



1. On 9 July 2012 and 11 September 2012, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi rendered Judgment No. UNDT/2012/104 (Judgment on Receivability), and Judgment No. UNDT/2012/135 (Judgment on merits), respectively, in the case of *Manco v. Secretary-General of the United Nations*. The Secretary-General appeals both Judgments.

### **Facts and Procedure**

2. On 9 February 2009, Mr. Alan Manco, who had acquired a permanent resident status in New Zealand, received an offer of appointment for a P-3 Legal Investigator position with the Office of Internal Oversight Services (OIOS) in Nairobi, which he took up on 20 May 2009. The offer specified that “should [he] transfer to or be appointed to United Nations Headquarters, New York on a long-term appointment in the future”, he would need to either become a citizen of New Zealand or give up his permanent resident status there.

3. On 12 March 2010, Mr. Manco was offered a separate Investigator position in Nairobi. By e-mail dated 22 March 2010 from the Human Resources Management Services of the United Nations Office at Nairobi (HRMS/UNON), Mr. Manco was advised that before they could proceed with processing his two-year appointment, he would have to provide proof that he had applied for citizenship or that he had renounced his permanent resident status in New Zealand.

4. During a phone call on 26 March 2010, HRMS/UNON advised that a mistake had been made in the original offer of appointment which did not contain the same policy as the e-mail of 22 March 2010.

5. On 29 March 2010, Mr. Manco applied for New Zealand citizenship at a fee of NZD 460. In a letter to HRMS/UNON dated 21 October 2010, sent on 3 November 2010, Mr. Manco requested reimbursement of the fee as well as the discontinuance of this policy, with respect to himself and in general. He stated that a lack of response within fourteen days would be treated as an “adverse administrative decision”.



Administration's e-mail to Mr. Manco from 22 March 2010 constitutes the administrative decision which Mr. Manco was obliged to challenge. This e-mail outlined a definite condition which represented the policy of the Administration, and clearly demonstrated the legal effect, as Mr. Manco applied for citizenship pursuant to this e-mail. Thus, the 60-day deadline for management evaluation commenced on 22 March 2010 and ended on 22 May 2010.

12. The UNDT erred in holding that Mr. Manco's letter dated 3 November 2010 extended the time limit in which he was entitled to request management evaluation. Similarly, the

19. This Tribunal reaffirms that unless the decision is notified in writing to the staff member, the limit of sixty calendar days for requesting management evaluation of that decision does not start.<sup>1</sup>

20. Without receiving a notification of a decision in writing, it is not possible to determine when the period of sixty calendar days for appealing the decision under Staff Rule 11.2(c) starts. Therefore, a written decision is necessary if the time limits are to be correctly, and strictly, calculated.<sup>2</sup> Where the Administration chooses not to provide a written decision, it cannot lightly argue receivability, *ratione temporis*.

21. The UNDT Judgment on receivability is affirmed.

22. Mr. Manco challenges the disputed policy requiring him to renounce his permanent resident status in a country not of his nationality as a condition for becoming a staff member of the Organization at the professional level.

23. This Tribunal has noted previously that the Fifth Committee, in paragraph 73 of its 1953 report (A/2615), required that its decisions taken at the session were to “be recorded in its report to the General Assembly for the guidance of the Secretary-General in giving effect to the policies thus approved *through appropriate amendments to the Staff Rules*”<sup>22.3c[(s)-5(ly p</sup>

efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

26. There is nothing in the United Nations Charter to suggest that geographical distribution is based on resident status. All along, recruitment into the Organization has been based on nationality and not on residence.<sup>4</sup>

27. While Mr. Manco only raised the claim for moral damages during the UNDT hearing, this case is a reiteration of the *Valimaki-Erk* judgment in which the Appeals Tribunal awarded moral damages. There is no reason to depart from this precedent and the award of

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding  
21 June 2013

*(Signed)*

Judge Adinyira  
21 June 2013

*(Signed)*

Judge Lussick  
28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar