

# 2022-UNAT-1192, Andrew Webster

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Webster. UNAT held that although the current legal framework (ISA Staff Rule 11.2), mentions the establishment of a neutral first instance process with staff participation to take a decision upon any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules, there is, to this date, no such neutral first instance process. According to the Staff Rules, the JAB Panel shall submit a report to the Secretary-General, who takes the final decision.

While it is true that the JAB “assumed, for the purposes of the present report on remand, that it is empowered to act as directed by the UNAT and take a decision binding on the [ISA] Secretary-General”, this does not have the effect of transforming its “Report” into a judgment or decision, as is required by Article 2(10) of the Appeals Tribunal Statute. The Appeals Tribunal acknowledges the effort made by the JAB to comply with the Appeals Tribunal determination. However, jurisdiction must not be assumed or implied, even less so by means of an interpretation which is restricted to one case and, most importantly, against the current legal framework.

Here, the JAB Panel did not have the power to issue a decision binding on the ISA Secretary-General and it did not do so. To this date, the JAB has only legal authority to issue a recommendation under ISA’s Staff Regulations and Rules in their present form. Thus, there has been no compliance with the terms of Article 2(10) of the Appeals Tribunal Statute. As the Appeals Tribunal is the second level of appeal, it cannot conduct a review without a decision from a neutral first instance process.

The case was remanded to the JAB of ISA to ensure compliance with the jurisdictional requirements of Article 2(10) of the Appeals Tribunal Statute.

## Decision Contested or Judgment/Order Appealed

Mr. Webster contested the report of a panel of the Joint Appeals Board (JAB Panel) of the International Seabed Authority (ISA). The JAB Panel had been re-established to review his case on remand. It had dismissed Mr. Webster’s appeal on the merits and affirmed ISA’s decision to separate him from service on the ground of abandonment of post.

## Legal Principle(s)

Neither the assumption under which the JAB of ISA was working that it was empowered to take a decision binding on the ISA Secretary-General nor the consent of the parties can establish jurisdiction. Under the Staff Regulations and Rules of ISA, the JAB of ISA did not issue a decision; it issued only a recommendation, as it did not have legal authority to issue a decision binding on the ISA Secretary-General. As the decision did not come from a neutral first instance process of ISA, UNAT could not conduct a review.

Jurisdictional issues cannot be decided by the litigants. The consent, silence or even agreement of the litigants should not establish jurisdiction, namely power of a court or tribunal to dispense justice in a particular case. This is because lack of jurisdiction is a strictly legal matter which the Appeals Tribunal or any other tribunal can and should raise *sua sponte*, as it is not bound by the volition of the parties.

## Outcome

Case remanded

Outcome Extra Text

The case is remanded to the Joint Appeals Board of ISA to ensure compliance with the jurisdictional requirements of Article 2(10) of the Appeals Tribunal Statute.

Full judgment

[Full judgment](#)

Applicants/Appellants

Andrew Webster

Entity

ISA

Case Number(s)

2021-1526

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Apr 2022

President Judge

Judge Knierim

Judge Raikos

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Abandonment of post

Jurisdiction / receivability (UNAT)

Applicable Law

UNAT Statute

- Article 2.10

ISA Staff Regulations and Rules

- Rule 11.2

Related Judgments and Orders

2020-UNAT-983

2021-UNAT-1117

2021-UNAT-1148

2021-UNAT-1089

2021-UNAT-1150