



INTERNATIONAL SEABED AUTHORITY

JOINT APPEALS BOARD

ISBA/JAB/APPEAL/ BOURREL-MCKINNON/GRIEVANCE 2/2025

Marie Bourrel-McKinnon (the "Appellant")

v.

Secretary-General of the International Seabed Authority

(the "Respondent")

Judgment of the Board relating to Grievance 2 submitted by the Appellant

- i. *Reclassification and Restructuring of the Appellant's Post***
- ii. *Termination of the Appellant's Fixed-Term Appointment***

Introduction

1. The Appellant joined the International Seabed Authority (ISA/Authority) in 2017 as an individual consultant. On 1 January 2019, she was appointed to the position of Senior Policy Advisor and Special Assistant to the Secretary-General at the P-5 level on a fixed-term appointment (FTA). She served in this position until December 2023. In November 2023, the Appellant's post was reclassified to Chief of Staff and Head of Strategic Planning Unit at the D-1 level. She was appointed to the reclassified post effective 1 January 2024 on an FTA which was due to expire on 31 December 2028.

2. On 5 March 2025, the Appellant filed the present appeal, registered as Grievance 2 before the Joint Appeals Board (JAB/Board) of the Authority, pursuant to Staff Rule 11.2(a)(i) of the ISA Staff Rules and Rules 11 and 17 of the JAB Rules of Procedure. The appeal challenges the interoffice memorandum (IOM) dated 7 January 2025 by which the Appellant was informed



that her position had been reclassified and restructured on 6 January 2025 by the Respondent, leading to the termination of her FTA.

3. The Appellant submits that the contested decision is unlawful because it is tainted by discrimination and arbitrariness. She requests compensation for the damages suffered.

Procedural Background

4. On 1 January 2025, the new Secretary-General (the “Respondent”) of the ISA assumed office.

5. On 6 January 2025, the annex to ISBA/ST/AI/2023/3 (Staff selection system) was amended as ISBA/ST/AI/2023/3/Amend.2 (Procedures for classification and reclassification of posts).

6. On the same date, pursuant to ISBA/ST/AI/2023/3/Amend.2, the Respondent communicated two reclassification decisions to the Officer-in-Charge (OIC) of the Office of Administrative Services (OAS). The first decision reclassified the post of Legal Counsel at the D-2 level to that of Chef de Cabinet, also at the D-2 level. The second decision reclassified the Appellant’s post of Chief of Staff and Head of the Strategic Planning Unit at the D-1 level to the position of Legal Counsel at the D-1 level within the Office of Legal Affairs.

7. By IOM dated 7 January 2025, the OIC of the OAS informed the Appellant that, “in accordance with the Staff Rules of the International Seabed Authority, specifically ISBA/ST/AI/2023/3/Amend.2, and as part of the restructuring of the Office of the Secretary-General,” the Appellant’s post had been “reclassified and restructured into a different role within the Secretariat,” effective 6 January 2025. The IOM stated further that “[a]s your current position no longer exists and considering the Authority’s obligation to provide a one-month notice, we propose compensating you with one month’s pay in lieu of the notice period [...]”

8. On the same date, the Appellant submitted a request for administrative review of the contested decision to the Secretary-General.

9. From 8 January to 6 February 2025, the Authority advertised Job Opening No. 25-POL-250707-D-KINGSTON (R) for the position of Chef de Cabinet at the D-2 level.



10. On 12 February 2025, the Human Resources Office issued a payment advice to the Appellant indicating that an amount of USD14,821.85 was being paid to her as “salary in lieu of notice.”

Procedural History

11. On 12 March 2025, the Appellant, through Counsel, submitted an appeal registered as Grievance 2 before the JAB, pursuant to Staff Rule 11.2(a)(i) of the ISA Staff Rules and Rules 11 and 17 of the JAB Rules of Procedure.

12. On the same date, the JAB Secretariat requested confirmation from the Appellant’s Counsel regarding the completeness of the appeal, including all annexes and supporting documentation. This confirmation was received on the same date.

13. Following receipt of confirmation and pursuant to Rule 9 of the JAB Rules of Procedure, the Chair of the JAB invited the parties to engage in conciliation on 14 March 2025.

14. Both parties declined the offer of conciliation. Consequently, the JAB Secretariat formally notified the Respondent of the appeal and invited her to submit a reply. The deadline for submission was set for 16 April 2025.

15. On 28 March 2025, the Appellant was informed by the JAB Secretariat that her appeals would be heard by the “full Board”.

16. On 3 April 2025, the Appellant submitted a request under Rule 26 of the JAB Rules of Procedure 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.

17. On 16 April 2025, the Respondent submitted her reply to the appeal.

18. On 17 April 2025, the JAB Secretariat transmitted the Respondent’s reply to the Appellant and invited her to submit comments by 19 May 2025.

19. On 19 May 2025, the Appellant submitted her comments on the Respondent’s reply.

20. On the same date, the Chair of the JAB invited the Respondent to submit additional comments in response to the Appellant’s submission. The deadline was set for 17 June 2025. The JAB Secretariat received the Respondent’s additional comments on due date.



