



# **INTERNATIONAL SEABED AUTHORITY**

## **JOINT APPEALS BOARD**

**ISBA/JAB/APPEAL/BOURREL-MCKINNON/ GRIEVANCE 5/2025**

**Marie Bourrel-McKinnon**

**(the "Appellant")**

**v.**

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

**(the "Respondent")**

**Judgment of the Board relating to Grievance 5 submitted by the Appellant**

***Denial of access to Email, Cloud, and Office***

### **Introduction**

1. The Appellant joined the International Seabed Authority (ISA/the Authority) in 2017. She held a Fixed-Term Appointment (FTA) as Chief of Staff and Head of Strategic Planning Unit at the D-1 level valid until 31 December 2028.
2. On 14 March 2025, the Appellant filed the present appeal registered as Grievance 5 before the Joint Appeals Board (JAB) of the Authority, pursuant to Article 11.2(a)(i) of the ISA Staff rules and Rules 11 and 17 of the Revised JAB Rules of Procedure.
3. The appeal challenges the non-access by the Appellant to: (i) her emails; (ii) the cloud; and (iii) the office. The Appellant claims that such actions constitute harassment and



persecutory behaviour and formed part of a broader pattern of conduct. She requests annulment of the unlawful decision and compensation for moral damages suffered.

### **Procedural Background**

4. On 1 January 2025, the newly appointed Secretary-General (the Respondent) officially assumed office.

5. By email dated 2 January 2025, the Appellant requested access to the “new generic inbox” for the Executive Office of the Secretary-General (EOSG) to “perform [her] role and discharge [her] right to exercise [her] functions, as described in [her] terms of reference.”

6. Concomitantly, the Appellant was notified that her access to the generic email address for the EOSG had been revoked.

7. By Interoffice Memorandum dated 3 January 2025, two ISA staff members, subjects of the Applicant’s complaints dated 24 November 2024, were designated as Officers-in-Charge (OiCs) of the Office of Legal Affairs (OLA) and the Office of Administrative Services (OAS).

8. On 6 January 2025, the Respondent amended the annex to the administrative instruction on Staff Selection (ISBA/ST/AI/2023/3).

9. On 7 January 2025, the OiC of the OAS informed the Appellant that her appointment was terminated by the Respondent. The letter indicated that her position had been “reclassified and restructured” into a different role within the Secretariat, effective 6 January 2025.

10. On 15 January 2025, the Appellant requested administrative review of her non-access to: (i) her emails; (ii) the cloud; and (iii) the office.

11. On 13 January 2025, the Respondent affirmed her decision to terminate the Appellant’s appointment.

### **Procedural History**

12. On 14 March 2025, the Appellant, through her Counsel, submitted the present appeal registered as Grievance 5 to the Secretariat of the JAB, pursuant to Staff Rule 11.2(a)(i) of the ISA Staff Rules and Rules 11 and 17 of the Revised JAB Rules of Procedure.



13. The JAB Secretariat requested confirmation from Counsel regarding the completeness of Grievance 5 including annexes and supporting documentation. The confirmation was received on 14 March 2025.
14. Following receipt of the confirmation, and pursuant to Rule 9 of the Revised JAB Rules of Procedure, the Chair of the JAB invited the parties to engage in conciliation on the same date.
15. Both parties declined the offer of conciliation for the appeal. Consequently, the JAB Secretariat formally notified the Respondent of the appeal and invited her to submit a reply by 16 April 2025,
16. 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 ensure consistency and avoid conflicting outcomes, the Chair, pursuant to Rule 28 of the Revised JAB Rules of Procedure and established tribunal practices, decided to hear them together.
17. On 3 April 2025, the Appellant submitted a request under Rule 26 of the Revised 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 re-constitution of the full Board.
18. On 16 April 2025, the Respondent submitted her reply addressing Grievance 5.
19. On 17 April 2025, the JAB Secretariat transmitted the Respondent's reply to the Appellant and invited her to submit comments no later than 19 May 2025.
20. On 19 May 2025, the Appellant submitted her comments to the Respondent's reply.
21. On the same date, the Chair invited the Respondent to submit additional comments in response to the Appellant's submission of 19 May 2025.
22. The JAB Secretariat received additional comments from the Respondent on the due date.

### **Summary of the Appeal**

23. The Appellant submitted an appeal concerning denial of access to: (i) her emails; (ii) the cloud; and (iii) the office. The Appellant contends that access to her email account was blocked



without prior notice, thereby preventing her from retrieving communications relevant to the grievances she had submitted and from adequately preparing her legal claims.

