



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2026-UNAT-1679

Marie Bourrel-McKinnon

(Appellant)

v.

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

(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Leslie F. Forbang Judge Gao Xiaoli
Case Nos.:	2025-2083, 2025-2085, 2025-2086 & 2025-2087
Date of Decision:	25 June 2026
Date of Publication:	22 July 2026
Registrar:	Juliet E. Johnson

Counsel for Appellant: Alexandre Philippe Haines

Counsel for Respondent: Steven Dietrich/Talatu Akindolire

JUDGE GRAEME COLGAN, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) is seized of separate appeals by Marie Bourrel-McKinnon, the former Chief of Staff and Head of Strategic Planning Unit (D-1) of the International Seabed Authority (ISA) filed on 14 and 17 November 2025, respectively, against the following Decisions of the ISA Joint Appeals Board (JAB or Appeals Board or Board), all issued on 17 September 2025:

- Judgment [Decision] of the Board relating to Grievance 1 submitted by the Appellant, *Temporary designation of officers-in-charge of OLA and OAS* (JAB Decision 1) (assigned UNAT Case No. 2025-2083);
- Judgment [Decision] of the Board relating to Grievance 6 submitted by the Appellant, *Grievance Concerning removal of the former JAB Chair* (JAB Decision 6) (assigned UNAT Case No. 2025-2085);
- Judgment [Decision] of the Board relating to Grievance 4 submitted by the Appellant, *Alleged obstruction of misconduct investigation* (JAB Decision 4) (assigned UNAT Case No. 2025-2086); and
- Judgment [Decision] of the Board relating to Grievance 5 submitted by the Appellant, *Denial of access to Email, Cloud and Office* (JAB Decision 5) (assigned UNAT Case No. 2025-2087).

2. For the reasons set out below, the appeals of Ms. Bourrel-McKinnon are granted in part, the JAB Decisions are quashed, and the matters are remanded for rehearing consistent with this Judgment.

Facts and Procedure

3. On 24 November 2024, Ms. Bourrel-McKinnon filed with ISA two formal complaints of abuse of authority, harassment, retaliation, and gender discrimination against ISA's Director of the Office of Administrative Services (OAS), and a Budget and Oversight Officer within OAS, respectively.¹

4. On 6 December 2024, the now former ISA Secretary-General informed Ms. Bourrel-McKinnon that he had appointed an investigative panel to examine the allegations contained in her complaints.²

¹ JAB Decision 1, para. 4.

² *Ibid.*, para. 6.

5. By e-mail dated 30 December 2024, the former Secretary-General confirmed that he had included Ms. Bourrel-McKinnon's correspondence, his response, the preliminary report of the investigation panel and his own confidential notes to file on all matters relating to the appointment of the investigation panel in his handover notes to the incoming Secretary-General. He also noted that he had copied Human Resources and the Office of Legal Affairs (OLA) on his e-mail requesting that it serve as "a firm instruction to proceed to the engagement of the Panel as a matter of urgency".³

6. On 1 January 2025, the newly appointed ISA Secretary-General assumed office.⁴

7. On 3 January 2025, the Secretary-General issued an Interoffice Memorandum announcing the decision to designate the two ISA staff members who were the subjects of Ms. Bourrel-McKinnon's complaints dated 24 November 2024, as Officers-in-Charge (OiCs) of OLA and OAS.⁵

8. On 6 January 2025, the Secretary-General circulated ISBA/ST/AI/2023/3/Amend.2 amending its Annex (Procedures for classification and reclassification of posts) to allow the Secretary-General to directly authorize the reclassification of a position without requiring prior submission in accordance with standard classification procedures "[o]n an exceptional basis" "during periods of office restructuring or reform."⁶

9. By Inter-Office Memorandum dated 7 January 2025 from the OiC for OAS, Ms. Bourrel-McKinnon was notified that her appointment was terminated because her post had been reclassified and restructured into a different role, effective 6 January 2025.⁷

10. On 5 March 2025, Ms. Bourrel-McKinnon filed an appeal to the JAB challenging the temporary designation of officers-in-charge of OLA and OAS.⁸

11. On 14 March 2025, Ms. Bourrel-McKinnon filed an appeal to the JAB challenging the Administration's decision not to grant her access to her e-mails, "the Cloud" and her office

³ "Evidence 13" attached to Ms. Bourrel-McKinnon's request for administrative review of the temporary designation of officers-in-charge of OLA and OAS.