Preliminary remark: scope of review

21. The Board clarifies that the reclassification of the Appellant’s post concerns the managerial prerogative of the Secretary-General in shaping the organizational structure, whereas the termination of the Appellant’s FTA affects her individual employment rights. While both measures stem from a single chain of events and are factually linked (see IOM of 7 January 2025), they are conceptually distinct. The Board will therefore examine the reclassification first, as directly challenged, before turning to the implicit claim concerning the termination of the appointment.

22. In determining the scope of its review *ratione materiae*, the JAB must first identify the precise decisions that fall within the appeal. Although only (a) the reclassification and restructuring of the post encumbered by the Appellant is expressly challenged in the appeal (Grievance 2), the JAB will also examine (b) the termination of the Appellant’s FTA. Both decisions are interlinked, as the restructuring and reclassification of the post directly led to the termination of the Appellant’s appointment. Following this guidance, the JAB will address the two issues under separate points (i) and (ii), analyzing each claim individually in the present judgment.

(i) Reclassification and restructuring of the Appellant’s Post (Chief of Staff D-1 into Legal Counsel D-1)

Summary of the Appeal

23. The Appellant contests the Respondent’s decision dated 6 January 2025, which led to the termination of her FTA, originally due to expire on 31 December 2028. She argues that the contested decision was issued without lawful authority and that the Respondent exceeded her discretionary powers in contravention of principles of international administrative law.

24. She maintains that referring only to “reform and restructuring” to justify the contested decision “is legally insufficient to override due process guarantees” and constitutes abuse of authority.



25. The Appellant submits that the impugned decision violated her rights arising from her Letter of Appointment dated 1 January 2024, which governed the terms and conditions of her employment.

26. Furthermore, the Appellant contends that the decision is inconsistent with the approved budget documents of the Authority (ISBA/29/A/3/Add.1-ISBA/29/C/11/Add.1), which had included her position as part of the 2025–2026 biennial budget. She asserts that the Respondent unilaterally amended this budget by reclassifying her post without engaging an independent expert classifier and without any consultation with her.

27. The Appellant further maintains that the contested decision contravenes the recommendation of the Finance Committee of the Authority, as recorded in its report of July 2024 (ISBA/29/A/9, para. 19), which requested that the Respondent clarify the applicable policy to ensure that no reclassification decision would be implemented without the prior approval of the Assembly as stipulated in the annex to ISBA/ST/AI/2023/3.

28. The Appellant also notes that the terms of reference and job description for the advertised position of Chef de Cabinet (at the D-2 level) were substantially identical to her former functions and responsibilities. She asserts that the reclassification served as a pretext to replace her with another candidate, circumventing due process. She contends that, having challenged the legality of the abolition of her post, she was under no obligation to participate in a recruitment process that she deemed procedurally flawed.¹

Relief Requested

29. The Appellant seeks the following remedies:

- (a) Compensation for moral and material harm suffered, including loss of personal belongings resulting from her expedited departure;
- (b) An award of legal costs incurred in connection with these proceedings; and
- (c) A written apology from the Respondent concerning the manner in which she was treated.

¹ See para. 17 of the Appellant's 19 May 2025 comments on the Respondent's reply of 16 April 2025 (No 2).



Request for Oral Hearing

30. The Appellant requests that the Board hold an oral hearing and permit the examination of the following witnesses:

- (a) The former SG;
- (b) The Respondent; and
- (c) The Appellant.

Summary of the Reply of the Respondent

31. The Respondent submits that the Appellant is not, in fact, contesting the termination of her FTA, but rather the measures leading to that outcome, namely, the reclassification of her post within the context of a restructuring of the Secretariat. In the Respondent's view, the Appellant has failed to identify a contested administrative decision within the meaning of Staff Rule 11.2 of the ISA Staff Rules.

32. The Respondent further argues that ISBA/ST/AI/2023/3/Amend.2 was not an administrative decision of individual application. It had no budgetary impact, did not require a recommendation from the Finance Committee, and did not require approval by the Assembly. The Respondent explains that ISBA/ST/AI/2023/3/Amend.2 was intended to enhance the "efficiency, agility and responsiveness" of the Secretariat's organizational realignment. It applied to all ISA staff members and did not produce any direct legal consequences for the Appellant's terms and conditions of employment.

33. The Respondent maintains that the abolition of the Appellant's post and her resulting separation from service were lawful measures. The posting of the Chef de Cabinet position at the D-2 level was, according to the Respondent, a legitimate restructuring measure aligned with the organizational needs of the ISA.

34. The Respondent recalls that the Appellant was expressly invited to consider applying for the reclassified position once it was advertised and to participate in the competitive selection process. The Appellant did not apply for the position of Chef de Cabinet at the D-2 level, and she has not sought administrative review of the related selection process.

35. The Respondent also argues that, by declining to apply for the reclassified position, the Appellant failed to fulfil her duty to mitigate any potential loss. As such, the Respondent



maintains that the Appellant lacks standing to challenge any subsequent selection decision, rendering her submissions in this respect irreceivable *ratione materiae*.

