

# 2021-UNAT-1117, Margaret Mary Fogarty

## UNAT Held or UNDT Pronouncements

UNAT held that while the SAB may satisfy the requirements of a neutral first instance process, its decision is only advisory or recommendatory. UNAT held that the facts did not disclose whether the Secretary-General of IMO had the power to amend the powers of the SAB retrospectively to permit the SAB to make a decision rather than a recommendation or, more pertinently, by subsequent fiat, to convert a recommendation of SAB into a decision. UNAT held that the source of the Secretary-General's power to introduce interim measures was not clear and that there may be other constraints upon his power of amendment in other legislative instruments that are not immediately evident or known to UNAT. UNAT held that it was not clear whether the Secretary-General of IMO had the power to take the action (legislatively suspending parts of Staff Rule 111) retroactively. UNAT held that the evidence and submissions on record were insufficient to determine outstanding issues on authority. UNAT held that it would be prudent to remand the decisive jurisdictional questions to the SAB (in terms of Article 2(3) of the UNAT Statute) for proper ventilation on full facts with more thorough legal argument. UNAT held that the question for determination by the SAB was whether it had, or now has, the jurisdiction/power to take a decision (rather than make a mere recommendation) in relation to Ms. Fogarty's appeal. UNAT remanded the appeal to SAB to determine the jurisdictional question.

## Decision Contested or Judgment/Order Appealed

The Appellant contested the decision of the Staff Appeals Board (SAB) to uphold the determination of the IMO Advisory Board on Compensation Claims that Ms. Fogarty's disability termination was not service-incurred pursuant to Staff Rule 106.3 and Appendix D.

## Legal Principle(s)

The Secretary-General of the IMO is not a neutral or disinterested body because he is the executive representative of the IMO. The requirement of authority is a fundamental precept of the constitutional principle of legality. The first principle of administrative law (and of the rule of law) is that the exercise of power must be authorised by law. There is a strong presumption that administrative or regulatory decisions do not obtain retroactively.

## Outcome

Case remanded

Outcome Extra Text

N/A

Full judgment

[Full judgment](#)

Applicants/Appellants

Margaret Mary Fogarty

Entity

IMO

Case Number(s)

2020-1457

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2021

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

United Nations Joint Staff Pension Fund (UNJSPF)

Disability

Applicable Law

Agreements, conventions, treaties (etc.)

IMO Staff Regulations and Rules

- Article XI
- Rule 111.1(a)
- Rule 111.1(gg)
- Rule 111.1(hh)
- Rule 111.1(ii)
- Rule 111.1(jj)

UNAT Statute

- Article 2.1
- Article 2.10
- Article 2.3

Staff Rules

- Appendix D

Related Judgments and Orders

2019-UNAT-949

2019-UNAT-951

2019-UNAT-958