⁴ JAB Decision 5, para. 4.

⁵ *Ibid.*, para. 7.

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*, para. 9.

⁸ JAB Decision 1, para. 20.

following the termination of her appointment.⁹ That same day, she also filed an appeal to the JAB alleging an obstruction by the Secretary-General of an investigation into her complaints of misconduct.¹⁰

12. On 18 March 2025, Ms. Bourrel-McKinnon filed an appeal to the JAB in relation to the removal of the former Chair of the JAB.¹¹

13. By letter dated 9 January 2025, the Secretary-General notified the (now 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.¹²

14. On 23 January 2025, the Secretary-General issued Information Circular ISBA/ST/IC/2025/3 by which she announced the new membership of the JAB.¹³

15. On 28 March 2025, the JAB Secretariat notified Ms. Bourrel-McKinnon that her appeals would be heard by the full Board, as they were substantively similar to other pending appeals in context and compensation sought. To ensure consistency and avoid conflicting outcomes, the JAB Chair, pursuant to Rule 28 of the JAB Rules of Procedure as revised on 4 March 2025 (JAB Rules) and what were described as established tribunal practices, decided to hear these appeals together.¹⁴

16. On 17 September 2025, the JAB issued all four impugned Decisions.

17. In all four JAB Decisions, the Appeals Board justified the full composition of the JAB Panel as follows:¹⁵

... 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 for ensuring collective responsibility in its determinations.

... 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,

⁹ JAB Decision 5, para. 12.

¹⁰ JAB Decision 4, para. 20.

¹¹ JAB Decision 6, para. 16.

¹² *Ibid.*, para. 8.

¹³ *Ibid.*, para. 11.

¹⁴ *Ibid.*, para. 19; JAB Decision 1, para. 19; JAB Decision 4, para. 24; JAB Decision 5, para. 16.

¹⁵ JAB Decision 1, paras. 66 to 68; JAB Decision 4, paras. 62 to 64; JAB Decision 5, paras. 55 to 57; JAB Decision 6, paras. 53 to 55.

Rule 28 of the [JAB Rules] 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.

... 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 [r]evised [JAB Rules].

18. All four JAB Decisions dismissed the appeals as not receivable.
19. Ms. Bourrel-McKinnon has appealed to the Appeals Tribunal against the JAB Decisions.¹⁶
20. By Order No. 666 (2026) dated 24 April 2026, the Appeals Tribunal consolidated Case Nos. 2025-2083 and 2025-2086 for all purposes.
21. By Order No. 681 (2026) dated 19 June 2026, the Appeals Tribunal further consolidated the appeals filed in Case Nos. 2025-2083, 2025-2085, 2025-2086 and 2025-2087 for all purposes.

Submissions

22. Each of the appeals raises numerous allegations of errors of fact, law and procedure.
23. There is, however, a fundamental issue affecting all four now consolidated appeals by Ms. Bourrel-McKinnon, which issue is addressed by this Judgment. As will be discussed in detail below, it is a preliminary jurisdictional issue which potentially precludes the Appeals Tribunal from considering, deliberating on and determining the arguments presented by the parties on appeal. Because this Judgment does not turn on the parties' arguments and the Appeals Tribunal is precluded from considering them, we will not summarize the parties' submissions as we usually do.
24. Suffice it to say that, as to remedies, Ms. Bourrel-McKinnon asks that the Appeals Tribunal reverse all four Decisions, decide the matters itself, and award different types of compensation, as

¹⁶ See above, para. 1.

well as legal costs. Ms. Bourrel-McKinnon also requests that the Appeals Tribunal hold an oral hearing.

25. The Secretary-General submits that the JAB did not err in deciding the appeals by a seven-member Panel. She asks that the Appeals Tribunal affirm the JAB Decisions, dismiss the appeals and find them frivolous or devoid of merit.

Considerations

26. There is a fundamental issue affecting all four appeals by Ms. Bourrel-McKinnon which is a preliminary jurisdictional issue relating to the lawful constitution of the JAB Panels that delivered Decisions that are the subject of the four appeals. Questions about the power in law to determine such fundamental jurisdictional questions can and must be determined preliminarily, even on final appeals as these are.