Appellant's comments on the Respondent's Reply

36. In her comments dated 19 May 2025, the Appellant reiterates that the Secretary-General's discretion to undertake restructuring and reorganization is not unfettered but is subject to the principles of legality and reasonableness, which must be assessed in light of the specific circumstances of the case. She contends that the Respondent's interpretation of the legal framework governing the restructuring process is flawed.

37. The Appellant relies, inter alia, on *Fillippovva* UNDT/2016/008, in which the Tribunal held that the Administration bears the burden of demonstrating the existence of changes in operational realities or a legitimate restructuring exercise to justify the abolition of a post. The Appellant maintains that the Respondent has not discharged this burden in the present case.

Respondent's further comments

38. In her further comments dated 17 June 2025, the Respondent reiterates her request that the appeal be dismissed in its entirety, on the grounds that the Appellant has not adduced evidence that the contested decision was motivated by prejudice or other extraneous considerations.

39. The Respondent emphasizes that the reclassification and restructuring of the Appellant's position were undertaken in the best interests of the ISA and in furtherance of its operational needs.

40. The Respondent concludes that the Appellant has failed to demonstrate any breach of her contractual or statutory rights and that the termination of her FTA appointment was lawful.

ii) Termination of the Appellant's FTA

Summary of the Appeal

41. The Appellant challenges the administrative decision dated 6 January 2025 leading to the termination of her FTA. She contends that the decision was not made on objective grounds but tainted with bad faith. The termination of her FTA was executed without due process.



42. The Appellant argues that the Respondent acted without legal authority, relying on an amendment to an administrative instruction in a manner that exceeded her discretionary powers.
43. Furthermore, the contested decision violated her rights and interests in accordance with the Letter of Appointment signed with the Authority on 1st January 2024 establishing the terms and conditions of her FTA.
44. The Appellant submits that substitution of prior notice by compensation reflects procedural unfairness.
45. Finally, the Appellant also submits that the termination of her FTA will result in additional costs for the Organization, associated with a new selection process.

Relief Requested

46. The Appellant requested the following relief:
- (a) The annulment with immediate and retroactive effect of the IOM dated 6 January 2025.
 - (b) The removal of all references to her termination in her file.
 - (c) The payment of all due entitlements from 7 January 2025 until the end of her FTA set to expire on 31 December 2028.
 - (a) A written apology for how she was treated.
 - (b) The halt of the recruitment process for the position of Chef de Cabinet.

Request for Oral Hearing

47. The Appellant requests for an oral hearing with an examination of:
- (a) the former SG;
 - (b) The new SG and;
 - (c) The Appellant herself.

Summary of the Reply of the respondent

48. The Respondent submits that the Appellant is not contesting the Termination of her FTA “but the prefatory acts that lead up to that outcome”.



49. The Respondent argues that the abolition of the post encumbered by the Appellant resulting in the termination of her FTA was based on the necessity to reinforce the operational oversight of the Secretariat.

50. The Respondent recalls that the administration encouraged the Appellant to apply for another position, but she declined that offer.

51. The Respondent further submits that, Under ISA Staff Regulation 9.1, the Secretary-General had the authority to suppress posts and terminate appointments. The Appellant's FTA and the applicable rules allow termination without prior notice.

Appellant's comments on the Respondent's Reply

52. In her comments to the Respondent's reply dated 19 May 2025, the Appellant confirms that the decision under challenge is the termination of her contract.

53. She reiterates that Administrative Instructions have direct impact on a staff member's terms and conditions of employment. To the Appellant, "Where such impact is adverse, it confers both standing and legal grounds upon the staff member to contest the measure in question".

Respondent's further comments

54. The Respondent reiterates, in her response of 17 June 2025, that the termination of the Appellant's FTA was lawful, following the reclassification and restructuring of her position.

55. The Respondent maintains that the Appellant failed to address the lawfulness of her termination, relying exclusively on the argument that she should have been considered for a position for which, however, she did not apply.

Considerations of the JAB

Preliminary Matters: Request for Oral Hearing

56. The Board recalls that, under Rule 29 of the JAB Rules of Procedure, oral hearings are not held as a matter of right but may be granted where the Board considers that such a hearing is necessary for the fair and expeditious disposal of the case or for the clarification of specific factual or legal issues. In the present matter, as will be seen below in this judgment, the appeal



turns on legal matters; the underlying facts are either not in dispute or can be assessed adequately on the basis of the written record.

57. The Appellant has not demonstrated that an oral hearing would contribute to the fair resolution of this case. She did not identify any specific factual issue that remains unclear or contested, nor did she show how live testimony would assist the Board in resolving the legal issues raised. The written record already contains comprehensive documentary submissions from both parties, which are sufficient for the Board to reach its determination.

58. Moreover, the Appellant's allegation of retaliation was framed in broad and general terms, without the specification of concrete facts requiring examination through witness testimony. The individuals she proposed as witnesses would not have been able to provide relevant or probative evidence. The former Secretary-General was no longer in office at the time of the alleged events and therefore has no direct knowledge of them. The Appellant herself, as well as the current Secretary-General, have both been fully represented by counsel, who had ample opportunity to present their positions in the written proceedings. In these circumstances, oral evidence would not have added to the record in any material way. For these reasons, the Board concludes that the conditions for granting an oral hearing are not met. Accordingly, the Appellant's request is unwarranted and is hereby denied.

