



INTERNATIONAL SEABED AUTHORITY

JOINT APPEALS BOARD

ISBA/JAB/Bourrel/2025

Marie Bourrel-McKinnon

(the "Appellant")

v.

Secretary-General of the International Seabed Authority

(the "Respondent")

Decision of the Panel relating to applications for suspension of action by the Appellant

Background and Procedural History

1. Between 6 January and 29 January 2025, the Appellant submitted six applications to the Joint Appeals Board ("JAB") seeking the immediate suspension of various administrative decisions taken by the Secretary-General of the International Seabed Authority ("ISA"). These included the reclassification and abolition of her post as Chief of Staff and Head of Strategic Planning Unit (D1), her subsequent separation from service, the posting of a vacancy for the "Chef de Cabinet – D2" position, the blocking of access to her ISA emails and documents, the removal of the former Chair of the JAB, and the refusal to pay her entitlements under the ISA Staff Rules and Regulations.



2. On 23 January 2025, the Secretary-General issued ISBA/ST/SGB/2020/1/Amend.3, further amending the Staff Rules of ISA, to significantly enhance the judicial powers of the JAB, which had been strengthened by Amend. 1. Both of these amendments grant the JAB the authority to: a) issue binding orders to the Secretary-General regarding suspension of action; b) decide appeals in disciplinary cases, instead of referring them to the United Nations Appeals Tribunal (“UNAT”) in the first instance; c) exercise full judicial independence in reviewing administrative decisions.
3. Also on 23 January 2025, the new membership of the JAB was established through Information Circular ISBA/ST/IC/2025/3.
4. On 31 January 2025, the Secretariat of the JAB (the “JAB Secretariat”) transmitted the suspension of action applications to the Respondent, with a deadline of 7 February 2025 for a response.
5. Also on 31 January 2025, the JAB Secretariat informed the Appellant that her requests would be considered by the newly constituted JAB in accordance with its rules of procedure.
6. On 2 February 2025, Counsel for the Appellant informed the Secretariat of the JAB that, due to the Respondent’s actions of unlawfully dismantling the former JAB, the Appellant’s urgent requests for suspension of action had not been processed, forcing his client to leave Jamaica within a matter of days following her unlawful termination. He also informed that the UNAT had been seized of the matter and had ordered the ISA to file its comments, and that the new JAB has no jurisdiction to consider her requests.
7. On 3 February 2025, a request for clarification was sent by the JAB Secretariat to the Appellant as to whether she was formally withdrawing her requests for suspension of action before the JAB.
8. Also on 3 February 2025, Counsel for the Appellant reiterated that a decision by the UNAT on her motion for interim relief would be instructive for both the JAB and the Appellant in determining the way forward, without prejudice to a future application on the merits of the matter.
9. Also on 3 February 2025, the Secretariat of the JAB, on behalf of the new Chair, sought clarification from the Appellant regarding her requests for suspension of action, as she simultaneously argued that the JAB lacks jurisdiction while implying that it should continue to



consider the case. To ensure procedural clarity and prevent jurisdictional conflicts, the Appellant was asked to confirm i) whether she wished to suspend the JAB proceedings pending the UNAT decision; ii) identify the legal basis for the JAB to continue despite her jurisdictional challenge; and iii) whether she intended to formally withdraw her requests or pursue parallel proceedings before both bodies.

10. On 5 February 2025, the Appellant clarified that she was neither requesting that the JAB suspend its proceedings nor was she requesting that the JAB consider her claims independently, asserting that the urgent requests for suspension of action were initially filed before the former JAB, which had begun reviewing them before being dismantled by the Respondent. She contends that the new JAB is not seized of the matter, as it is now before the UNAT. She declined to withdraw her requests, maintaining that they were never before the new JAB.

11. Additionally, she raised concerns about procedural irregularities, including alleged ex parte communications between the JAB and ISA officials, delays in notifying the Respondent of her applications, and the Respondent's actions in dissolving the former JAB. She also requested disclosure of communications between the JAB and key ISA officials, questioned the legitimacy of the new JAB constitution, and raised concerns about potential conflicts of interest, particularly regarding ISA legal representation.

12. Also on 5 February 2025, the new Chair of the JAB constituted a Panel to consider the application for suspension of action, after obtaining the consent of the respective Panel members.

13. On 7 February 2025, the Respondent requested an extension until 11 February 2025 for submitting a response to the applications for suspension of action, citing requirements to respond simultaneously to two UNAT orders, deriving from motions from the Appellant and other Appellants, for interim measures by 7 February 2025 and the resulting workload on the small legal team.

