



# **INTERNATIONAL SEABED AUTHORITY**

## **JOINT APPEALS BOARD**

**ISBA/JAB/APPEAL/BOURREL-MCKINNON/GRIEVANCE 6/2025**

**Marie Bourrel-McKinnon**

**(the "Appellant")**

**v.**

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

**(the "Respondent")**

**Judgment of the Board relating to Grievance 6 submitted by the Appellant**

***Grievance Concerning removal of the former JAB Chair***

### **Introduction**

1. The Appellant was employed by the International Seabed Authority (ISA/Authority) since 2017. At the relevant time of events, she held the position of Chief of Staff and Head of the Strategic Planning Unit at the D-1 level. She held a Fixed-Term Appointment (FTA) set to expire on 31 December 2028.

2. On 18 March 2025, the Appellant filed the present appeal registered as Grievance 6 before the Joint Appeals Board (JAB/Board) of the ISA, pursuant to Staff rule 11.2(a)(i) of the ISA Staff Rules and 10 and 16 of the JAB Rules of procedure (RoP), which correspond to Rules 11 and 17 of the revised JAB RoP. The Appeal challenges an administrative decision dated 9 January 2025 to remove the former JAB Chair.



3. The Appellant contends that the decision was unlawful, constitutes abuse of authority and was tainted by improper motives. She seeks that the “JAB explicitly decline its jurisdiction and allow the UNAT to assume direct adjudication pursuant to Article 2.1(b) of the UNAT Statute”.

### **Procedural Background**

4. The new Secretary-General (the “Respondent”) of the ISA commenced her appointment on 1 January 2025.

5. On 6 January 2025, the Respondent amended the Administrative Instruction on Staff Selection (ISBA/ST/AI/2023/3).

6. On 7 January 2025, the Officer-in-Charge of the Office of Administrative Services informed the Appellant that her position had been “reclassified and restructured” within the Secretariat, effective 6 January 2025, resulting in the termination of her appointment.

7. The same date, the Appellant requested the Respondent to review the decision of the termination.

8. By letter dated 9 January 2025, the Respondent notified the former JAB Chair and three JAB members of her intention to “re-appoint” new members and the chairperson of the JAB as part of a strategic review.

9. By email dated 15 January 2025, the former Chair notified the Appellant that he was no longer the Chair of the JAB.

10. On 16 January 2025, the Appellant requested administrative review of the contested decision.

11. On 23 January 2025, the Respondent issued Information Circular ISBA/ST/IC/2025/3 by which she announced the new membership of the JAB.

12. On 5 February 2025, the newly appointed Chair of the JAB constituted a panel to consider the Appellant’s requests for suspension of action, which were requested between 6-29 January 2025.

13. On 14 February 2025, the Respondent dismissed the Appellant’s request for administrative review on the grounds that the contested decision was not an administrative decision within the meaning of Rule 11.2 of the ISA Staff Rules.



14. On 25 February 2025, the JAB dismissed the Appellant's request for suspension of actions.
15. By Order No. 592 (2025) dated 26 February 2025, the United Nations Appeals Tribunal (UNAT) denied the motions, which had been filed by the Appellant on 27 January 2025.
16. On 18 March 2025, Counsel for the Appellant submitted an appeal on behalf of the Appellant, registered as Grievance 6. The JAB Secretariat requested confirmation from Counsel regarding the completeness of the grievance, including annexes and supporting documentation. This confirmation was received on the same date.
17. Upon confirmation, the Chair of the JAB, on 18 March 2025, invited the parties to engage in conciliation in accordance with Rule 9 of the revised JAB RoP.
18. By letter dated 21 March 2025, the Respondent declined the offer of conciliation for all the appeals. Consequently, the JAB Secretariat formally notified the Respondent of the appeal and invited her to submit a reply by 18 April 2025.
19. 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 RoP and established tribunal practices, decided to hear them together.
20. On 3 April 2025, the Appellant submitted a request under Rule 26 of the revised JAB 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.
21. On 16 April 2025, the Respondent submitted her reply.
22. 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.
23. On 19 May 2025, the Appellant submitted her comments to the Respondent's reply.
24. 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 that date.



## Summary of the Appeal

25. The Appellant challenges the administrative decision, dated 9 January 2025, by the Respondent, removing the former Chair of the JAB. The Appellant contends that this decision effectively dismantled ISA's internal justice system by eliminating the neutral first-instance adjudicatory body responsible for hearing staff grievances.

26. The Appellant argues that the Respondent's actions were unlawful and constituted an abuse of authority, implemented without proper communication, transparency, or due process. She highlights that the removal occurred while the former JAB Chair and members were actively exercising their mandates and emphasizes that the President of the UNAT described the dismantling as "alarming."