27. We disagree with and reject the Secretary-General's assertion that the JAB Panels were properly constituted and competent to consider and decide these cases. For convenience, we will refer to one of the JAB's Decisions¹⁷ in these cases on appeal to exemplify the issue which is, however, common to all the now-consolidated appeals before us. The following are our reasons for this conclusion.

28. The Secretary-General argues that the JAB Rules enable it to "[assume] jurisdiction to review the matter with a full panel". At paragraphs 62 and following of JAB Decision 4, the JAB concluded in relation to what it titled "*Full Board Composition Justification*" that "Staff Rule 11.2(e)(i) provides for a panel to ordinarily hear an appeal"; its JAB Rule 28 allows for the whole Board to decide cases; this reflects the practice in other international administrative tribunals which "reinforc[ed] the legitimacy" of doing so in this case; and, the decision by the full Board was "justified and fully in line with the applicable Staff Rules and the [JAB] Rules". We disagree with each of these statements.

29. In these four cases and in addition to the Chair, the Panel consisted of three staff representative appointees and three Secretary-General appointees. Staff Rule 11.2(e)(i) requires the Chair to appoint a Panel for a case consisting of "*A panel chair*, which shall be either the Chair

¹⁷ JAB Decision 4.

or one of the members of the Board”, “*A member selected from among those appointed by the Secretary-General*”, and “*A member selected from among those elected by staff*”.¹⁸

30. While there are subsequent Rules limiting the ability of some members to be appointed to a Panel, there is no provision for a Panel to consist of other than, i.e. more or fewer than, three members, let alone as occurred in this case, all the seven members of the Board. There is no qualification of this requirement, for example by use of the word “ordinarily” as the JAB concluded was the case. The Staff Rule uses the singular “A member”. Unlike, for example, the Statutes governing the UNAT and the United Nations Dispute Tribunal which do allow for more than the usual number of Judges to decide cases in specified instances, no such provision exists under the Staff Regulations and Rules in the case of the JAB. International tribunals, including the JAB, are creatures of statute or other similar founding documents and can operate only within their statutory confines. Individual tribunals cannot make or rely for their jurisdiction on procedural rules overriding those boundaries without express authority to do so, which was not given to the JAB here.

31. The position is further complicated and confused by the JAB Rules themselves which, in addition to purporting to introduce at Rule 28 a new power to constitute a “Whole Board” Panel, retain definitions of terms in Rule 1 as follows: “*Members of the Panel*’ shall mean the three persons on the Panel which is constituted under Staff Rule 11.2(e) to consider an appeal, including a Panel Chair, who shall be either the Chair or one of the members of the Board, a Member selected from among those appointed by the Secretary-General and a Member selected from among those elected by Staff.” “*Panel*’ means the three-person body constituted under Staff Rule 11.2(e) to consider an appeal.” In addition, Rule 2 (*Interpretation*) provides: “These rules of procedure shall be read together with the staff regulations and the staff rules of the [International Seabed] Authority.”

32. It is simply not possible to read the conflicting provisions in Rule 28 with Staff Rule 11.2(e)(ii) together to empower “Whole Board” Panels, thus reinforcing the unconstitutionality of the Panels appointed to consider and decide these cases.

33. There is a normative hierarchy that the UNAT has long, and again recently, recognised. While many of the cases involve the relationship between Staff Regulations/Rules and Administrative Instructions (the latter must conform to and cannot contradict the former), the

¹⁸ Our emphases.

principle is the same as between Staff Regulations/Rules and the JAB's Rules of Procedure. Indeed, in relation to ISA itself, the UNAT in 2023 described the Staff Rules as ISA's "highest-ranking instrument on staff relations".¹⁹ We concur with this statement as modified by our footnote.