14. On 10 February 2025, the Chair of the Board noted the Appellant's contention that the JAB lacks jurisdiction and that the UNAT decision will take precedence over the JAB decision. Notwithstanding the Appellant's concerns regarding the JAB's jurisdiction, and taking into account the recent amendment to the Staff Rules, the recent appointment of the new Chair and Members of the JAB, the recent constitution of the Panel, as well as the complexity and volume



of the case, and in the interest of ensuring a thorough and properly considered assessment of the issues, the requested extension until 11 February 2025 was granted exceptionally.

15. On 11 February 2025, the Respondent filed her reply to the requests for suspension of action, with annexes.

16. Also on 11 February 2025, the JAB Secretariat transmitted the reply of the Respondent together with its annexes for the Appellant to comment on by 20 February 2025, to which the Appellant did not reply.

17. Also on 13 February 2025, the JAB Secretariat transmitted documents relating to the alleged restructuring and reclassification of roles within the Secretariat, which had been submitted by the Respondent at the direction of the JAB, to the Appellant to comment on by 20 February 2025, to which the Appellant did not reply.

Summary of the Application for Suspension of Action

18. The six submissions (dated 6 January 2025, 9 January 2025, 10 January 2025, 17 January 2025, 20 January 2025, and 29 January 2025) were made by the Appellant to the JAB of the ISA, challenging a series of administrative decisions allegedly taken unlawfully by the Respondent.

19. The 6 January 2025 submission concerns interference with an investigation into serious misconduct allegations. The Appellant filed formal complaints on 24 November 2024 against two senior officials for harassment, abuse of authority, retaliation, and gender discrimination. An independent fact-finding panel was set up by the former Secretary-General (the former Secretary-General) on 6 December 2024, which, after a preliminary assessment on 23 December 2024, recommended urgent action. After the departure of the former Secretary-General on 31 December 2024, on 3 January 2025, the new Secretary-General assigned both individuals to key senior roles. This decision was allegedly made without consulting the Senior Management Board or the Appellant.

20. The Appellant argues that these assignments compromised the independence of the investigation, undermined administrative law principles, violated her rights as a complainant,



and posed risks to the workplace environment. She also claims this was a retaliatory act against her and that there have been instances of retaliation since the complaints were filed, including threats made by a senior official. She requests the suspension of these appointments, the development of a retaliation prevention plan, and the continuation of the investigation by the panel appointed in December 2024. The Appellant also requested protective measures and remote work due to workplace deterioration. She asserts that the Respondent failed to uphold the duty of care, exposing the Authority to potential liability.

21. The 9 January 2025 submission concerns the reclassification and abolition of the Appellant's post. On 6 January 2025, the Administrative Instruction on Staff Selection (ISBA/ST/AI/2023/3) was amended, allegedly allowing the abolition of the Appellant's post without due process. On 7 January 2025, another senior official informed the Appellant that her post "no longer exists," leading to the termination of her appointment (originally fixed until 31 December 2028) with one month's salary. The Appellant claims that this was an unlawful dismissal disguised as restructuring, violating ISA regulations and international administrative law. She requests the suspension of the reclassification decision, her reinstatement, and the halt of any recruitment for her former post.

22. The 10 January 2025 submission concerns the suspension of recruitment for the "Chef de Cabinet – D2" post. On 9 January 2025, the ISA posted a vacancy for the position, which the Appellant argues was identical to her former role. She asserts that the reclassification was a pretext to replace her with another candidate without following due process. The Appellant requests the suspension of recruitment for this post pending resolution of her case.

23. The 17 January 2025 submission concerns the blocking of access to emails, cloud data, and physical premises. On 8 January 2025, the Appellant was blocked from her ISA email, cloud storage, and office access. She argues that this hindered her ability to appeal her termination and prevents her from accessing necessary documents in order to prepare her case, violating her due process rights. She requests the restoration of her access to ISA systems and the suspension of all contested decisions.

24. The 20 January 2025 submission concerns the removal of the Chair of the Joint Appeals Board. The Appellant learned on 15 January 2025 that the former Chair of the JAB had been removed without prior notice. She asserts that this interfered with the neutrality of the JAB, obstructed her access to justice, and was retaliatory in nature. She requests the suspension of



this decision, disclosure of the decision-making process, and clarification on the appointment of a new JAB Chair.

25. The 29 January 2025 submission concerns the denial of entitlements and separation benefits. The Appellant challenges the Respondent's refusal to pay her contractual entitlements, including salary for January 2025, relocation allowances, education grants, and medical coverage. She argues that this decision is arbitrary, unlawful, and intended to financially coerce her into leaving without due process. She requests the suspension of this decision and the immediate payment of her entitlements.