27. The Appellant further submits that the Respondent's decision violated her rights under Regulation 1.1 of the ISA Staff Regulations, which requires respect for staff rights and duties as established by the ISA Convention and relevant internal regulations. The failure to provide reasons or legal justification for the former Chair's removal, and the absence of a duly constituted JAB, denied the Appellant access to justice, particularly impeding her ability to seek suspension of action regarding her wrongful termination and related grievances.

28. The Appellant maintains that the new JAB's legitimacy is questionable concerning disputes that arose prior to its establishment, as the principle of the natural judge requires continuity and impartiality of the judicial body at the time the dispute arose. She therefore requests that the JAB recuse itself and allow UNAT to assume direct jurisdiction over the matter, preserving procedural fairness and protecting her fundamental rights.

### ***Relief Requested***

29. The Appellant requests the following relief:

- (a) That the newly appointed JAB withdraw from adjudication and allow UNAT to assume direct jurisdiction over the matter.
- (b) Compensation for damages resulting from the absence of a first-instance body to consider her request for suspension of action.
- (c) An award of moral damages.



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

30. The Appellant requests an oral hearing, in which the following witnesses can be examined:
- a) The former SG and,
  - b) The former JAB Chair.

### **Summary of the Reply of the Respondent**

31. The Respondent submits that the contested decision does not constitute a reviewable administrative decision within the meaning of ISA Staff Rule 11.2. She argues that the Appellant has failed to meet the burden of demonstrating that the elements required for receivability are satisfied.
32. The Respondent further asserts that the former Chair and members of the JAB remained in office and continued to exercise their functions until their successors were appointed on 23 January 2025, pursuant to Rule 11.1(c).
33. Finally, the Respondent contends that the matter is *res judicata*.

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

34. In her comments dated 19 May 2025, the Appellant submits that the rationale given in the letter notifying the former JAB Chair of his removal differs significantly from that in the Respondent's reply.
35. The reference to "a strategic review" and to the Respondent's own "vision" as the reason for the "reorganization" contradicts the Reply, where staff concerns are indicated as the "primary driver". This inconsistency discredits the arguments put forward by the Respondent.

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

36. In her further comments dated 17 June 2025, the Respondent reiterates her challenge to the receivability of Grievance 6, maintaining that the contested decision does not involve a reviewable administrative decision (*ratione materiae*) and that the Appellant lacks standing *ratione personae*.



## Considerations of the JAB

### *Request for Oral Hearing*

37. The Board recalls that, under Rule 29 of the revised JAB RoP, oral hearings are not held as a 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. As will be seen below in this judgment, in the present matter, the appeal concerns the re-constitution of the JAB, which is a regulatory measure of general application and therefore the legal nature of which is not in dispute and can be assessed solely on the basis of the written record.

38. The Appellant has not demonstrated that live evidence or oral submissions would provide further clarity on the material facts or assist in resolving any contested legal question. The documentary submissions from both parties are comprehensive and sufficient to enable the Board to render its determination.

39. Accordingly, the Board finds that the Appellant's request for an oral hearing is not warranted in the circumstances of this case and is hereby denied.:

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

40. 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.

41. The JAB notes that the issue of its competence was first raised by the Appellant in her Statement of Appeal dated 18 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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***

49. 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.

50. 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.

51. 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.



52. 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/Bour-rel/2025*.

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

53. 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.

54. 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 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.

55. 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 RoP.

***Issues for Determination***

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

- (a) Whether the decision dated 9 January 2025, by which the Respondent decided to re-appoint new JAB members and a new JAB Chair constitutes a reviewable administrative decision within the meaning of Staff Rule 11.2;
- (b) If the appeal is receivable:



- i. Whether the contested decision was unlawful and affected the Appellant's terms and conditions of employment.
- ii. Whether the Appellant is entitled to any remedies.

### ***Reviewability of the Contested Decision***

57. In this appeal, Grievance No. 6, the primary issue for determination is whether the contested decision which is the removal of the former JAB Chair and the subsequent reconstitution of the Board constitutes an administrative decision subject to judicial review. The Appellant contends that this decision undermines her right to a fair hearing and argues that her case should have been adjudicated by the previous JAB prior to its reconstitution, or alternatively, by the UNAT.

58. The Appellant specifies that “(t)he administrative decision being contested is the one taken by the (current) Secretary-General (‘SG’)...to remove (the former JAB Chair), in defiance of her obligation to ensure the existence of a neutral first-instance process to decide appeals by staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules, and in breach of her good faith obligation of information and communication with the Appellant, as Applicant, of two pending proceedings before the JAB. In this regard, the removal of the Chair of the JAB was tantamount to its dissolution.”

59. While the Appellant initially limited her challenge to the removal of the former Chair, she subsequently extended her contestation to the broader “dismantling of the JAB.” Accordingly, the Board will consider the full scope of the contested decision.

