a%e %esumed to ha/e .een %egu!a%7 e%fo%medH a##o%d"ng!7& "n a %e#u"tment %o#edu%e& "f the management "s a!e to e/en m"n"ma!!7 sho , that the staff mem.e%Cs #and"datu%e , as g"/en a fu!! and fa"% #ons"de%at"on& the .u%den of %oof sh"fts to the #and"date& , ho must .e a !e to sho , th%ough #!ea% and #on/"n#"ng e/"den#e that she o% he , as den"ed a fa"% #han#e. The T%".una! #ons"de%#s that the do#uments made a/a"!a .!e to "t sat"sf7 th"s m"n"ma! sho , "ng.

49. The T%".una! also %e#a!s the , e!!\$<no , n %"n#" !e that an7 a !"#ant a!!eg"ng that "m %o e% mot"/es ha/e ta"nted a #e%ta"n de#"s"on .ea%#s the .u%den of %o/"ng "t (see& e.g.& 2014\$UNAT\$494+. The A !"#ant em has"ses that& as

Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

... 'e/ant o##u at'ona! e= e"en#e/em !o7ment fo% the %e/"ous f"/e 7ea%\$ "s des"%a .!e.

41. 2n 2015\$UNAT\$540& the A eals T%".una! aff"%med the ho!d"ngs "n UNDT/2014/042 that&

The Adm"n"st%at"on d's oses of #ons"de%a .!e d"s#%et"on "n dete%#m"ng ,ho "s an)e= e%t* fo% the u% ose of 5UN - P: 'e#%u"tment L 2nst%u#t"ons and P%o#edu%es& se#t"on 14.B.9(.+(2+6 and #ons"de%\$ that "t #an !eg"t"mate!7 .e a%gued that "n /"e , of the s"m"!a%"t7 of the management fun#t"ons of the D"%e#to%& 2A2G& and those of the d's uted ost& the D"%e#to%& 2A2G& , as an e= e%t unde% the K %u!e. >O%eo/e%& and ma7.e mo%e "m o%tant!7& the T%".una! f"nds that the% #an .e no dou.t that the P%og%amme >anage% K though he ,as s"tt"ng on the Pane! as a)#!"ent %e %esentat"/e* L .e7ond ,hat ,as %e4u"%ed .7 the a !"#a .!e %ules L also fu!"!ed the #%"te%"a of a te#hn#a! e= e%t. K 2ndeed& K he #e%ta"n!7 had "n\$de th <no ,!edge , "th %es e#t to the s<"!s and e= e%t"se %e4u"%ed fo% the d's uted ost. Th"s "s su o%ted .7 the fa#t that "t , as "n fa#t h"m& togethe% , "th the D"%e#to%& : ? - C& , ho ma<ed the , %"tten test , h"#h 5>% . A!"<o6 K assed su##essfu!!7.

4@. 2n UNDT/2015/021& th"s T%".una! deemed that an e= e%t s"tt"ng "n a ane! set u to %e##u"t the sen"o% head of a med"#a! un"t& d" d not ne#essa%"!7 need to .e a do#to%H an e= e%t on management #ou!d .e #ons"de%ed as a su .Ee#t matte% e= e%t fo% th"s ost& as "t %e4u"%ed manage%"a! s<"!s.

50. 3ased on th"s gu"dan#e& the T%".una! #ons"de%\$ that "t , as not mandato%7 that the ane! "n#!ude a 'uss"an t%ans!ato% and o% %e/"se%. Th"s ,ou!d .e an e=t%eme!7 na%%o , unde%stand"ng of the doma"n(s+ of e= e%t"se that ma7 .e %e!e/ant fo% a #e%ta"n ostH the te%ms of se#. 1(#+ of :T/A2/2010/9 !ea/e %oom fo% a , "de% "nte% %etat"on.

51. 3e7ond that& the Ch"ef& T ; :& , as #e%ta"n!7 a su .Ee#t matte% e= e%t as he , as h"gh!7 e= e%"en#ed "n the f"eld of t%ans!at"on and %e/"s"on. As to the othe% t , o mem.e%\$& "t "s o.se%/ed that the7 ,e%e sen"o% staff manage%\$, hose %es e#t"/e dut'es led them to .e "n #onstant "nte#a#t"on& at !east as #!"ents& , "th the t%ans!at"on un"ts. Ao!!o , "ng the standa%d out!"ned "n & "t "s not un%easona .!e to #on#!ude that at !east one of 6523() - 91.0791(o)9.69979(f) - 8.0786() - 3 dn t98 892(") - 9.78 874

56. The >anua!& ado ted "n a##o%dan#e , "th th's %o/"s'on& %eads "n "ts %e!e/ant a%t (se#t"on @.6+G

A !"#ants #on/o<ed fo% "nte%/"e , s a%e no%ma!7 not"f"ed at least f"/e , o%<"ng da7s "n ad/an#e. The "n/"tat"on "n#!udes the date& t"me and means of the "nte%/"e , K and a!so "nfo%ms the a !"#ant of the . (em has"s added+.

