



# **INTERNATIONAL SEABED AUTHORITY**

## **JOINT APPEALS BOARD**

**ISBA/JAB/APPEAL/BOURREL-MCKINNON/GRIEVANCE 1/2025**

**Marie Bourrel-McKinnon**

**(the “Appellant”)**

**v.**

**Secretary-General of the International Seabed Authority**

**(the “Respondent”)**

**Judgment of the Board relating to Grievance 1 submitted by the Appellant**

***Temporary Designation of Officers-in-Charge of OLA and OAS***

### **Introduction**

1. The Appellant held a Fixed-Term Appointment (FTA) at the D-1 level as Chief of Staff and Head of the Strategic Planning Unit, which was due to expire in December 2028.
2. On 5 March 2025, the Appellant filed the present appeal, listed as Grievance 1 before the Joint Appeals Board (JAB) of the International Seabed Authority (ISA), pursuant to Staff Rule 11.2(a)(i) of the ISA Staff Rules and Rules 10 and 16 of the JAB Rules of Procedure (RoP), which correspond to Rules 11 and 17 of the Revised RoP. The appeal challenges the decision conveyed by an Interoffice Memorandum dated 3 January 2025, which designated the Director of the Office of Administrative Services (Director of OAS) as the Officer-in-Charge (OiC) of the Office of Legal Affairs (OLA) and the Budget and Oversight Officer as OiC of the Office of Administrative Services (OAS).



3. The Appellant contends that the decision was unlawful, constituted an abuse of authority, and formed part of a broader pattern of retaliatory conduct. She requests the annulment of the decision and compensation for moral damages suffered. She also seeks the recusal of the members of the JAB and referral of this matter directly to the United Nations Appeals Tribunal (UNAT) for adjudication.<sup>1</sup>

### **Procedural Background**

4. On 24 November 2024, the Appellant filed two formal complaints of abuse of authority, harassment, retaliation, and gender discrimination against the Director of OAS, and the Budget and Oversight Officer.

5. By Interoffice Memorandum dated 2 December 2024, the Director of OAS, in his capacity as the first reporting officer of the Budget and Oversight Officer, submitted a response to the complaint filed against the Budget and Oversight Officer.

6. On 6 December 2024, the former Secretary-General (SG) informed the Appellant that, in accordance with Section 5.14 of ST/SGB/2008/5<sup>2</sup>, an investigative Panel had been appointed to examine the allegations contained in her complaints.

7. On 9 December 2024, the Appellant submitted a request to the former SG and the OiC Legal Counsel and Human Resources, seeking protective measures during the pendency of the investigation.

8. On 11 December 2024, the former SG informed the Appellant that two complaints had been lodged against her. The first, dated 9 December 2024, was submitted by the Budget and Oversight Officer, alleging bullying, harassment, and intimidation. The second, dated 10 December 2024, was filed by the Finance Officer, alleging additional instances of prohibited conduct.

9. On 15 December 2024, the Appellant reported to the former SG and the OiC Legal Counsel and Human Resources that the Director of OAS and the Budget and Oversight Officer had breached the confidentiality of the complaints process by involving the Staff Association.

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<sup>1</sup> See paras. 49 to 54 of the Statement of Appeal for Grievance #1.

<sup>2</sup> Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority.



10. On 16 December 2024, the former SG confirmed to the Appellant that her additional documentation had been transmitted to the Investigation Panel and that the United Nations Ethics Office (UNEO) had also been contacted in relation to the matter.
11. On 23 December 2024, the Appellant independently contacted the UNEO to request protection against retaliation.
12. On 3 January 2025, the Respondent issued an Interoffice Memorandum announcing the impugned decision. These temporary assignments were framed as internal administrative arrangements.
13. On 6 January 2025, the Appellant submitted a request for administrative review of the decision dated 3 January 2025.
14. On 7 January 2025, the Appellant was notified that her post had been abolished and that her FTA, valid until December 2028, was terminated effective the same day.
15. Between 6 and 29 January 2025, the Appellant submitted six applications for suspension of action to the JAB seeking the immediate suspension of various administrative decisions taken by the Respondent.
16. On 27 January 2025, the Appellant filed an appeal with the UNAT in relation to the termination of her appointment by the ISA.
17. On 5 February 2025, the Respondent rejected the Appellant's request for review, asserting that the Interoffice Memorandum of 3 January 2025 did not constitute an appealable administrative decision under Staff Rule 11.2.
18. On 25 February 2025, the JAB dismissed the Appellant's requests for suspension of action (Judgment No. ISBA/JAB/Bourrel/2025).
19. On 26 February 2025, the UNAT denied all the Motions submitted by the Appellant (Order No. 592 (2025)).