Preliminary Matters: Competence and recusal of the JAB

59. 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.

60. 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.



61. 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.

62. 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 Board had been fully established by the time Grievance No. 1 was filed on 5 March 2025.

63. 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.

64. 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.



65. 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.

66. 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.

67. 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

68. 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.

69. 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.

70. 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.

71. 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/Bourel/2025.

Preliminary Matters: Full Board Composition Justification

72. The Board recalls that, in the present case, the judgment was 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 for ensuring collective responsibility in its determinations.

73. 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 JAB Rules of Procedure 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.

74. 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 JAB Rules of Procedure.



Identification of the contested decisions

75. The JAB must first determine the administrative decisions challenged by the Appellant and identify the subjects of judicial review. As noted in the preliminary remarks, the appeal (Grievance 2) expressly challenges (a) the reclassification and restructuring of the post encumbered by the Appellant. However, the Board will also examine (b) the termination of the Appellant's FTA, as both decisions are inextricably linked: the restructuring and reclassification directly led to the termination of her appointment.

76. In identifying the scope of the appeal, it is part of the Board's duties to "adequately interpret and comprehend the application submitted by the moving party" and determine what is in fact being contested (Hassanin 2017-UNAT-759, para. 41; see also Massabni 2012-UNAT-238, paras. 25–26; Gakumba 2015-UNAT-591, para. 21; Monarawila 2016-UNAT-694, para. 32; Fasanella 2017-UNAT-765, para. 19; Cardwell 2018-UNAT-876, para. 23).

77. In accordance with the principles of procedural economy and substantive justice, the Board finds it appropriate to address the termination decision within the same factual and legal framework as the reclassification. When a decision is "merely a consequence, confirmation, and execution of an earlier decision," it "cannot be impugned independently" (Saeed 2016-UNAT-617, paras. 10–11). Considering that Grievance 2 raises a common set of facts, consolidating the two claims serves judicial economy and consistency without affecting the rights of the parties.

78. Consequently, the Board will assess the termination of the Appellant's FTA inextricably linked to the contested reclassification and abolishment of her former post. The analysis will proceed under two separate headings: (i) Reclassification and Restructuration of the Appellant's Post, and (ii) Termination of the Appellant's FTA.

Issue for Determination

(i) Reclassification and restructuring of the Appellant's Post : (Chief of Staff D1 into Legal Counsel D1)

79. The JAB is called upon to determine the following issues:

- (a) Receivability of the reclassification decision - Whether the IOM dated 7 January 2025 informing of the reclassification and restructuring of the post encumbered by the



Appellant constitutes a valid administrative decision subject to appeal under Staff Rule 11.2.

- (b) Lawfulness of the restructuring – If receivable, whether the reclassification and restructuring of the Appellant’s former post was lawful and in accordance with applicable Staff Rules, Regulations and established procedures of the ISA.
- (c) Allegations of improper motive – If receivable, whether the decision challenged by the Appellant was motivated by retaliation and abuse of authority.
- (d) Consequences for the Appellant’s appointment - Whether the termination of the Appellant FTA was lawful, in accordance with the ISA’s legal framework.

80. ISBA/ST/AI/2023/3/Amend.2 provides:

5.4 On an exceptional basis, and during periods of restructuring or reform, the Secretary- General may directly authorize the reclassification of a position without requiring prior submission in accordance with standard classification procedures. This authority ensures the efficiency, agility and responsiveness of the Secretariat’s organizational realignment. Reclassification authorized under this provision shall take effect immediately upon the decision of the Secretary- General.

81. The contested decision is as follows:

INTEROFFICE MEMORANDUM

TO: [The Appellant]

FROM: [...] OiC office of the Administrative Services

Date: 07 January 2025

SUBJECT: Reclassification of the Chief of Staff & Head of Strategic Planning Unit Position D-1 to D-1 Legal Counsel.

I would like to inform you that, in accordance with the staff rules of the International Seabed Authority (ISA), specifically ISBA/ST/AI/2023/3/Amend.2, and as part of the restructuring of the Office of the Madam Secretary-General, your position as Chief of Staff & Head of the Strategic Planning Unit has been reclassified and restructured by the Madam Secretary-General into a different role within the Secretariat, effective 6 of January 2025.

As your current position no longer exists and considering the Authority’s obligation to provide a one-month notice, we propose compensating you with one month’s pay in lieu of



the notice period. This will be paid to your main bank account listed in your distribution salary form.

ISA Human Resources Office (HR) will contact you regarding a possible mutual termination agreement considering the terms of your contract and your years of service with ISA.

To expedite the initiation of your separation process, please get in contact with HR office, you may also contact them using your private email.

Effective immediately, you will no longer be required to be in the office or perform any work related to the ISA. However, I encourage you to prepare and send a written handover of pending urgent tasks and matters to Ms. Christine Griffiths.

