



# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Judgment No. 2025-UNAT-1593

**Sheldon Heron Carter**  
**(Appellant)**

**v.**

**Secretary-General**  
**of the International Seabed Authority**  
**(Respondent)**

## **JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Leslie F. Forbang Judge Gao Xiaoli
Case No.:	2024-1942
Date of Decision:	31 October 2025
Date of Publication:	25 November 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Rose Marie Dennis
Counsel for Respondent:	Gwenaëlle Le Gurun

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Sheldon Carter, a Database Manager for the International Seabed Authority (ISA or Agency), contested the decision of the ISA Secretary-General not to implement the recommendation of the Performance Review Panel (PRP or Review Panel) to reverse his appraisal rating “C – Partially meets expectations” (contested decision).
2. On 8 May 2024, a panel of the Joint Appeals Board of the ISA (JAB) issued its final Decision on Receivability (impugned JAB Decision),<sup>1</sup> determining that Mr. Carter’s appeal was not receivable because he had not contested a reviewable administrative decision.
3. On 6 August 2024, Mr. Carter filed an appeal against the impugned JAB Decision with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal grants the appeal and reverses the impugned JAB Decision.

**Facts and Procedure**

5. On 15 June 2023, Mr. Carter’s First Reporting Officer (FRO) provided him with his performance assessment for the 2022-2023 performance cycle, assigning a rating of “C – Partially meets expectations”.<sup>2</sup> We will refer to this as Mr. Carter’s C rating.
6. On 27 June 2023, Mr. Carter submitted a written rebuttal statement outlining why he believed he deserved a higher overall rating, in accordance with ISA Administrative Instruction ISBA/ST/AI/2023/1 (Performance Management and Development System).
7. On 11 July 2023, the ISA Director, Office for Administrative Services, informed Mr. Carter by e-mail that an *ad hoc* PRP had been established.<sup>3</sup>
8. On 11 August 2023, the PRP issued its Final Report, concluding:<sup>4</sup>

In conclusion, it is evident that the performance review conducted for the [staff member] accurately reflects their capabilities and efforts, however the agreed upon goal was not

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<sup>1</sup> *Sheldon Carter v. Secretary-General of the International Seabed Authority*, Case No. ISBA/JAB/CARTER/2023, 8 May 2024.

<sup>2</sup> Performance assessment report of Mr. Carter from June 2023.

<sup>3</sup> E-mail dated 11 July 2023 from the ISA Director, Office for Administrative Services, to Mr. Carter.

<sup>4</sup> Final Report dated 11 August 2023 (emphasis added).

achieved. *It is recommended not to give the lower rating given the abbreviated period, the new FRO and changes.* The shortcomings identified in the [performance] review can be attributed to a number of additional factors, including a lack of clear communication, absence of a midpoint review, inadequate management and insufficient support. It needs to be clearly stated that ISA's DeepData database was established very successfully by [Mr. Carter] and its team, with appreciations by ISA's contractors, responsible for the data input and delivery, and in ISA's capacity building activities. *Based on the timely delivery of the particular strategy, we agree with the rating.*

9. By Memorandum dated 14 September 2023, the ISA Secretary-General informed the ISA Director, Office for Administrative Services, of his decision to maintain the performance rating. The ISA Secretary-General emphasised that, while the PRP recommended not assigning a lower rating, it ultimately agreed with the rating given. The ISA Secretary-General concluded that “the panel’s decision [was] to maintain the performance rating as given by the FRO”, adding that “[h]ad the panel intended to designate a different rating, it would have specified such a rating as stipulated by the Administrative Instruction”.<sup>5</sup> We infer that Mr. Carter received notice of this decision on the same day, 14 September 2023.

10. On 13 November 2023, Mr. Carter requested a review of the decisions and conclusions taken following the Final Report of the PRP, and as contained in the Memorandum dated 14 September 2023.<sup>6</sup>

11. On 24 November 2023, the ISA Secretary-General informed Mr. Carter by memorandum that the 14 September 2023 memorandum did not constitute an administrative decision and that performance appraisals are purely preparatory in nature.<sup>7</sup>

12. On 24 December 2023, Mr. Carter filed an appeal with the JAB, challenging the contested decision and seeking, among other relief, annulment of the Agency’s Performance Improvement Plan (PIP) to address his confirmed performance rating.<sup>8</sup>

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<sup>5</sup> Memorandum dated 14 September 2023 from the ISA Secretary-General to the ISA Director, Office for Administrative Services.