### **Procedural History**

20. On 5 March 2025, the Appellant, through her Counsel, submitted an appeal registered as Grievance 1 with the Secretariat of the JAB, pursuant to Staff Rule 11.2(a)(i) of the ISA Staff Rules and Rules 10 and 16 of the JAB RoP (Rules 11 and 17 of the Revised RoP).



21. Due to technical issues, several annexes to the Statement of Appeal were initially not received by the JAB Secretariat. The Secretariat informed the Counsel accordingly and advised resubmission in accordance with the Revised RoP, effective 4 March 2025, with a submission deadline set for 7 April 2025.
22. Between 5 and 20 March 2025, Counsel submitted multiple grievances on behalf of the Appellant, including Grievance 1 through Grievance 7. The JAB Secretariat requested confirmation of completeness of each grievance and supporting documentation, which was duly provided for Grievance 1 on 12 March 2025.
23. On 14 March 2025, the Chair of the JAB invited the parties to engage in conciliation in accordance with Rule 9 of the JAB RoP. Both parties declined the offer of conciliation.
24. The JAB Secretariat subsequently notified the Respondent of Grievance 1 and invited submission of a reply, with a deadline of 16 April 2025.
25. On 28 March 2025, the JAB Secretariat notified the Appellant that her appeal would be heard by the full Board, as it is substantively similar to other pending appeals in context and compensation sought to other pending appeals. To ensure consistency and avoid conflicting outcomes, the Chair, pursuant to Rule 28 of the Revised RoP and established tribunal practices, decided to hear them together.
26. On 3 April 2025, the Appellant submitted a request under Rule 26 of the Revised RoP seeking the disqualification of four JAB members, including the Chair, citing actual or apparent conflicts of interest and concerns regarding the composition and reconstitution of the full Board.
27. On 16 April 2025, the Respondent submitted a consolidated reply addressing Grievances 1 and 3 to 7, and a separate reply for Grievance 2.
28. On 17 April 2025, the JAB Secretariat transmitted the Respondent's replies to the Appellant and set 19 May 2025 as the deadline for the Appellant's comments.
29. The Appellant submitted her comments on 19 May 2025. The Chair invited the Respondent to submit additional comments in response by 17 June 2025, which were received on due date.
30. The JAB has since been seized of the matter and is now ready to consider the appeal.



## Summary of the appeal

31. The Appellant challenges the administrative decision dated 3 January 2025, by which two staff members were appointed as OiCs of OLA and OAS. She contends that the decision was not grounded in any legitimate restructuring effort, and no supporting documentation or consultation with the appropriate bodies was undertaken to justify these appointments.

32. She maintains that the designations were procedurally flawed, ultra vires, and in conflict with the established authority of the Assembly. The decision, she argues, was made without transparency and contrary to the spirit and letter of the relevant ISA Staff Regulations and Rules.

33. Relying on established UNAT jurisprudence, including *Lee* 2014-UNAT-481, the Appellant asserts that the decision qualifies as an administrative decision within the meaning of Staff Rule 11.2, as it had a direct impact on her terms and conditions of employment. She emphasizes that the focus lies not in whether the decision was individualized, but rather in whether it materially altered her employment relationship.

34. She submits that by appointing individuals against whom she had previously filed complaints of harassment and misconduct, the Respondent fundamentally altered her working conditions and created an environment of intimidation, thereby interfering with her legal protections and the integrity of the pending investigation.

35. The Appellant further argues that the designations presented an inherent conflict of interest that undermined the impartiality of the investigation process, in violation of applicable staff conduct rules. The failure to consult the Appointment and Promotion Board in making such assignments, particularly when other duly appointed senior staff were already in place, constitutes a procedural irregularity.

