a. In a meeting held on 29 September 2011, Mr. Baumann stated that a FRPPHQWPDGHEWKH$SSOLFDQWDQGVLGLFXORXV

b. In an email dated 22 November 2011, Mr. Baumann referred to the $SSOLFDQWDQGGLIILFXOW´

c. Mr. Baumann sent an email to the Applicant on 15 April 2012, copying Mr. Shaaban and other staff members, referring WR WKH $SSOLFDQW¶V DOOHJHG IFRQWUDULQHVVLYLVHQDQGHFHSWLYHQHVV ;

d. Mr. Baumann acted in bad faith and with the intent to obscure the status and official functions of the Applicant by instructing or directing that his name and title be omitted from a DGACM organizational chart; and

e. Mr. Baumann referred to other staff members as being involved in a UDFNHWLQHODWLRQVRIRYHUWLPHSURFHGXUHV

Appointment of the first FFP in 2012

6. On 27 April 2012, Mr. Shaaban, as the then USG/DGACM and responsible officer receiving the complaint, appointed the first FFP to investigate the allegations, which was comprised of two investigators, Ms. MN and Mr. GK, and a note taker.

7. On 13 July 2012, Mr. Shaaban departed DGACM and two weeks later, the Secretary-General appointed Mr. Jean-Jacques Graisse as Acting Head of DGACM.

8. On 20 July 2012, the first FFP interviewed the Applicant after other witnesses had been interviewed. Having not heard back from the first FFP since his interview, the Applicant sent Ms. MN and Mr. GK at least three unanswered requests for an update[2] on 17 December 2012, 31 January 2013 and 20 March 2013.

Appointment of the second FFP in 2015

21. On 13 March 2015, Ms. AL, Special Assistant to the USG/DGACM, emailed the Applicant informing him that, because the previously appointed investigators were XQDEOH WR FRQGXFW WKH LQYHVWLJDWLRQ IRU UHDVRQV XQUHODWHG WR WKH case, the USG/DGACM had appointed Ms. MS and Mr. EC to a second FFP to continue the investigation.

22. On 16 March 2015, Ms. AL emailed the Applicant informing him that Mr. EC had recused himself in view of a conflict of interest and that an alternate investigator was being sought. On 27 March 2015, the Applicant was informed that Mr. FS was appointed as investigator.

23. On 16 April 2015, Ms. MS and Mr. FS emailed the Applicant a memorandum informing him of their appointment taking over the investigation and inviting him to an interview. The next day, the Applicant responded to the email requesting the terms of reference of the second FFP as signed by the Head of the Department.

24. On 28 $ULO WKH 0DQJHPHQW (YDOXDWLRQ 8QLW 0(8´LQIRUPHG the $SOLFDQWWKDWKLVUHTXHVWZDVRRWDQRQWUHFHLYDEOHEHFDXVHWKHUHFRQ))3 had been established and was yet to conclude its investigation.

Outcome of the second FFP investigation

25. On 26 June 2015, the second FFP submitted their investigation report to Mr. Gettu.

26. In accordance with sec. 5.18 of ST/SGB/2008/5, by letter dated 8 September 2015, Mr. Gettu informed the Applicant that he had reviewed the UHFRQ))3¶VHSRUW, and provided the Applicant with a summary of the findings and conclusions set forth in this report0UHWWXV¶HWWdu UHcluded as follows:

Conclusion

> The second panel concluded, after reviewing all the evidence, that the working relationship between yourself and Mr. Baumann was especially difficult following your elevation to the post of Chief, [Office of the USG and ASG], with a different reporting line to the USG/[DGACM].
>
> On your specific complaint, the Panel observed that your complaint cannot be viewed in isolation. Mr. Baumann produced evidence of his own complaints to the USG against your own conduct.
>
> The second panel concluded that none of the incidents cited by themselves can be viewed as abusive and/or offensive and, viewed as a whole they still fall short of amounting to harassment. Thus there was no prohibited conduct under ST/SGB/2008/5.
>
> Following a review of the investigation report and supporting documentation, I have concluded that the record indicated that Mr. Baumann¶FRQXFW LQWKH FRQWH[W RI RXU FRPSODLQW GRHV QW violate the provisions of ST/SGB/2008/5, and as this falls under section 5.18(a) of ST/SGB/2008/5, I therefore consider the case closed.

Procedural history

27. On 8 June 2015, the Applicant filed an application before the Tribunal and the Respondent filed his reply on 8 July 2015.

28. On 14 July 2015, by Order No. 141 (NY/2015), the Applicant was ordered to file FRPPHQWV WR WKH 5HVSRQGHQW¶V XEPLVVLRQ UHJDUGLQ WKH receivability of the application, which he did on 21 August 2015.

Consolidation of proceedings and joint statements

29. On 12 July 2016, the Tribunal issued identical orders, Orders No. 168 (NY/2016) and 169 (NY/2016), LQWKH $SSOLFDQ¶V FDVH before the Tribunal regarding his complaint against Mr. Baumann (the present case and Case No. UNDT/NY/2015/062), directing the parties to respond, *inter alia*, to whether they agree to attempt informal resolution and whether the two cases should be consolidated through an order for combined proceedings. The Tribunal also requested the Respondent to provide the Tribunal a copy of the report of the second fact-finding panel submitted on 26 June

2015 and provide a full explanation, including all relevant particulars, as to why it took more than three years from the date of the XEPLVRQIWKH$SOLFDQWVRPSODLQW

34. The Respondent proposed three witnesses, namely Ms. MN, the lead investigator of the first FFP; Mr. FS, the lead member of the second FFP; and Ms. AL, the Special Assistant to Mr. Baumann and Mr. Gettu. In addition to the three witnesses proposed by the Respondent, the Applicant listed Mr. GK, investigator of the first FFP, and Ms. MS, investigator of the second FFP, explaining that, if one member of a panel were to be called, then so should be the other panel member. He also listed Mr. Gettu and Mr. DK of shoulof 9(n)-9(e)4( )ET5- s8EU.05 b,

The $SSOLFDQW¶V FRQ DSSOLFDWLRQ FRQWHQWLQWKH GHFLVLRQ is complaint without taking further action is addressed in *Auda* UNDT/2017/007.

