

Order on request for extension of time limit to respond

Marie Bourrel-McKinnon (the "Appellant")

VS

Secretary General of the International Seabed Authority (the "Respondent")

1. Between 9 January and 29 January 2025, Ms. Marie Bourrel-McKinnon submitted six applications to the Joint Appeals Board (JAB) seeking the immediate suspension of various administrative decisions taken by the Secretary-General. These include *inter alia* the reclassification of her post and her separation from service; the obstruction of an investigation into misconduct allegations which she had filed; the blocking of access to her emails, cloud storage, and physical office; the removal of the former Chair of the JAB, and the refusal to pay her entitlements under the Staff Rules and Regulations of the Authority.
2. The Appellant seeks the following remedies in her requests for suspension of action: a) suspension of the reclassification and termination decision; b) suspension of the recruitment for "Chef de Cabinet – D2"; c) restoration of access to ISA emails and documents; d) protection against retaliation and obstruction of investigation; e) recognition of procedural irregularities; f) costs and further remedies. These remedies aim to reverse her termination, prevent the filling of her former position, restore her access to crucial documents, and ensure that her complaints are properly investigated.
3. On 23 January 2025, the Secretary-General issued SBA/ST/SGB/2020/1/Amend.3, further amending the Staff Rules of the International Seabed Authority (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. These changes are in line with international standards, specifically Article 2(10) of the Statute of the United Nations Appeals Tribunal, as revealed by its jurisprudence, which affirms the necessity of judicial bodies accepting jurisdiction of the administrative system to have the authority to issue binding decisions rather than mere recommendations.
4. Also on 23 January 2025, the new membership of the JAB was established through Information Circular [ISBA/ST/IC/2025/3](#).
5. On 31 January 2025, the Secretary of the JAB signed and transmitted a letter to the Secretary-General, requesting a response by 7 February.
6. Also on 31 January 2025, the Secretary of the JAB sent a letter to the Appellant, informing that her requests of 6 applications from 9-29 January 2025 would be considered by the newly constituted JAB in accordance with its rules of procedure.
7. On 2 February 2025, the Counsel for the Appellant informed the Secretariat of the JAB that, due to the Secretary General'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 has been seized of the matter and has ordered the ISA to file its comments, and that the new JAB has no jurisdiction to consider her requests.

8. On 3 February 2025, the Secretary of the JAB requested clarification from the Appellant's Counsel on whether she was formally withdrawing her current requests for suspension of action before the JAB.
9. 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.
10. Also on 3 February 2025, the Secretary 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.
11. On 5 February 2025, the Appellant clarified that she is neither requesting that the JAB suspend its proceedings, nor is she requesting that the JAB consider her claims independently, asserting that the urgent Requests for Suspension were initially filed before the former JAB, which had begun reviewing them before being dismantled by the Secretary-General. 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. Additionally, she raised concerns about procedural irregularities, including alleged *ex parte* communications between the JAB and ISA officials, delays in notifying the Secretary-General of her applications, and the Secretary-General'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. On the same date, the new Chair of the JAB constituted a Panel for the case relating to the requests for suspension of action, after obtaining the consent of the respective Panel members.
13. On 7 February 2025, the Secretary-General requested an extension until 11 February 2025 for submitting responses to the applications for suspension of action citing requirements to respond simultaneously to two UNAT orders, deriving from motions filed by appellants, for interim measures by 7 February 2025 and the resulting workload on the small legal team.
14. The Rules of Procedures of the JAB establish no provision for an extension of the time limit for the Secretary-General to submit their reply in the case of an application for suspension of action.
15. The Panel for the present appeal for suspension of action has been formed, and according to Rule 15(1) of the Rules of Procedure, the Panel may decide regardless of any reply from the Secretary-General.
16. In accordance with correspondence with the Secretary of the JAB, the Appellant has stated that she believes that the JAB lacks jurisdiction and that the UNAT decision will take precedence over the JAB decision.

17. Notwithstanding the Appellant's concerns regarding the JAB jurisdiction, and taking into account the recent relevant review in 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 well-considered assessment of the issues, the requested extension for a short period is granted exceptionally.
18. To address the Applicant's request, it is confirmed that the new Chair of the JAB previously served as a judge of the United Nations Appeals Tribunal (UNAT).
19. The Panel will resolve all outstanding issues and requests.

ORDER

20. For the aforementioned reasons, the Secretary-General may file her reply about the requests for suspension of action no later than 11 February. No further extensions will be allowed.

Issued by:

A photograph of a handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read 'M. Halfeld'.

Judge Martha Halfeld Furtado de Mendonça Schmidt

Chair

Joint Appeals Board

International Seabed Authority

10 February 2025