36. The Appellant notes that the continued service of the designated OiCs posed a substantial risk to the fairness and credibility of the investigation, and facilitated acts of retaliation against her, including termination, reputational damage, and interference with her departure arrangements. She seeks annulment of the contested decision and appropriate relief.

### ***Relief Requested***

37. The Appellant seeks the following relief:



- (a) The annulment, with immediate and retroactive effect, of the administrative decision dated 3 January 2025 appointing the OiCs of OLA and OAS;
- (b) Compensation for moral damages, including emotional distress, reputational harm, professional injury, and disruption of working conditions, which she attributes to the contested decision and the alleged retaliation that followed;
- (c) Recognition by the Board of the procedural irregularities and retaliatory nature of the contested decision, as well as acknowledgement of the institutional failure to protect her rights as a complainant under the applicable legal framework.

### ***Request for Oral Hearing***

38. The Appellant requests an oral hearing and the examination of key witnesses, including:
  - (a) The two staff members against whom her present appeal has been lodged;
  - (b) The former Secretary-General; and
  - (c) The former Chair of the JAB.

### ***Request for Recusal of the Current JAB***

39. The Appellant further challenges the legitimacy of the current JAB to adjudicate the matter. She submits that the internal justice system of the ISA was unlawfully dismantled by the Administration in January 2025, with no successor body in place at the time of her filing. She refers to UNAT Order No. 592 (2025), wherein the President of the Tribunal acknowledged with concern the Administration's unilateral dismantling of the JAB without notice or justification.

40. Invoking the principle of the natural judge, the Appellant argues that a tribunal must exist at the time the cause of action arises. The JAB constituted after the dismantling cannot qualify as such for purposes of adjudicating her claim, which arose prior to its establishment. She submits that the absence of a pre-existing and impartial tribunal undermines due process and renders the current JAB procedurally defective.

41. Accordingly, the Appellant requests that the JAB recuse itself from hearing the present dispute on grounds of lack of jurisdiction and procedural irregularity and that the matter be referred directly to the UNAT pursuant to Article 2.1(b) of the UNAT Statute.



## Summary of the reply of the Respondent

42. With respect to the Appellant's first grievance, the Respondent, in her replies dated 16 April 2025, submits that the temporary designation of two staff members as OiCs of the OLA and the OAS, does not constitute a reviewable administrative decision within the meaning of ISA Staff Rule 11.2.

43. The Respondent argues that the impugned designations were interim internal measures taken during a transitional period following the assumption of office by the new Secretary-General. The designations were implemented to ensure continuity of operations within the Secretariat and did not involve any change to the Appellant's contractual status or terms of employment.

44. It is further submitted that the decision was not directed specifically at the Appellant and did not result in any direct legal consequences for her. The Respondent contends that, in accordance with established jurisprudence, only administrative decisions that produce a direct and adverse impact on the terms and conditions of employment of an individual staff member are subject to review. The assignment of OiCs falls outside this scope.

45. The Respondent also contests the Appellant's claim that the temporary designations obstructed the conduct of an investigation into allegations of misconduct. It is maintained that the ISA regulatory framework does not assign any investigatory role to the Directors or Officers-in-Charge of OLA or OAS, and thus, the Appellant's assertions are unfounded and speculative.

46. Finally, the Respondent submits that the Appellant lacks legal standing to contest the interim assignments, as they bear no connection to her former status as a staff member and have no bearing on her rights. As such, the Respondent argues that the grievance is not receivable *ratione materiae* or *ratione personae*.

## Appellant's comments on the Respondent's reply

47. In her 19 May 2025 comments on the Respondent's reply, the Appellant maintained her argument that the temporary designation of the two staff members to senior positions constituted a reviewable administrative decision, as it had direct and adverse legal effects on her conditions of employment. She contends that the appointments aggravated a hostile work environment, had a retaliatory effect due to their timing in relation to her complaints of harassment, and signalled a loss of institutional confidence in accountability mechanisms. The



Appellant further submits that the appointments effectively modified the terms under which she was required to work, thereby meeting the threshold of a reviewable administrative decision under applicable jurisprudence.