Summary of the Reply of the Respondent

26. In her replies dated 11 February 2025, the Respondent requested dismissal of all six applications, arguing that they failed to meet the legal criteria for suspension of action under ISA Staff Rule 11.2(c)(ii).

27. The Respondent contended that the abolition of the Appellant's post and her separation from service had already been implemented, rendering the request moot. She further argued that the posting of the "Chef de Cabinet – D2" position was a lawful restructuring measure aligned with ISA's organisational needs. Regarding the denial of email and office access, the Respondent maintained that it followed standard procedures for separated staff members and did not constitute an appealable administrative decision.

28. The Respondent also denied that any investigation had been obstructed, asserting that the preliminary steps initiated by the former Secretary-General did not amount to a formal investigation. She argued that the removal of the former JAB Chair was within her authority and aimed at strengthening the JAB's impartiality. Finally, she contended that the Appellant's separation entitlements had not been denied and that any delay resulted from her failure to submit the required separation documentation.



Considerations of the JAB

29. The Panel of the Joint Appeals Board has been constituted to consider the application for suspension of action filed on 7 January 2025 by the Appellant pursuant to Rule 11.2(c) of the Staff Rules of ISA.

30. The Appellant challenges the following administrative decisions. First of all, the reclassification and abolition of her post as Chief of Staff and Head of Strategic Planning Unit (D1), leading to her separation from service, effective 7 January 2025. Second, the posting of a vacancy for the "Chef de Cabinet – D2" position, which she contends is identical to her abolished post. Third, the blocking of access to her ISA emails, cloud storage, and office premises, preventing her from preparing her appeal and managing personal administrative matters. Fourth, the alleged obstruction of the investigation into her complaints of harassment and retaliation against two senior officials. Fifth, the removal of the former JAB Chair without prior notice, which she claims undermined the neutrality of the proceedings. Sixth, the refusal to pay her entitlements under the ISA Staff Rules, including salary, relocation allowances, education grants, and medical coverage.

31. The Appellant requests the immediate suspension of these decisions, reinstatement to her former post, restoration of access to ISA systems, protection against retaliation, and the payment of all outstanding entitlements.

32. The JAB will determine the six applications for suspension of action in a joint manner.

General Legal Framework and the Transitional Period:

The Role of the JAB

33. As stated, ISBA/ST/SGB/2020/1/Amend.3, issued on 23 January 2025, amended the Staff Rules of ISA to significantly enhance the judicial powers of the JAB, which had already been strengthened by Amend. 1. These amendments grant the JAB the authority to: (a) issue binding orders to the Secretary-General regarding suspension of action; (b) decide appeals in disciplinary cases, instead of referring them to UNAT in the first instance; and (c) exercise full judicial independence in reviewing administrative decisions.



34. The consolidated amendments to the Staff Rules of the ISA introduce key changes that enhance JAB judicial authority in order to bring these closer in line with the internal justice system of the United Nations. Specifically, these amendments: (i) affirm the JAB’s full judicial authority under Amendments 1 and 3; (ii) empower the JAB to order, rather than merely recommend, the suspension of action in accordance with Amendment 3; (iii) remove the Secretary-General’s final decision-making power over appeals; (iv) reinforce the binding nature of JAB decisions to ensure compliance; and (v) provide greater clarity regarding procedures for appeals, panel composition, and representation.

35. These changes align with international standards, particularly Article 2(10) of the UNAT Statute, as also reflected in its jurisprudence¹. Under a special agreement, concluded on 11 February 2010, the ISA accepted the jurisdiction of the UNAT. Accordingly, the JAB, akin to the United Nations Dispute Tribunal (“UNDT”) within the United Nations internal justice system, must possess the authority to issue binding decisions rather than mere recommendations, ensuring the effective functioning of the administrative justice system.

36. However, while the JAB has been granted judicial authority and shares similarities with the UNDT, it remains distinct from it in a fundamental way: it is not a first-instance judicial body within the United Nations internal justice system. Instead, the JAB functions as an adjudicatory mechanism within the ISA, operating under a separate legal framework and jurisdiction. This distinction is crucial in understanding why the JAB must exercise judicial independence similar to the UNDT while not being bound by all of the same structural and procedural constraints. The reference to the JAB being “akin” to the UNDT reflects the requirement that it must uphold principles of fairness, impartiality, and judicial independence in administrative decision-making, consistent with international standards. However, unlike the UNDT, which operates as an organ of formal adjudication within the United Nations justice system, the JAB serves as the principal mechanism for resolving employment disputes at the ISA level before recourse to the UNAT.