While you are required to begin the checkout procedures at the earliest possible opportunity, please coordinate your visit to the ISA premises in advance with the HR Office. On the agreed date, you will be expected to finalize your separation formalities, complete the exit form, and return all ISA-issued assets, including your United Nations Laissez-Passer, SIM card, laptop, identification card, and any other items in your possession.

Finally, we would like to kindly encourage you to explore the opportunity of applying for the reclassified position once advertised and pursuing it through the competitive process.

Thank you.

Receivability of the Claim Concerning Reclassification

82. It is a well-established principle of international administrative law that not every measure taken by the Administration is susceptible to judicial review. Jurisprudence consistently defines an administrative decision as one that: (i) emanates from the Administration; (ii) is unilateral in character; (iii) is of individual application; and (iv) produces direct legal consequences on the terms and conditions of employment of a staff member (*Hamad* 2012-UNAT-269, para. 23; *Al Surkhi* 2013-UNAT-304, para. 26; *Ngokeng* 2014-UNAT-460, para. 26; *Gehr* 2014-UNAT-475, paras. 16–17; *Lee* 2014-UNAT-481, para. 48; *Terragnolo* 2015-UNAT-517, para. 31; *Reid* 2015-UNAT-563, para. 32; *Staedtler* 2015-UNAT-578, para. 30).

83. The Appellant seeks to challenge the IOM of 6 January 2025, whereby the Secretary-General reclassified and restructured her post. However, the JAB recalls that under Staff Regulation 2.1, the Secretary-General holds the authority to classify posts “according to the nature of the duties and responsibilities required, consistent with the principles in use in the



United Nations common system and with due regard for the need for economy and efficiency.” Furthermore, ISBA/ST/AI/2023/3/Amend.2 expressly empowered the Secretary-General, during periods of restructuring or reform, to authorize the reclassification of positions without following the standard classification procedures, with such decisions taking immediate effect. Even though the Board takes note that this provision (Section 5.4) has been removed from ISBA/ST/AI/2023/3 by a subsequent amendment ISBA/ST/AI/2023/3/Amend.3, the case must be decided according to the law in force at the time of the events.

84. The Board emphasizes that its role is not to undertake a constitutional review of the institutional balance between the Secretary-General, the Assembly, and the Finance Committee. Rather, it is confined to assessing whether Section 5.4, as in force at the material time, was implemented lawfully, fairly, and transparently, and whether it was applied without ulterior motives.

85. The record shows that the IOM of 6 January 2025 was not limited to the Appellant’s post. Other positions within the Office of the Secretary-General were also reclassified, including the conversion of the post of Legal Counsel at the D-2 level to Chef de Cabinet at the same grade. The Board further observes that the reclassification did not create additional expenditures beyond the approved budget.

86. In line with established jurisprudence, such restructuring measures are deemed to be of general application, as they are directed at organizational structures rather than at individual employment rights. The Appeals Tribunal has confirmed that restructuring exercises, even when they result in the abolition of posts, do not in themselves constitute reviewable administrative decisions because they do not carry immediate and direct legal consequences for the individual staff member (Pedicelli 2017-UNAT-758, para. 116; see also Collins 2020-UNAT-1021, para. 30, where the Tribunal held that the abolition of a post as part of a restructuring could not be equated with discrimination).

87. The JAB further recalls that the Administration enjoys broad discretion to determine the structure of its departments and the allocation of posts (*Gehr* 2012-UNAT-236, para. 25; *Pacheco* 2013-UNAT-281, para. 22; *Simmons* 2014-UNAT-425, para. 31; *Hersh* 2014-UNAT-433, para. 16; *Bali* 2014-UNAT-450, para. 21). This managerial prerogative, when exercised in



the context of institutional restructuring, does not of itself generate an appealable right for the staff member concerned.

88. Accordingly, the JAB finds that the IOM of 6 January 2025, to the extent that it reclassified and restructured the Appellant's post, was an organizational measure of general application. It did not alter the Appellant's contractual entitlements or impose direct legal consequences on her conditions of service.

89. For these reasons, the claim directed against the decision to reclassify and restructure the Appellant's post is dismissed on grounds of receivability.

90. Since the claim is irreceivable, the JAB does not reach the Appellant's submissions regarding the alleged misuse of discretion, bad faith, lack of transparency, discrimination, absence of due process, or unreasonableness. These matters pertain to the merits of a claim, which the Board is precluded from examining once receivability has not been established. However, these allegations will be examined below in the present judgment, when dealing with the claim regarding the termination of the Appellant's FTA.

91. This is because, while the restructuring exercise itself is not subject to review, the JAB emphasizes that the subsequent termination of the Appellant's FTA prior to its expiry on 31 December 2028 does constitute an individual administrative decision with direct legal effect. It is therefore receivable and will be examined separately (*Nouinou* 2019-UNAT-902, paras. 35–38; *Lee* 2014-UNAT-481, para. 51).

Issue for Determination

ii) Termination of the Appellant's FTA

92. The JAB is also called upon to determine the following issues:

- (a) Receivability - whether the termination of the Appellant's FTA was receivable as an administrative decision under Staff Rule 11.2.
- (b) Lawfulness - if receivable, whether the termination of the Appellant's FTA was lawful and in accordance with the legal framework and established procedures of the ISA.