### **Respondent's further comments on the Appellant's comments**

48. On 17 June 2025, the Respondent submitted further comments, limiting her response to address the Appellant's misinterpretation of Rule 14 of the Revised RoP. The Respondent reiterated that Rule 14 empowers the JAB to consider receivability as a preliminary issue and to remand the matter for merits submissions if the appeal is found receivable. The Respondent maintained that the contested decisions do not fall within the scope of reviewable decisions under Staff Rule 11.2 and further challenged the Appellant's standing to contest certain alleged decisions.

### **Considerations of the JAB**

#### ***Request for Oral Hearing***

49. The Appellant requested an oral hearing to examine the former Secretary-General, the two Officers-in-Charge and the former JAB Chair, alleging improper motives behind the contested decisions, including retaliation, conflict of interest and interference with an ongoing investigation. She argued that their testimony was necessary to substantiate her claims.

50. Pursuant to Rule 29 of the JAB RoP, the JAB declines the Appellant's request for an oral hearing because it deems the written submissions of the parties to adequately cover the issues involved. The Board also notes that the Appellant failed to identify any specific and material factual dispute that could not be resolved on the basis of the written record. While the case file contains voluminous written submissions, the Appellant presented no written evidence that would justify the examination of witnesses.

51. More importantly to the present case, as will be seen below in this judgment, is the fact that the threshold of admissibility is not met. Where the contested measure does not amount to a reviewable administrative decision under Staff Rule 11.2, there is no basis for holding an oral hearing on the merits.

52. Accordingly, the Board finds that an oral hearing is not necessary for the fair and expeditious disposal of the case, and the request is denied.



***Preliminary matters: Competence and recusal of the JAB***

53. The Appellant challenges the jurisdiction of the Board itself in her appeal, asserting that the JAB lacks competence to adjudicate matters arising before its reconstitution in January 2025. She submits that the prior dissolution of the internal justice system left a procedural vacuum and invokes the principle of the “natural judge” to argue that her claim should be heard by the UNAT under Article 2.1(b) of its Statute, rather than by the newly reconstituted JAB.

54. The JAB notes that the issue of its competence was first raised by the Appellant in her Statement of Appeal dated 12 March 2025, whereas her request for recusal of the entire JAB panel was only submitted subsequently, on 3 April 2025. Given the foundational nature of the jurisdictional objection namely, that the JAB lacks competence to adjudicate matters arising before its reconstitution, it is appropriate to address this issue first. A tribunal must confirm its authority to hear a case before considering the composition of the adjudicating body.

55. The JAB recalls that, pursuant to ISBA/ST/SGB/2020/1/Amend.3, the ISA Staff Rules were amended on 23 January 2025 to clarify and enhance the judicial powers of the JAB, in accordance with UNAT Judgment No. 2023-UNAT-1369. These reforms granted the Board the authority to issue binding determinations, adjudicate disciplinary appeals directly, and function with full judicial independence. The reconstitution of the JAB, implemented on the same date, ensured continuity in the administration of justice and maintained the Appellant’s access to an independent adjudicatory mechanism.

56. Moreover, the Appellant’s argument that a tribunal must already be constituted at the time the cause of action arises in order to be competent is without merit. Accepting such a proposition would risk undermining the very possibility of institutional reform or reconstitution of adjudicatory bodies, potentially leaving staff members without recourse during transitional periods. Furthermore, as set out in the procedural history above, there is no doubt that the current composition of the Joint Appeals Board had been fully established by the time Grievance No. 1 was filed on 5 March 2025.

57. In this regard, the JAB finds relevant guidance in the jurisprudence of the United Nations internal justice system, particularly the Campos decisions. In *Campos* UNDT/2009/005, the United Nations Dispute Tribunal (UNDT) explicitly rejected the applicant’s request for the recusal of all judges of both the UNDT and UNAT. As noted in paragraph 7.3.1 of the UNDT



judgment, “the recusal of all the Judges of the UNDT and UNAT would result in a denial of justice to the Applicant as the only body vested with power to determine his case is the UNDT with an appeal to the UNAT. The Tribunal cannot countenance such a situation and cannot be a party to denying justice to a party.” This reasoning was later affirmed by the UNAT in Judgment No. 2010-UNAT-001, which emphasized at paragraph 65 that UNDT/UNAT lacked any statutory authority to dissolve a tribunal established by the United Nations General Assembly.