37. This distinction is particularly relevant in response to the concerns raised regarding the appointment of the Chair and other newly appointed members of the JAB. The Appellant cited

¹ See, v.g., 2021-UNAT-1117 (*Fogarty*); 2021-UNAT-1089 (*Nguyen*); and 2022-UNAT-1192 (*Webster*).



the UNDT Statute in arguing that these appointments were improper, but the correct reference should have been to Article 3.6 of the UNAT Statute, which states:

A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post, for a period of five years following his or her term of office.

38. In this regard, it should be noted that the appointments in question were made following the relevant amendments to the Staff Rules of the ISA, which conferred judicial authority upon the JAB, allowing it to issue binding determinations rather than mere recommendations. Consequently, the nature of these roles falls within the scope of judicial appointments rather than administrative or staff positions. Furthermore, Article 3.6 of the UNAT Statute applies strictly to appointments within the United Nations system. Given that the ISA operates under a separate legal framework, and that JAB members are not United Nations staff members, the restriction in Article 3.6 does not extend to appointments within the JAB. The purpose of this prohibition is to prevent former UNAT judges from assuming administrative or staff roles within the United Nations, not to preclude their participation in independent judicial bodies of international organisations operating under distinct mandates.

39. Accordingly, the concerns raised regarding the legitimacy of the JAB composition do not take into account the legal distinction between the United Nations internal justice system and the ISA independent adjudicatory framework. The recent amendments to the ISA Staff Rules ensure that the JAB functions with the necessary judicial independence and authority, in accordance with international legal standards.

40. On another note, the JAB notes that while there was a delay in processing the request for suspension of action during the transitional period, this does not constitute a violation of Rule 14 of the Rules of Procedure of the JAB. Rule 14 states that the Panel shall "normally" be constituted within one week of receiving the request. However, the transitional period, marked by structural adjustments to the JAB, was not a normal situation but rather an exceptional circumstance. Given the nature of these changes, the usual time frame could not be strictly adhered to.

41. After having been informed of the reconstitution of the JAB on 31 January 2025, the Appellant communicated with the JAB Secretariat on 3 February 2025, informing that she had



submitted a request for interim relief before UNAT, in response to the JAB's delay in handling the request for suspension of action. The Appellant expressed her expectation that the matter would now be handled by UNAT, rather than the JAB. She also clarified that her request before the JAB remained valid and did not prejudice her right to challenge the contested decision through the internal mechanisms of the ISA.

42. The Panel recognizes the concerns expressed by the Appellant regarding the timeliness of this decision but notes that the leadership transition does not hinder the JAB's ability to address the Appellant's claims. The JAB was reconstituted with a new Board, appointed on 23 January 2025, the same date of Amendment 3 to the ISA Staff Rules. The Board is now in its full capacity to issue the present decision after having respected the prescribed time limits and guaranteed equal treatment to the parties.

43. Notwithstanding the above, the JAB acknowledges the delay of the Secretariat in acknowledging receipt of the requests for suspension of action during the transitional period, which created the impression of a procedural vacuum for the Appellant. This delay also pertains to the lack of timely information regarding the restructuring of the JAB. The JAB takes note of these concerns and suggests that such delays be avoided by the Secretariat in the future to ensure the timely handling of proceedings and information by the Secretariat.

44. The Panel will determine the applications for suspension of action based on its own competence, independent of the UNAT jurisdiction, which falls exclusively within the purview of the UNAT itself, in accordance with Article 2(10) of the UNAT Statute.

45. In this regard, procedural deadlines are not determined by the position of the parties but are assigned by the JAB in accordance with its procedural rules. It is for the Chair to establish the applicable timeframes for submissions, taking into account procedural fairness, efficiency, and the need to ensure an orderly process. The initiation of proceedings before the UNAT does not automatically suspend or negate obligations before the JAB unless explicitly ordered by the competent judicial authority. Therefore, any further procedural directions will be issued by the JAB in line with its mandate and applicable procedural rules.



Specific Legal Framework: Requests for Suspension of Action

46. Rule 11.2(c) of the Staff Rules of the ISA, as it now reads, establishes in relevant part that the filing of a request for administrative review or an appeal before the JAB does not automatically suspend action on the contested decision. However, the staff member concerned may request a suspension of action by submitting a written request to the JAB, demonstrating that: (a) the contested decision has not been implemented, and (b) its implementation would result in irreparable injury to the appellant. Upon receipt of such a request, a panel of the JAB shall be promptly constituted and shall act expeditiously. If the above conditions are met, the panel may order the Secretary-General to suspend action on the contested decision, and the Secretary-General is legally bound to comply.