- (c) Allegations of improper motive - if receivable, whether the Appellant has demonstrated that the contested decision constitutes abuse of authority motivated by retaliation, thereby warranting annulment.
- (d) Remedy - if receivable and unlawful, whether the Appellant is entitled to remedy.

Receivability of the Claim Concerning Termination

93. Pursuant to Staff Regulation 11.2, a reviewable administrative decision must be unilateral in nature and produce direct legal consequences affecting the terms of employment of the staff member. (See also *Lloret Alcañiz et al.* 2018-UNAT-840, para 61). In the present case, the contested decision is the termination of the Appellant's FTA following the reclassification of her post. This decision directly altered her contractual status and resulted in her separation from service.

94. The JAB therefore finds that the termination of the Appellant's appointment is a reviewable administrative decision within the meaning of Staff Rule 11.2. The claim is receivable.

Merits concerning Termination

(a) Legal framework governing termination

95. According to Staff Regulation 9.1 of the ISA, in relevant parts:

- (a), the SG may terminate the appointment of a staff member (...)
- (iv) If the necessities of the service require abolishment of the post, change of the functions of the post or reduction of staff; (...).

- (d) The Secretary-General may terminate the appointment of a staff member with a fixed-term appointment prior to the expiration date for any of the reasons specified in subparagraphs (a), (b) and (c) above, or for such other reason as may be specified in the Regulation 9.2.

96. ISA Regulation 9.2 provides that:

- (a) If the Secretary-General terminates an appointment, the staff member shall be given such notice and such indemnity payments as may be applicable under these Regulations and the Staff Rules (...).

97. ISA Staff Rule 9.6 provides that:



A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General, in accordance with the terms of the appointment or on the grounds set out in staff regulation 9.1 on termination of appointment.

98. As can be seen from the provisions above, under ISA Staff Regulation 9.1, the Secretary-General may terminate the appointment of a staff member prior to the expiration of their fixed-term contract if the necessities of service so require, including the abolition of a post, a change of its functions, or a reduction of staff. Regulation 9.2 further provides that a staff member whose appointment is terminated shall receive the applicable notice and indemnity payments.

99. Termination of appointment is defined in ISA Staff Rule 9.6 as a separation from service initiated by the Secretary-General, in accordance with the terms of appointment and the grounds established in the Staff Regulations.

100. Furthermore, it is well settled that termination based on the abolition of a post constitutes a legitimate ground for separation, provided that the decision is implemented in a fair, just, and transparent manner (*Guzman* 2014-UNAT-455, para. 28; *Islam* 2011-UNAT-115, paras. 29–32).

(b) Consideration of alternatives and duty of good faith

101. Jurisprudence has consistently held that where a post is abolished, the Administration bears the burden of demonstrating that “all reasonable and good faith efforts had been made to consider the staff member concerned for available and suitable posts before taking the decision to terminate” (*El-Kholy* 2017-UNAT-730, para. 25).

102. As previously noted, by IOM dated 7 January 2025, the OiC of the OAS notified to the Appellant the termination of her employment. The IOM specifically notified to the Appellant that:

[a]s your current position no longer exists and considering the Authority’s obligation to provide a one-month notice, we propose compensating you with one month’s pay in lieu of the notice period. This will be paid to your main bank account listed in your distribution salary form.

ISA Human Resources Office (HR) will contact you regarding a possible mutual termination agreement considering the terms of your contract and your years of service



with ISA. To expedite the initiation of your separation process, please get in contact with HR office, you may also contact them using your private email.

Finally, we would like to kindly encourage you to explore the opportunity of applying for the reclassified position once advertised and pursuing it through the competitive process.

103. When the Administration demonstrates that an appellant was given full and fair consideration, the evidentiary burden shifts to the appellant to show that she/he was subjected to an act of unreasonableness or unfairness.

104. In the present case, the record shows that the Administration informed the Appellant of the abolition of her post by IOM dated 7 January 2025. In that IOM, the Appellant was notified that her current position no longer existed and offered one month's salary in lieu of notice and encouraged to apply for the reclassified position once advertised and pursuing it through the competitive process. Consequently, the Chef de Cabinet position was advertised which had been created during the restructuring. The JAB notes that the Appellant did not pursue this opportunity and on 12 February 2025 the Appellant received a month salary in lieu of Notice of USD14,821.85.

105. Therefore, “[T]he Secretary-General met the minimal standard of proof that the abolition of [the Appellant] post and her non-placement on another suitable post had been done in accordance with the Regulations and Rules [...] [and that] the burden of proof had shifted to [her] to show by clear and convincing evidence a violation of her employment rights”. (*Icha* 2020-UNAT-1077, para. 1).

106. The JAB finds that the Administration discharged its duty of good faith by (i) offering compensation in lieu of notice; (ii) inviting the Appellant to explore a mutual termination agreement with Human Resources; and (iii) encouraging her to apply for the newly created position. These measures demonstrate that the Appellant received full and fair consideration.