58. By analogy, the Appellant in the present case cannot unilaterally negate the mandate of the JAB, which was reconstituted pursuant to ISBA/ST/SGB/2020/1/Amend.3, nor demand wholesale recusal in a manner that would effectively deprive her of access to any competent forum. The JAB, as the body currently empowered by the ISA legal framework to adjudicate internal appeals, cannot entertain arguments that would lead to a procedural vacuum and the denial of justice.

59. Furthermore, the Appellant’s argument has already been addressed by the UNAT in Order No. 592 (2025), in which the Tribunal reaffirmed the JAB’s competence to consider appeals filed after the reconstitution of the Board and dismissed the Appellant’s request for interim relief as moot. The UNAT’s finding confirms that the JAB, as currently composed, is a competent body under the ISA framework to adjudicate matters such as the present appeal.

60. The JAB also notes the settled jurisprudence of the UNAT emphasizing the need for judicial finality (*Shanks* 2010-UNAT-026 *bis*, para. 4; *Dalgaard et al.* 2016-UNAT-646, paras. 9-14; *Loeber* 2018-UNAT-844, paras. 26-28 ; *Ocokoru* 2024-UNAT-1483, para. 50; *Chernov* 2023-UNAT-1320, para. 70). The Appellant’s current jurisdictional challenge seeks to reopen matters that have already been settled by the UNAT and this JAB in the context of the earlier proceedings of SoA. While the Board acknowledges that these jurisdictional issues might remain under review by the UNAT on appeal, it finds that the Appellant’s current jurisdictional objections merely revisit those same arguments without presenting any new or compelling basis. As such, these objections do not alter the Board’s assessment of its competence in the present case.

61. For these reasons, the JAB confirms its jurisdiction and competence to hear the present appeal and finds no legal basis for referring the matter directly to the UNAT.



***Preliminary matters: Request for Disqualification of the JAB Chair and Members***

62. The Board notes that the Appellant submitted a request for the disqualification of four members of the Board, including the Chair, alleging actual or apparent conflicts of interest and raising concerns about the legitimacy of the Board's composition. Such requests engage important principles of impartiality and independence fundamental to the administration of justice.

63. It is well established that adjudicative bodies must be impartial and free from any bias or appearance of bias. The standard for disqualification requires a reasonable apprehension of bias, judged by an objective test whether a reasonable and informed observer would perceive a real likelihood of bias.

64. While the Board notes that the Appellant filed a separate claim in this regard (Grievance # 6), the Board has carefully examined the Appellant's allegations and the circumstances relating to the appointment and constitution of the current JAB. To the extent of this specific case, the Board finds no sufficient basis to conclude that any member's impartiality is compromised or that there exists a real risk of bias. The formation of the JAB complied with the applicable ISA Staff Rules and procedural requirements, and the Board operates independently from the Administration.

65. Accordingly, the Board rejects the Appellant's request for disqualification and confirms its jurisdiction to hear and decide this matter, consistent with its determination in the prior proceedings concerning the Suspension of Action, as set out in Judgment No. ISBA/JAB/*Bourrel*/2025.

***Preliminary matters: Full Board Composition Justification***

66. The Board recalls that, in the present case, the judgments were deliberated upon and adopted by the full composition of the Joint Appeals Board. This approach reflects both the significance of the issues under review and the Board's concern of ensuring collective responsibility in its determinations.

67. The Board observes that, while Staff Rule 11.2(e)(i) provides for a Panel to ordinarily hear an appeal, it must be read together with Staff Rule 11.1(e), which authorizes the Joint Appeals Board to establish its own rules of procedure. Pursuant to this authority, Rule 28 of



the Revised RoP expressly provides that when the Chair, or any two members sitting on a particular Panel, consider that the appeal so warrants, the case shall be heard by the whole Board. This framework is consistent with the Staff Rules, which do not preclude the hearing of cases by the full Board.

68. In the present circumstances, the pending appeals share significant similarities, both in their factual context and in the nature of the remedies sought. Referring these cases to the full Board avoids the risk of divergent conclusions by different Panels and promotes consistency, coherence, and procedural efficiency. Moreover, the practice of referring complex or precedent-setting cases to a full bench is well established in other international administrative tribunals, reinforcing the legitimacy of this approach. Accordingly, the referral of the Appellant's case to the full Board was justified and fully in line with the applicable Staff Rules and the Revised RoP.