47. Rule 11.2(d) and (e) further regulate the procedural aspects of appeal, including: (a) the formal filing of appeals and requests for suspension of action; (b) the composition of JAB panels, which include a Chair, a member appointed by the Secretary-General, and a member elected by the staff; and (c) exclusions for panel membership, such as disqualifying any individual who has participated in prior conciliation efforts.

48. In the present case, the Panel will not address the substance of the claims but will restrict its assessment to the requests for suspension of action.

Contested Decisions and Relief Sought

49. The Appellant contests several decisions of the Respondent, including the reclassification and abolition of her post as Chief of Staff and Head of Strategic Planning Unit (D1), resulting in her subsequent separation from service. She also challenges the publication of a vacancy for the "Chef de Cabinet – D2" position, which she alleges is identical to her abolished post. Additionally, the Appellant contests the blocking of her access to ISA emails and documents, claiming that this action prevented her from adequately preparing her legal case. Further, she alleges that the Respondent obstructed an investigation into harassment and retaliation complaints she had previously filed against senior ISA officials.

50. The Appellant's Counsel has repeatedly asserted that the JAB lacks jurisdiction over the matter, as the case has been escalated to the UNAT. However, despite this assertion, the



Appellant's Counsel has simultaneously declined to formally withdraw the suspension requests before this Board.

Request for Suspension of Action

51. ISA Staff Rule 11.2(c)(ii) requires that a request for suspension of action must meet two conditions: (a) the contested decision has not been implemented; (b) its implementation would result in irreparable injury to the Appellants. The Panel must first determine whether the contested decision has already been implemented.

52. The Panel first addresses the termination of the Appellant's appointment. The Appellant's separation from service took effect on 7 January 2025. Since the contested decision has already been implemented, the first condition for suspension of action is not met. Moreover, the Appellant's claims of financial hardship and career disruption do not constitute "irreparable harm" under ISA Staff Rule 11.2(c)(ii), as such harm can be compensated through financial remedies.

53. On the issue of access to ISA systems, the denial of access followed the Appellant's separation from service. As the separation has already taken effect, the request for suspension is no longer applicable.

54. In the Mason case², the JAB determined that suspending action was necessary to prevent mootness of the appeal. Here, however, the remedies sought by the Appellant are no longer viable as the actions have already been executed. Given that the first condition under Rule 11.2(c)(ii), that the decision must not yet have been implemented, is not met, there is no legal basis to suspend any action that has already taken effect.

55. Regarding the vacancy for the "Chef de Cabinet – D2" position, the Panel notes that in the Mason case, a halt to recruitment and restructuring was necessary to preserve the substance of the appeal because the appellant's position was still in dispute. However, in this case, the Panel finds that the Appellant's former post has been abolished and restructured and her

² ISBA/JAB/MASON/2024.



appointment has been terminated. As of the date of this decision, the prima facie information available to the JAB indicates that the Appellant's position no longer exists. According to the Respondent's reply and the evidence provided, several positions, including the one to which the Appellant was previously appointed, have already been restructured and reclassified, which leads to the request for suspension in this regard being moot.

56. Concerning the alleged obstruction of the investigation, the Panel finds no prima facie evidence of an active investigation obstructed by the Respondent so as to justify suspension of action.

57. With respect to the removal of the former JAB Chair, the Panel concludes that the removal and reconstitution of the JAB occurred in accordance with the amended Staff Rules. As discussed previously in this judgment, no procedural irregularity warranting suspension of action has been demonstrated.

58. Finally, regarding the denial of entitlements, the Appellant's separation entitlements have not been formally denied, no prima facie evidence of irreparable harm has been presented to the JAB.

59. The Panel acknowledges the Appellant's concerns regarding harm, particularly the career and financial consequences she may have faced due to the separation. However, since the primary contested decision has already been executed, the remedy of suspension of action is no longer applicable. In situations like the present case, where suspension of action is no longer an available option, another alternative remedy might be pursued, should the Appellant choose to do so.

Conclusion

60. The Panel determines that the requests for suspension of action must be **DISMISSED** because: (a) the contested decisions, namely the abolition of the Appellant's post and the termination decision, the recruitment for the new position, and the denial of access have already been implemented; (b) there is no action left to suspend under ISA Staff Rule 11.2(c)(ii); (c) there are no procedural irregularities to be declared.



61. This determination on the application for suspension of action does not preclude the Appellant from pursuing future appeals regarding her claims, in a separate manner, should she choose to do so.

Dated 25 February 2025

Judge Martha Halfeld Furtado de Mendonça Schmidt

Panel Chair

Ambassador Gina Guillen-Grillo

Panel Member

Ambassador Johnny Ibrahim

Panel Member