60. The contested decision to remove the former Chair is the following:

9 January 2025

(name), Chairman, Joint Appeals Board, International Seabed Authority

Dear Mr. (name),

I would like to express my sincere appreciation for your invaluable contribution to the work of the International Seabed Authority over the past four years, particularly in your role as Chairman of the Joint Appeals Board (JAB) and, prior to that, as a member of the Board.

Your exceptional leadership, impartiality, and unwavering dedication to the JAB's mission have been truly commendable. Your vision, wisdom, and commitment to excellence relating to the work of the JAB have been inspirational, and under your



stewardship, the JAB has made remarkable progress in its work. I also wish to acknowledge your profound professionalism and integrity in dealing with the sensitive and complex matters under the review by the JAB.

As part of the ongoing strategic review of key components of the organization, I wish to restructure the secretariat and its internal boards and committees, and this includes re-appointment of new members and chairperson of the JAB. This decision has been made after careful consideration and to reflect a broader vision for the future of the Authority during my tenure as Secretary-General.

I look forward to and welcome your continued engagement and contribution to the work of the Authority in other capacities in the future.

Please accept the assurances of my highest regard.

Yours sincerely,

(name, Secretary-General)

61. On the same date, the Respondent sent similar letters to three other members of the JAB, informing them of her intention to restructure “the Secretariat and its internal boards and committees”, including the reappointment of a new JAB Chair and new members.

62. Chapter XI of the ISA Staff Rules sets out the provisions governing the establishment and functioning of the Joint Appeals Board. In particular, Rule 11.1 provides as follows:

**Chapter XI**

**Joint Appeals Board**

**Rule 11.1**

**Establishment**

(a) There is hereby established a Joint Appeals Board to consider and advise the Secretary-General regarding appeals filed under the terms of staff regulation 11.1.

(b) The Joint Appeals Board shall be composed of:

(i) A Chair appointed by the Secretary-General after consultation with the Staff Committee;

(ii) Members appointed by the Secretary-General;

(iii) An equal number of members elected by the staff.

The number of members shall be determined by the Secretary-General after consultation with the Staff Committee.



(c) The Chair and members of the Joint Appeals Board shall be appointed or elected for two years, shall be eligible for reappointment or re-election and shall remain in office until their successors are appointed or elected.

(d) The Chair may be removed from the Joint Appeals Board by the Secretary-General after consultation with the Staff Committee. A member appointed by the Secretary-General may be removed by the Secretary-General. A member elected by the staff may be recalled by a majority vote of the staff, taken at the initiative of the Staff Committee.

(e) The Joint Appeals Board shall establish its own rules of procedure.

63. The new JAB was reconstituted on 23 January 2025 by ISBA/ST/IC/2025/3, in accordance with Staff Rule 11.1. The Secretary-General appointed a new Chair and three new members, while retaining the members elected by the staff, thereby ensuring both continuity and compliance with the governing rules.

64. Under ISA Staff Rule 11.2, the Appellant bears the burden of demonstrating the existence of a contested administrative decision. She must identify the specific decision challenged, indicate when it was issued and explain its impact on her terms of employment, in accordance with 17.1(b) of the revised JAB RoP. The threshold question of receivability is whether the contested decision constitutes an administrative decision subject to review by the JAB. Only administrative decisions directly affecting the Appellant's terms or conditions of appointment are justiciable *ratione materiae*.

65. Administrative decisions must further be distinguished from regulatory or executive actions of general application, which fall outside the scope of review (See 2018-UNAT-840, para. 61.)

66. The JAB finds that the removal of the former JAB Chair and the appointment of a successor form part of the discretionary authority granted to the Secretary-General by Staff Rule 11.1(b)(i) and (ii), which, by its executive nature did not have an effect on the Appellant's terms of appointment. Such measures constitute managerial decisions of general application and do not amount to administrative decisions of individual application within the meaning of Staff Rule 11.2 without clear evidence of improper motives or procedural irregularity.<sup>1</sup>

67. The JAB recalls the principle established by UNAT that it is not necessary to address each and every claim advanced by a litigant, particularly where claims are manifestly without

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<sup>1</sup> *El Awar* 2019-UNAT-931.



merit. (*Abu Jarbou* 2013-UNAT-292, para. 47. See also *Mizyed* 2015-UNAT-550, para. 35; *Abdullah* 2016-UNAT-623, para. 24; *Negussie* 2016-UNAT-700, para. 19; *Al-Ashi* 2018-UNAT-838, para. 26). Accordingly, the JAB will not consider the Appellant's remaining submissions, apart from the ones addressed in separate judgments.

68. Moreover, since the UNAT functions mainly as a second instance body tasked with reviewing first-instance adjudication, there was no basis to refer the matter for adjudication at this stage. To do so would effectively suppress the two-tier system of administration of justice, undermining its very structure and guarantees.

### **Conclusion**

69. For these reasons, the JAB hereby dismisses Grievance 6 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



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**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