### *Issues for Determination*

69. Having dealt with the preliminary matters above, the JAB is now called upon to determine the following issues:

- a) Whether the Interoffice Memorandum dated 3 January 2025, appointing the two staff members as OiCs of the OLA and the OAS, constitutes a valid administrative decision subject to appeal under Staff Rule 11.2.
- b) If the application is receivable:
  - i. Whether the appointment of the OiCs was lawful and in accordance with applicable Staff Rules, Regulations, and established procedures of the International Seabed Authority.
  - ii. Whether the Appellant has demonstrated that the decision was made in abuse of authority or motivated by retaliation, thereby warranting annulment.
  - iii. Whether the Appellant is entitled to any remedies, including reinstatement, compensation for moral or material damages, or other appropriate relief.



### ***Receivability and Nature of the Contested Decision***

70. The issue for consideration and determination in this appeal is whether the designation of the two OiCs, as communicated in the Interoffice Memorandum dated 3 January 2025, constitutes a reviewable administrative decision.

71. Pursuant to ISA Staff Regulation 11.2 and Staff Rule 11.2, an administrative decision subject to review must be a unilateral act of the administration, producing direct legal consequences affecting the terms and conditions of employment of the staff member (*Ngokeng* 2014-UNAT-460, paras. 26-27; *Wasserstrom* 2014-UNAT-457, para. 34; *Bauzá Mercére* 2014-UNAT-404, para. 18). Thus, the decision taken by the administration is distinguished from other administrative acts, such as those having regulatory power usually referred to as rules or regulations, as well as from those not having direct legal consequences. In order to have standing to challenge such a decision, the appellant must demonstrate a direct and personal legal interest in the outcome, i.e., that her terms of appointment or contractual rights were affected (*Iskandar* 2011-UNAT-116).

72. It is established in the jurisprudence that the Appellant bears the burden of establishing that the contested decision meets this standard (*Selim* 2015-UNAT-581). Moreover, the contested decision must not only be identifiable but must also have the capacity to produce direct legal consequences affecting a staff member's terms and conditions of employment (*Patkar* 2021-UNAT-1102, para. 22).

73. After a careful examination of the submissions, the evidence on record, and the applicable legal framework, the JAB finds that the Interoffice Memorandum dated 3 January 2025, designating Officers-in-Charge, does not constitute a reviewable administrative decision within the meaning of Staff Rule 11.2. The designation was an internal managerial measure and did not alter, diminish, or otherwise affect the Appellant's contractual status, entitlements, or conditions of service. Accordingly, it falls outside the scope of reviewable administrative decisions.

74. The Appellant also contends that the designation of the Officers-in-Charge interfered with an ongoing investigation arising from complaints she had submitted against those individuals. However, the JAB finds that this argument does not support receivability of the appeal. Alleged institutional implications or potential procedural concerns in an internal investigation, without a direct legal consequence on the Appellant's own contractual status or rights, do not transform



a managerial measure into a reviewable administrative decision under Staff Rule 11.2. Moreover, oversight of investigative processes falls outside the scope of the JAB's jurisdiction absent a demonstrated violation of the Appellant's terms of appointment.

75. In view of the foregoing, the Board concludes that the temporary OiCs designations announced on 3 January 2025 did not give rise to any legal consequences affecting the Appellant's individual rights or terms of employment. As such, the contested decision does not meet the threshold of a reviewable administrative decision and therefore, the appeal is not receivable.

### **Conclusion**

76. Accordingly, the appeal (Grievance 1) is dismissed in its entirety.

**Dated this 17th day of September 2025**

**Judge Martha Halfeld Furtado de Mendonça Schmidt**

Chair, Joint Appeals Board

**Judge Abena Kwakye-Berko**

Member, Joint Appeals Board

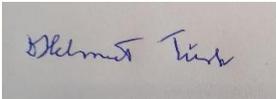
**Judge Jiefang Huang**

Member, Joint Appeals Board



**Judge Johnny Ibrahim**

Member, Joint Appeals Board



**Judge Helmut Tuerk**

Member, Joint Appeals Board



**Judge Georgina Guillén Grillo**

Member, Joint Appeals Board



**Judge Courtney Maxwell**

Member, Joint Appeals Board