(c) Burden of proof and allegations of improper motive

107. Once the Administration demonstrates that the termination was based on abolition of post and that reasonable efforts were made to mitigate its impact, the evidentiary burden shifts to the staff member to show that the decision was tainted by unreasonableness, unfairness, or improper motive (*Icha* 2020-UNAT-1077, para. 1). The duty to mitigate is reciprocal: while the Administration must consider the staff member for available suitable posts, the staff member



is expected to take reasonable steps to avail herself of such opportunities. As held in *El-Kholy* 2017-UNAT-730, para. 25, failure to do so may weigh against the staff member's claim of unfair treatment. In the present case, the Appellant was expressly encouraged to apply for the newly created post but declined to do so, thereby failing to discharge her duty of mitigation. This refusal shifts the evidentiary burden back to her to provide clear and convincing evidence that her separation was unlawful.

108. The Appellant contended that her separation was driven by retaliation and abuse of authority. These allegations, however, were broad and unsubstantiated, lacking specific factual details or supporting evidence capable of demonstrating improper motives. The Board reiterates that claims of retaliation cannot be presumed and must be supported by concrete, probative evidence (*Gehr* 2014-UNAT-475, para. 30; *Nyawa* 2021-UNAT-1155, para. 31).

109. The Board further observes that the Appellant invoked the framework of ST/SGB/2008/5, the former United Nations policy on discrimination, harassment, including sexual harassment, and abuse of authority. However, this instrument was abolished and replaced by ST/SGB/2019/8, which establishes a revised regime applicable to officials and heads of entities falling under the authority of the United Nations Secretary-General. Furthermore, the International Seabed Authority, as an autonomous international organization established under the United Nations Convention on the Law of the Sea, is not an entity under the authority of the UN Secretary-General. In the absence of a memorandum of understanding or other agreement with the Office of Internal Oversight Services, neither ST/SGB/2008/5 nor ST/SGB/2019/8 forms part of the applicable legal framework governing ISA staff. The Authority is instead bound by its own Staff Regulations, Staff Rules, and internal policies, including the ISA Code of Conduct and the jurisdiction of the Joint Disciplinary Committee operating under its Rules of Procedure. At most, the United Nations policies may be regarded as persuasive or reflective of international best practice, but they do not constitute binding law within the Authority's internal legal order.

110. The Board notes, moreover, that Staff Rule 13.3 of the Authority provides that, in the absence of an administrative instruction issued by the Secretary-General of the Authority, the Secretary-General shall be guided by the administrative instructions of the United Nations to the extent that they relate to the implementation of comparable Staff Rules. This provision refers specifically to *administrative instructions* and not to *Secretary-General's Bulletins*.



Applying the principle of specification, the express inclusion of United Nations administrative instructions necessarily excludes other types of issuances, such as Secretary-General's Bulletins. Accordingly, the Board considers that questions of conduct, discrimination, or abuse of authority fall to be addressed under the Authority's own Code of Conduct and related mechanisms.

111. In light of these considerations and given that she did not avail herself of the available mitigation measure by applying for the reclassified post, the Appellant's allegations of improper motive cannot succeed.

(d) Procedural safeguards and compensation

112. The Board recalls that the termination of the Appellant's appointment must be assessed in light of the applicable regulatory framework. In this regard, Section VI of the Annex to ISBA/ST/AI/2023/3, governs procedures following classification and reclassification. Section 6.1 reads as follows:

Section VI

Procedures following classification and reclassification

6.1 If a post is vacant, it will be advertised at the grade at which it was classified.

6.2 If a post is encumbered and reclassified at a grade level below the incumbent's personal grade level, the incumbent will retain his or her current grade and salary level until his or her departure from the post, on the understanding that every reasonable effort will be made to reassign the concerned staff member to a post at his or her personal grade level. Subsequently, the post will be advertised at the new grade if the duties and requirements have remained unchanged.

6.3 If a post is encumbered and reclassified above the current grade, the following applies:

(a) The post will be advertised for recruitment;

(b) After the recruitment process, if the incumbent satisfactorily meets all qualifying requirements, the incumbent shall be selected and accorded the new grade of the post. The new grade shall be effective retroactively from the first of the month following receipt of the reclassification request submitted in accordance with the conditions set out in section 3.3 above;

(c) After the recruitment process, if the incumbent does not meet the qualifying requirements for the post at the new grade, the incumbent will retain his or her current grade until his or her departure from the post, on the understanding that every reasonable effort will be made to reassign the concerned staff member to a post at his or her personal grade level.



113. The Board observes that Section VI does not expressly regulate the situation in which a post is reclassified at the same grade level but with modified functions (as in the present case, from D-1 Chief of Staff to D-1 Legal Counsel). The Board finds, therefore, that the Administration retained a measure of discretion in applying the Staff Selection System to a scenario not directly contemplated by its provisions.