Receivability

60. The Respondent argues that the application is not receivable as the formal procedures under ST/SGB/2008/5 were ongoing at the time of the application and a final decision had not been taken. The Respondent submits that the application is moot because the $SSOLFDQW¶V FRPSODLQW DERXW WKH ODFN RI SURJUHVV\WEH Hwas addressed by the establishment of the second FFP. The Applicant contends that the Tribunal has jurisdiction to review an act or omission which modifies the rights of a staff member as recalled in *Gehr* UNDT/2012/095 and that the omission of the Administration to act promptly on a complaint, as required by ST/SGB/2008/5, is an administrative decision which may be reviewed. The Applicant relies on the Dispute 7ULEXQDO¶V MXGJPHQW *Birya* UNDT/2014/113, in which it held that:

> The omission of the Administration to act promptly on a complaint as required by ST/SGB/2008/5 is an administrative decision which may be reviewed by the Tribunal before the outcome of the process has been determined by the administration.

61. The Tribunal notes that the jurisprudence of the Dispute and Appeals Tribunals has established that administrative decisions subject to review by the Tribunals are not always presented as affirmative, articulated or written decisions. They may occur in the form of a failure to act, which may be characterized as an implied administrative decision (see, for instance, *Tabari* 2010-UNAT-030, *Nwuke* 2010-UNAT-099, *Zeid* UNDT/2010/022, *Rahimi* UNDT/2011/089, *Applicant* UNDT/2010/148, *Abubakr* UNDT/2011/219). In *Gehr*, in reliance on *Nwuke*, the Dispute Tribunal held that it has jurisdiction to examine the $GPLQLVWUDWLRQ¶V FWLRQ RQ RPLVVLRQ ZLOORZLQJ UHTXHVW for investigation submitted pursuant to ST/SGB/2008/5. Similarly, the Dispute Tribunal found in *Abubakr* WKDW $GPLQLVWUDWLRQ¶V IDLOXUH WR SHUIRUP LWV GXWLHV an aSSOLFDQW¶V FRPSODLQW RI Nwuke

62. Section 5.17 of ST/SGB/2008/5 requires the report of a fact-finding panel to be submitted to the responsible official normally no later than three months from the date of the submission of the complaint. The Applicant has a contractual right to have his complaint addressed timeously and properly. If the Tribunal were to accept the proposition that a staff member is unable to challenge the delay in resolving claims under ST/SGB/2008/5 until an outcome of the complaint is finalized, this could result in further delays and an unacceptable barr

66. At the hearing, Ms. MN testified and confirmed her written statement, which provides as follows:

> « In December 2012, Mr. [GK] and myself were in a position to FRPPHQFH WZLWLQWKH LQVWLJDWLRQUHSRUW «KRZHYHU D VHULHVRI unforeseen personal circumstances arose.
>
> « In the circumstance, my ability to complete my professional

> the case previously. Being castaway, regardless of my qualifications, has undermined my chances to hold similar or higher senior positions.

73. The Respondent argues that the Applicant has suffered no harm as a result of the delay in the determination of his complaint.

74. In *Antaki* 2010-UNAT-WKH$SSHDO7ULEXQDOWDWHGWKDW3RPSHQWLRQD\ only be awarded if it has been established that the staff member actually suffered

within a reasonable time. A reasonable time is counted in terms of day or weeks, not in terms of years. In the present case, nothing justified the lack of responses owed the Applicant regarding his reasonable requests for status and updates. It took years for him to obtain responses to very simple queries regarding the status of his investigation when courtesy alone should have dictated an immediate response or update.

79. The Tribunal is satisfied that the GHOD\LQ WKH KDQGOLQJ RI WKH $SOLFDQW¶V complaint against the former ASG/DGACM and the repeated lack of responses to the $SOLFDQW¶V UHDVRQDEOH UHTXHVWV IRU LQIRUPDWLRQ DQG the status of the investigation into his complaint are not mere irregularities of process, but are sufficiently egregious to amount to abuses of process and are clear breaches of the $SOLFDQW¶V ULJKW WR KLJK VWDQGDUGV RI FRPSHWHQFH

80. The psychological suffering or damage to the Applicant was evident. It cannot be overstated that for staff to sl Tf1-9(o)-(staT1 0 0 1 0)6(l su)-12(ff)6(e)4(ri)9 13(o)ETBT1 0 0 1 265.61 456[

82. At the hearing, the Tribunal asked questions of the Applicant as to the harm he

Orders

87. In view of the foregoing, the TRIBUNAL DECIDES:

a. The application succeeds;

b. The Applicant is awarded the sum of USD15,000 for non-pecuniary damages;

c. The sums above shall bear interest at the U.S. Prime Rate effective from the date this Judgment becomes executable until payment of said award. An additional five per cent shall be applied to the U.S. Prime Rate 60 days from the date this Judgment becomes executable.

(*Signed*)

Judge Alexander W. Hunter, Jr.

Dated this 1st day of February 2017