UNITED NATIONS DISPUTE TRIBUNAL

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

MANCO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Seth Levine, OSLA

Counsel for Respondent:
Miouly Pongnon, Office of the Director-General, UNON

made in the original Offer of Appointment which did not contain the same policy as the email of 22 March 2010.

6. On 29 March 2010, the Applicant applied for New Zealand citizenship at a cost of NZD 460.

7. On 21 October 2010, the Office of Staff Legal Assistance (OSLA) wrote a letter on behalf of the Applicant to the Chief of HRMS/UNON, requesting reimbursement of NZD 460 and the discontinuance of this policy, both with regard to the Applicant and in general. The letter stated that the lack of a response within fourteen days would be treated as an "adverse administrative decision". The letter was sent to HRMS/UNON on 3 November 2010.

8. On 17 January 2011, the Applicant requested a management evaluation of the decision taken by HRMS/UNON on 17 November 2010 in regard to the expenses incurred for his citizenship application a

12. The Respondent submitted in his reply that the Applicant's application was not receivable *ratione temporis.* On 9 July 2012, the Tribunal issued Judgment UNDT/2012/104, a Judgment on Receivability, in which it declared that "the failure of the administration to notify the Applicant in writing leaves this matter receivable *ratione temporis*." The case was also deemed receivable *ratione materiae,* although the issue of noncompliance would be decided on the merits of the case.

13. A hearing was held in this case on 23 August 2012. The Applicant gave evidence, along with Ms. Deborah Ernst (Chief, Staff Administration Section, HRMS/UNON) for the Respondent.

14. In the course of proceedings, Counsel for the Respondent asked the Applicant the two following questions:

a. "Do you recall stating in your application filed on 9 May 2011 that the

18. The Applicant also produced an interoffice memorandum of 4 August 2005 from the Office of Legal Affairs (OLA) to the Office of Human Resources

26. Counsel for the Respondent argued during proceedings that damages are not warranted in this case, as the fact that the Applicant's application for New Zealand citizenship was eventually rejected was not causally related to the Organization's position in regard to permanent resident status. Further, the Applicant's claim for damages was not part of his original application to the Tribunal.

Considerations

27. The issues for examination in this Judgment are:

a. Reasons for the refusal of two of Counsel for the Respondent's questions during the hearing;

b. The legality of the disputed policy; and

c. Whether the policy was "noncompliant" with the Applicant's terms of appointment.

On the refusal of two of Counsel for the Respondent's questions during proceedings

28. During the hearing of 23 August 2012, the Tribunal rejected two of Counsel for the Respondent's questions to the Applicant. These reasons for the refusal of these questions are being set out.

29. Both questions relate directly to the issue of receivability. As rightly pointed out by Counsel for the Applicant at the time, this issue was comprehensively dealt with in the Judgment on Receivability in this matter.[9]

The legality of the disputed policy

30. The Staff Regulations state the following as part of their scope and purpose:

> For the purposes of these Regulations, the expressions "United Nations Secretariat", "staff members" or "staff" shall refer to all the staff members of the Secretariat, within the meaning of Article 97 of the Charter of the United Nations, whose **employment and contractual relationship are defined by a letter of appointment subject to regulations promulgated by the General**

[8] UNAdT Judgment No. 819, *Moawad*, (1997).
[9] *Manco* UNDT/2012/104.

Assembly pursuant to Article 101,

> Human Resources Management in writing prior to making their application for permanent resident status or naturalization, as the case may be.
>
> 5.2 In accordance with United States law, a permanent resident of the United States who is a United Nations staff member may not continue to hold permanent resident status unless within a period of 10 days she or he signs a waiver of the rights, privileges, exemptions and immunities which would accrue to him or her as a staff member of the United Nations…
>
> 5.6 Subject to this section, staff members who have permanent resident status in the United States are required to renounce such status and to change to G-4 visa status upon appointment and staff members who seek to change to permanent resident status will not be granted permission to sign the waiver of rights, privileges, exemptions and immunities required by the United States Government for the acquisition or retention of permanent resident status.

40. The Respondent's witness, Deborah Ernst, was nonetheless adamant that the disputed policy was one of global import, linked to the politics of the concept of geographical distribution. However, the witness conceded that geographical distribution itself is based on nationality. The Tribunal wishes to emphasise that holding permanent resident status in a country may be a pathway to citizenship, but at the time of recruitment by the Organization it has no impact at all upon a staff member's nationality. This policy cannot be justified under the head of ensuring geographical distribution of staff members. The question may be asked what interest the Organization has in implementing this policy at all, in view of the principle that when a staff member holds two nationalities, the choice of nationality upon his or her recruitment is left to the Secretary-General.[12] Given this, surely the Secretary-General does not also need to have an input on a staff member's permanent resident status.

41. Counsel for the Respondent's closing submissions make reference to the confirmation of the 25th

Noncompliance of the policy with the Applicant's terms of appointment

47. With regard to whether this application is receivable *ratione materiae* the Tribunal repeats its statement in its Judgment on Receivability in this matter, that:

> [A]lthough there may not be a specific reference to the fact that the policy is noncompliant with the Applicant's terms of appointment, there is a clear inference to this noncompliance by the Applicant's very challenge to the policy. The Applicant has also made it reasonably clear that he is challenging this particular policy. policy. The Applicant has alpol9oncomm519 Tw[:72 -1.2 w21 ther6.8(find)-1.7.1

53. The Tribunal also RECOMMENDS to the Secretary-General, given the increasing frequency of cases di