114. The Board recalls that, under UNAT jurisprudence, organizations must present evidence of a genuine restructuring exercise to justify the abolition or reclassification of posts. In such processes, the Administration has a duty to act fairly, justly and transparently when dealing with staff members during a restructuring exercise (*Abdeljalil* 2019-UNAT-960, para. 19). The UNAT has further confirmed the applicability of the “presumption of regularity” in the organizational restructuring context: “[T]here is always a presumption that effective official acts have been regularly performed. The presumption of regularity is however rebuttable. If the Administration is able to minimally show that the staff member was given full and fair consideration, then the evidentiary burden shifts to the staff member to show that he or she was subject to an act of unreasonableness or unfairness.” (*Nastase* 2023-UNAT-1367, para. 25).

115. Regarding the basis and proportionality of the restructuring exercise, the Board observes that the ISA is a comparatively small organization, employing a total of approximately 55 staff members. Its restructuring exercises cannot reasonably be expected to follow the same scale and methodology as those of much larger United Nations entities. While the evidentiary burden still applies, it must be assessed in proportionality to the Authority’s size, operational structure, and resources. From the pending cases before it, the JAB is aware that the restructuring affected at least five posts – about ten per cent of the overall staff. For an organization of modest size, this represented a significant adjustment. It is also noted that the Appellant did not contest the fact of the restructuring as such, but rather its fairness and alleged improper motives.

116. The Board therefore considers that the Respondent was required to demonstrate, with sufficient documentation and reasoning, that the restructuring was genuine and not a mere pretext, taking into account the specific institutional context of the ISA. The evidence shows that the memoranda of 6 January 2025 did not concern solely the Appellant’s position. As already noted, several other posts within the Office of the Secretary-General were also subject to reclassification, including the transformation of the D-2 level Legal Counsel post into that



of Chef de Cabinet at the same grade and the “withdrawal” of letters of appointments which are currently being subject of other cases before JAB.

117. The Board further notes that following the reclassification of the Appellant’s former D1 post, the Administration invited the Appellant to apply for the newly created D-2 Chef de Cabinet position. The record shows, however, that the Appellant declined to do so, as confirmed in her written comments on the Secretary-General’s reply (Appellant’s 19 May 2025 comments, para. 17).

118. Furthermore, the Appellant received one month’s salary in lieu of notice (USD 14,821.85 on 12 February 2025), in accordance with ISA Regulation 9.2, which expressly provides for indemnity in lieu of notice. The evidence on record further shows that the Administration complied with the applicable procedural safeguards.

119. The Board also considers the Appellant’s contention that the contested decision contravened the Finance Committee’s guidance of July 2024, which had requested that no reclassification be implemented without prior approval of the Assembly pursuant to ISBA/ST/AI/2023/3. The Board emphasizes, however, that this guidance pre-dated the amendment of the Instruction. In January 2025, Section 5.4 was inserted into ISBA/ST/AI/2023/3, expressly conferring upon the Secretary-General the authority, on an exceptional basis and during restructuring or reform, to reclassify positions without resort to the standard classification process. As the most recent and authoritative text within the ISA regulatory framework, Section 5.4 operated as *lex posterior* and governed the contested decision, which was taken in conformity with this revised framework at the time of the events. Accordingly, the Appellant’s reliance on the earlier guidance from the Finance Committee cannot prevail over the clear text of Section 5.4, then adopted within the ISA’s regulatory framework.

120. This conclusion is not altered by subsequent developments. The Board further notes that Section 5.4 of ISBA/ST/AI/2023/3 was later removed by amendment. While it is relevant to acknowledge that the regulatory framework has since evolved, the amendment has no retroactive effect and therefore does not apply to the present case.



Conclusion on Merits – Termination of the Appellant’s appointment

121. For the foregoing reasons, the Board concludes that the reclassification of the Appellant’s post is not receivable and that the termination of her FTA was lawful, fair, and transparent. As no unlawfulness has been established, all remedies requested by the Appellant, including reinstatement, compensation, costs, and an apology, are dismissed.

122. The Appellant has failed to demonstrate by clear and convincing evidence that the decision was tainted by abuse of authority, retaliation, or improper motives.

123. For the foregoing reasons, the Board concludes that the termination of the Appellant’s FTA as a result of the reclassification of her post was lawful, fair, and transparent. As no unlawfulness has been established, all remedies requested by the Appellant, including reinstatement, compensation, costs, and an apology, are dismissed.

Conclusion of Grievance 2 (Claims Concerning Reclassification and Termination)

124. After careful consideration of the parties’ submissions, the evidence on record, and the applicable legal framework, the Board determines that the appeal in respect of Grievance 2 must be **DISMISSED** for the following reasons:

- (a) the claim concerning the reclassification of her post is not receivable under ISA Staff regulation 11.2; and
- (b) the claim concerning the termination of the Appellant’s FTA is without merit, as the termination was effected lawfully and with due process.

Conclusion

125. For the foregoing reasons, the appeal Grievance 2 is dismissed in its entirety.

Dated this 5th day of December 2025

Judge Martha Halfeld Furtado de Mendonça Schmidt

Chair, Joint Appeals Board



Abena Kwakye-Berko

Abena Kwakye-Berko
Member, Joint Appeals Board

Courtney Maxwell
Member, Joint Appeals Board

Georgina Guillén Grillo
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