24. The Appellant argues that the denial of access facilitated the potential destruction of evidence supporting her formal complaints of abuse of authority, harassment, and gender-based discrimination, which were submitted in November 2024 against two staff members of the Authority.

25. The Appellant further asserts that, as a matter of established practice, former staff members are ordinarily permitted continued access to their professional credentials for a reasonable period following separation. The departure from this practice, in her case, is presented as a deliberate act of harassment and persecution. She submits that she was unlawfully denied access to her email, work-related files, the Inspira platform, and her office, and was excluded from any meaningful transitional process.

### ***Relief Requested***

26. The Appellant seeks the following relief:

- (a) The annulment of the alleged decision “with immediate and retroactive effect concerning the direct harm suffered by the Appellant.”
- (b) Compensation for moral damage including distress and emotional anguish caused by the Administration’s unlawful actions.
- (c) Compensation for undue interference in an ongoing investigation, compromising the integrity of due process and reinforcing a climate of impunity.

### ***Request for Oral hearing***

27. The Appellant requests an oral hearing and the examination of the following witnesses:

- (a) The two ISA staff members designated as OiCs of the OLA and the OAS;
- (b) The former SG; and
- (c) The former JAB Chair.

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

28. 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 United Nations Appeals Tribunal (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.

29. 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.

30. 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**

31. The Respondent asserts that there is no administrative decision to contest. Since her separation from service became effective on 6 January 2025, the Appellant was no longer an ISA staff member.

32. She submits that access to ISA information systems and premises are limited to staff members. Therefore, there was no legal basis to grant the Appellant access to her former email account, cloud and office.

33. The Respondent submits that the Administration did not restrict the Appellant's access to the Inspira platform. It is further noted that the Appellant has provided no evidence to substantiate her claim, such as a request for technical assistance from the Inspira site administration. The Respondent emphasizes that Inspira is a publicly accessible website, and user profiles may be created independently by any individual.

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

34. In her submission dated 19 May 2025, the Appellant argues that the contested decision adversely affected her right to defend herself, thereby constituting a negative impact on her conditions of employment. She maintains that the absence of a formal written decision does not absolve the Administration from accountability.



35. The Appellant reiterates that, as a matter of established practice within the Authority, former staff members have been granted access to their email accounts and archives, subject to technical limitations imposed by the IT Department, to enable the retrieval of non-confidential materials. She contends that the unexplained denial of this practice in her case constitutes discrimination and violated due process by impeding her ability to collect evidence and prepare her legal claims.

### **Respondent's further comments**

36. The Respondent reiterated, in her comments to the Appellant's second response on 17 June 2025, her arguments to dismiss the appeal in its entirety on two grounds. First, she maintains that the contested matters do not constitute reviewable administrative decisions (*ratione materiae*). Second, she contends that the Appellant lacks the requisite legal standing (*ratione personae*) to challenge the alleged decision.

### **Considerations of the JAB**

#### ***Request for Oral hearing***

37. The Board notes that the Appellant has requested an oral hearing and the examination of several witnesses, including two staff members, the former Secretary-General, and the former Chair of the Joint Appeals Board.

38. Pursuant to Rule 29 of the Rules of Procedure, the Board may dispense with an oral hearing where the written record sufficiently addresses the issues in dispute. In the present case, the Board finds that the Appellant has submitted sufficient written pleadings and documentation, comprising legal arguments and factual assertions, which provide a comprehensive basis for adjudication.

39. Also, the Appellant has not identified any material factual dispute that cannot be resolved on the basis of the written record. The claims raised are largely based on administrative actions and documentary evidence, the occurrence of which is not in question. The matters at issue concern primarily the legal characterisation and consequences of these actions, rather than contested facts requiring the assessment of witness credibility.

40. Moreover, the Appellant has not demonstrated how the proposed examination of witnesses would materially assist the resolution of the case. No specific or admissible evidence



has been advanced that would warrant oral testimony beyond what is already included in the detailed record.

41. In view of the above, the Board considers that the Appellant's right to be heard is fully respected through the written procedure. Accordingly, the request for an oral hearing is denied.

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

42. 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.

43. The JAB notes that the issue of its competence was first raised by the Appellant in her Statement of Appeal dated 14 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.

44. 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.

45. 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. 5 was filed on 14 March 2025.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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***

51. 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.

52. 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.

53. 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.

54. 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***

55. 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.

56. 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.