5B. 8o , e/e%& the A ea!s T%" .una! %u!ed "n 2015\$UNAT\$4@6 that the >anua! does not ha/e !ega! fo%#e& %e#a!!"ng that)5%6u!es& o!"#es o% %o#edue&es "ntended fo% gene#a! a !"#at"on ma7 on!7 .e esta!"shed .7 du!7 %omu!gated :e#%eta%7\$Gene%a!Cs .u!et"ns and adm"n"st%at"/e "ssuan#es.* 2t u%su&edG

At most& the >anua! "n th"s a ea! %o/"des)gu"dan#e* on the)%es ons" .!"t"es* of the 8%"ng >anage&& as en/"saged .7 :e#t"on 2.6 of :T/A2/2010/9H "t does not u% o%t to /est a staff mem.e% , "th an ent"t!ement to .e a %"sed "n ad/an#e of an "nte%/"e , of the names of the ane! mem.e%s.

51. Not , "thstand"ng th"s f"nd"ng& the A ea!s T%" .una! #on#!uded that& "n the s e#f"# #"%#umstan#es of the #ase& the fa!U%e to "nfo%m the #on#e%ned staff mem.e% of the ane!Cs #om os"t"on had "m %o e%17 de %/"ed he% of the oss" .!"t7 to #ontest "t. 2n that #ase& the A !"#ant had f"!ed an a !"#at"on #ha!!eng"ng a %e/"ous sele#t"on %o#ess , "th the same h%"ng manage&& , h"#h the D"s ute T%" .una! had de#"ded "n he% fa/ou% a fe , da7s .efo%e the s#hedu!ed "nte%/"e , . 2n /"e , of "t& she had , %"tten to the Adm"n"st%at"on #on/e7"ng he% #on#e%ns on the !a#< of "m a%t"a!"t7 of the ane!& thus #!ea%17 sho , "ng the "m o%tan#e she atta#hed to "ts #om os"t"on.

5@. No s"m"!a% #"%#umstan#es , e%e %esent "n the "nstant #ase. 3ased on the Eu%"s %uden#e& the om"ss"on to "nfo%m the A !"#ant of the assesso%SC names "n ad/an#e of h"s "nte%/"e , d" d not .%ea#h an7 of the A !"#antCs %"ghts.

Pane!Cs assessment

60. The A !"#ant ta<es "ssue , "th the assessment of the #and"dates #ondu#ted .7 the ane!. 8e 4uest"ons the ane!Cs a .!"t7 to ade4uate!7 a %e#"ate the"% #om eten#es& as , e!! as "ts o.Ee#t"/"t7 and "m a%t"a!"t7.

61. It must be recalled that it is not the role of the Tribunal to substitute its own assessment of the facts for that of the Panel (see *UNAT*, 2011/UNAT/110+).

62. The issue of the Panel's competence has already been discussed (see paras. 48 to 52 above). Given its findings in this case, the Tribunal deems unfounded the claim that the Panel's lack of jurisdiction, independence and impartiality to evaluate the facts is proven.

69. Turning to the claim that the Tribunal has had the opportunity to

B6. The Tribunal concludes that the selection

es ons".!"t7 to ensu%e "ts good fun#t"on"ng o% a!"ate to "ts sho%t#om"ngs .7
#om !7"ng , "th "ts not"f"#at"on dut7 th%ough othe% means. 2t "s a , e!!\$esta.!"shed
%"n#" !e of !a , that no one #an .e a!!o , ed to "n/o<e h"s o , n tu% "tudeD

(& UNDT/2014/040

Case No. UNDT/GVA/2014/064

Judgment No. UNDT/2016/052

#. The Applicant shall also be awarded moral damages in the amount of USD 9,000.

d. The aforementioned sum shall bear interest at the United States prime rate, with effect from the date of this Judgment becomes enforceable until payment of said sums. An additional fine shall be awarded to the United States prime rate 60 days from the date of this Judgment becomes enforceable and

e. All other claims are rejected.

(+

Judge Thomas O'Connell

Dated this 4th day of May 2016

signed in the presence of on this 4th day of May 2016

(+

Enrique Vargas & Associates Geneva