

2013-UNAT-342, Manco

UNAT Held or UNDT Pronouncements

UNAT considered two appeals by the Secretary-General of judgment Nos. UNDT/2012/104 and UNDT/2012/135. Noting that, where the Administration chooses not to provide a written decision, it cannot lightly argue receivability *ratione temporis*, UNAT affirmed the UNDT judgment on receivability. On the merits, UNAT held that the contested policy, requiring Mr Manco to renounce his permanent resident status in a country not of his nationality as a condition for becoming a staff member of the Organisation at the professional level, was not reflected in any administrative issuance and concluded that it had no legal basis, as the Secretary-General had not complied with the requirements set by the Fifth Committee for its implementation. UNAT held that there was nothing in the UN Charter to suggest that geographical distribution is based on resident status, noting that recruitment into the Organisation has been based on nationality, and not residence. UNAT held that the case was a reiteration of Valimaki-Erk (2012-UNAT-304), in which UNAT awarded moral damages, and that there was no reason to depart from that precedent. UNAT dismissed the appeals and affirmed both UNDT judgments.

Decision Contested or Judgment/Order Appealed

The Applicant contested the requirement that he apply for citizenship or renounce his permanent residency status as a condition for becoming a staff member. In judgment No. UNDT/2012/104 on receivability, UNDT found the application receivable *ratione temporis* and *ratione materiae*. In judgment No. UNDT/2012/135 on the merits, UNDT found for the Applicant, awarding three months' net base salary.

Legal Principle(s)

A written decision is necessary if the time limits are to be correctly and strictly calculated; where the Administration chooses not to provide a written decision, it cannot lightly argue receivability *ratione temporis*. Decisions taken at the Fifth Committee session are 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.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Manco

Entity

OIOS

Case Number(s)

2012-379

2012-409

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- A/2615 (Fifth Committee Report)

UN Charter

- Article 101.3

Related Judgments and Orders

UNDT/2012/104

UNDT/2012/135

2011-UNAT-180

2010-UNAT-013

2012-UNAT-276