57. 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***

58. The JAB is called to determine the following issues:

- (a) Whether there was an administrative decision subject to appeal by the Appellant under Staff Rule 11.2.
- (b) If the appeal is receivable:
  - i. Whether the non-access to information systems and ISA premises by the Appellant was unlawful and tainted by improper motivations.
  - ii. Whether the Appellant is entitled to any requested remedies.

### ***Receivability and identification of the contested decision***

59. Before considering the merits of the case, the JAB must first determine whether the appeal is receivable. The receivability of the present application will be examined under a number of distinct topics, specifically addressing: (1) the scope of reviewable administrative decisions (*ratione materiae*), (2) the standing of the Appellant as a former staff member (*ratione personae*), (3) the general policy concerning access to ISA systems and premises, (4) the absence of a clearly identified contested decision, and (5) the Appellant's claim regarding the impact of the contested measures on her ability to defend herself in light of prior formal complaints.

#### **I. Scope of Reviewable Administrative Decisions (*Ratione Materiae*)**

60. The JAB recalls that, in accordance with established jurisprudence, only administrative decisions that are alleged to be in non-compliance with the terms or conditions of appointment



or the contract of employment may be subject to challenge. This requirement concerns the receivability *ratione materiae* of the appeal. As held by the UNAT in *Pedicelli* 2015-UNAT-555, para. 28, decisions of a general nature or application are not reviewable. For a decision to be subject to judicial review, it must be: (i) taken by the Administration, (ii) unilateral in nature, (iii) of individual application, and (iv) produce direct legal consequences affecting the terms and conditions of employment.

## **II. Standing of Former Staff Members (*Ratione Personae*)**

61. With respect to the standing of former staff members, the Appeals Tribunal has consistently held that “there must be a sufficient nexus between the individual’s former employment status and the impugned decision. In *Shkurtaj* 2011-UNAT-148, para. 29, the Appeals Tribunal confirmed this requirement of receivability *ratione personae*. In *Ghahremani* 2011-UNAT-171, paras. 4 and 5, the Tribunal found that a decision to prohibit the entry of a former staff member to the premises does not amount to a breach of the staff member’s terms of appointment or contract of employment, as it does not alter any of the Appellant’s contract or employment terms.

## **III. General Policy on Access to Systems and Premises**

62. In the present case, the Appellant’s separation from service became effective on 7 January 2025. As of that date, she no longer held the status of an ISA staff member. Access to internal information systems, including official emails accounts, digital storage, and physical premises is usually limited to serving staff members. Such a policy is of general application and was not applied exclusively to the Appellant. Consequently, the cessation of access to such systems and facilities cannot be regarded as a breach of her contractual terms or conditions of appointment, nor can it be deemed to constitute an individual administrative decision subject to review under the applicable legal framework.

## **IV. Absence of an Individually Contested Decision**

63. The Board further observes that the Appellant has not clearly identified a specific administrative decision subject to challenge in these proceedings. In this regard, the policy limiting access to ISA systems and facilities to current staff members is indeed a matter of general administration and does not constitute an administrative decision of individual application producing direct legal effects upon the Appellant’s contract. While separation from



service may result from an administrative decision, the consequences following such separation—such as termination of access to institutional platforms—do not in themselves amount to separately contestable decisions.

#### **V. Alleged Impact on the Right to Defend in Light of Prior Complaints**

64. The Appellant's separation from service, effective 7 January 2025, terminated her status as a staff member, and no sufficient nexus has been established to bring the present matter within the scope of reviewable decisions under the applicable legal framework. To the extent that the Appellant believes her ability to defend her interests in connection with her formal complaints of abuse of authority, harassment, and gender-based discrimination has been impaired, such concerns may be more appropriately addressed in the context of her pending application contesting the termination of her fixed-term appointment, where those issues, if raised, may fall within the proper subject matter.

#### **VI. Conclusion on Receivability**

65. Upon a thorough review of the submissions and documentation presently on file, the JAB concludes the Appellant has failed to identify and to demonstrate the existence of an administrative decision in direct correlation with her previous terms of appointment with the ISA.

66. In light of the foregoing, the JAB concludes that the present appeal is not receivable *ratione materiae*, as the Appellant has failed to identify an administrative decision of individual application producing direct legal consequences on her terms or conditions of employment. Nor is the appeal receivable *ratione personae*, as the Appellant no longer held the status of a staff member at the time of the alleged facts, and no sufficient nexus has been established between her former employment and the contested measures by themselves. Accordingly, the appeal must be dismissed in its entirety as irreceivable.

### **Conclusion**

67. Accordingly, the appeal (Grievance 5) is dismissed on grounds of receivability.



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