34. These hierarchical principles have been re-stated, not in a Staff Regulations or Rules/Tribunal Rules of Procedure inter-relationship but rather, by analogy, in a Staff Regulations or Rules/Administrative Instructions context. That restatement has been made most recently in *Opero* issued by the UNAT at this summer session of the Appeals Tribunal and is reflective of such previous Judgments as *De Aguirre* and *Couquet*.²⁰

35. In *Opero* we say: "we held in *De Aguirre* that 'an administrative issuance may not conflict with the applicable Staff Regulation or Rule which it implements'".²¹ In line with the same principle, we found in *Couquet* that in case of normative conflict, "the staff rule would take precedence over the administrative issuance".²² In *Opero*, we opined that "this form of incidental judicial review ensures the respect for the rule of law which necessitates the exercise of some level of judicial scrutiny within the defined powers attributed to the Tribunals"²³ and that while "the Tribunals are not empowered to strike down the inconsistent lower norms",²⁴ "they are empowered to rescind the individual administrative decision made pursuant to the inconsistent lower norm. Stating otherwise would lead to the aberrant result that Tribunals could breach a higher norm ... in favour of an inconsistent lower norm".²⁵

36. Put simply in these appeals before us, in constituting JAB Panels, the JAB must comply with the Staff Regulations and Rules. It cannot in law rely on the JAB Rules that conflict with the Staff Regulations and Rules: the former must yield to the latter.

¹⁹ *Andrew K. Webster v Secretary-General of the International Seabed Authority*, Judgment No. 2023-UNAT-1369, para. 54. This passage is erroneous as Staff Regulations are superior to Staff Rules in this hierarchy, but that error and the difference are not material to the ranking of the Rules of Procedure which are hierarchically below both Staff Regulations and Rules.

²⁰ *Couquet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-574, para. 39.

De Aguirre v. Secretary-General of the United Nations, Judgment No. 2016-UNAT-705, para. 44.

²¹ *Elizabeth Isabiti Opero v. Secretary-General of the United Nations*, Judgment No. 2026-UNAT-1675, para. 62, citing *De Aguirre op. cit.*, para. 44 (internal citations omitted).

²² *Couquet* Judgment, *op. cit.*, para. 39.

²³ *Opero* Judgment, *op. cit.*, para. 62.

²⁴ *Ibid.*, para. 64, citing *Oglesby v. United Nations Joint Staff Pension Board*, Judgment No. 2019-UNAT-914, para. 37.

²⁵ *Opero* Judgment, *op. cit.*, para. 64.

37. It follows that the Decisions made that are now the subject of these appeals were all made unconstitutionally or in the purported exercise of jurisdiction (the constitution of JAB Panels otherwise than as required by Staff Rule 11(2)(e)(i)) not possessed by the JAB and/or its Chair (who made the appointments to the Panels), and thereby unlawfully. The Decisions so made must be and are quashed on that ground alone. Contrary to Ms. Bourrel-McKinnon's submissions, the UNAT cannot determine at, what would now effectively be first instance, her substantive issues on their merits. The JAB's Decisions are quashed due to the Panels' absence of membership constitutionality. Ms. Bourrel-McKinnon's cases are remanded to a lawfully constituted Panel of the JAB.

38. Finally, we must consider what is to happen to Ms. Bourrel-McKinnon's claim for her legal costs incurred in these proceedings. Because these are not claimable, at least at this time, as an element of material damages, we consider that the most just course is to dismiss her claim to legal costs but without prejudice to Ms. Bourrel-McKinnon reviving these in subsequent and related litigation before the UNAT.

Request for an oral hearing

39. Ms. Bourrel-McKinnon requested an oral hearing before the Appeals Tribunal. She claimed that an oral hearing was needed so that the Appeals Tribunal could hear all submissions related to each appeal, could hear live evidence from key witnesses, and would be able to ask questions.

40. Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules) govern oral hearings before the Appeals Tribunal. Article 18(1) of the Rules stipulates that: "The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case".

41. Since the JAB Panel was unlawfully constituted and the cases must be remanded, there was no need for an oral hearing of these appeals. Ms. Bourrel-McKinnon's request for oral hearings was therefore denied.

Judgment

42. The appeals of Ms. Bourrel-McKinnon are granted in part, the JAB Decisions are quashed, and the matters are remanded to a lawfully constituted Panel for rehearing consistent with this Judgment.

Original and Authoritative Version: English

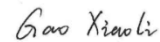
Decision dated this 25th day of June 2026 in New York, United States.



Judge Colgan, Presiding



Judge Forbang



Judge Gao

Judgment published and entered into the Register on this 22nd day of July 2026 in New York, United States.



Juliet E. Johnson, Registrar