<sup>6</sup> Memorandum dated 13 November 2023 from Mr. Carter to the ISA Secretary-General.

<sup>7</sup> Memorandum dated 24 November 2023 from the ISA Secretary-General to Mr. Carter.

<sup>8</sup> Request to file an appeal against an administrative decision form.

13. On 10 April 2024, Mr. Carter filed a request for suspension of action before the JAB, requesting the suspension of the decision taken on 1 October 2023, which placed him on a PIP.<sup>9</sup>

*Impugned JAB Decision*

14. On 8 May 2024, the JAB issued its impugned Decision, concluding that Mr. Carter's appeal was not receivable, because he had not contested a reviewable administrative decision. Relying on *Gehr*,<sup>10</sup> the JAB found that the contested decision did not produce direct legal consequences affecting Mr. Carter's rights. Rather, it held that "the actions so far taken towards [Mr. Carter were] merely preparatory, and although they might in the future, produce direct legal effects for [him], they [did] not do so now".<sup>11</sup>

15. Addressing the ISA Secretary-General's contention that Mr. Carter's appeal was time-barred under ISA Staff Rule 11.2 because it was filed more than one month after the contested decision of 14 September 2023, the JAB deemed this argument moot in view of its jurisdictional decision of non-receivability.<sup>12</sup>

**Submissions**

**Mr. Carter's Appeal**

16. Mr. Carter requests the Appeals Tribunal to reverse the impugned JAB Decision and rescind the decisions concerning the receivability of his request to file an appeal against the decision not to implement the PRP's recommendation to reverse the lower rating "C – Partially meets expectations" for the 2022-2023 performance cycle and to place him on a PIP, as well as the JAB's decision on his request for suspension of action.

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<sup>9</sup> Request for suspension of action dated 10 April 2024. Mr. Carter appears to refer to an e-mail dated 1 October 2023 from the Administration, stating that they "need to define a PIP as the next step in [the] process".

<sup>10</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313.

<sup>11</sup> Impugned JAB Decision, para. 25 referring to *Gnassou v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-865, para. 31; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, paras. 51-52.

<sup>12</sup> Impugned JAB Decision, para. 14.

17. Mr. Carter argues that ISBA/ST/AI/2023/1 does not apply to the present case because his performance documentation was issued prior to his performance assessment for the 2022-2023 performance cycle and was created before 31 March 2023.<sup>13</sup>

18. Mr. Carter maintains that his appeal to the JAB was filed timeously. He observes that, pursuant to ISA Staff Rule 11.2(a)(i), since the ISA Secretary-General responded to his 13 November 2023 request for review of the contested decision on 24 November 2023, he had one month from that date to file an appeal, which he did on 24 December 2023.

19. Mr. Carter contends that the 24 November 2023 Memorandum constitutes a reviewable administrative decision. He challenges the ISA Secretary-General's "failure to implement the outcome of the rebuttal process, which is valid and binding" and which, according to Mr. Carter's interpretation, recommended that the lower rating "C – Partially meets expectations" should not be maintained. He further asserts that the ISA Secretary-General was, at the least, obliged to seek clarification from the Review Panel regarding its intent in not recommending maintaining the lower rating – which would have warranted his placement on a PIP – and to ensure that the Review Panel designated a specific new rating.

20. Mr. Carter submits that the Administration committed several procedural irregularities in his performance assessment. He contends that these irregularities vitiated the contested decision. Relying on *Sarwar*,<sup>14</sup> he argues that, but for the flawed performance appraisal process, he would not have been placed on a PIP, which is also a decision he contests. Therefore, he asserts that these procedural deficiencies had a "direct legal consequence" on him, breaching his terms and conditions of employment regarding the management and appraisal of his performance.

### **The ISA Secretary-General's Answer**

21. The ISA Secretary-General requests the Appeals Tribunal to dismiss Mr. Carter's appeal.

22. The ISA Secretary-General submits that the appeal fails to demonstrate that the JAB should have reached a different conclusion. On the contrary, the ISA Secretary-General contends that the JAB correctly determined that the appeal was not receivable, as performance assessments

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<sup>13</sup> Mr. Carter appears to rely on Section 14.2 of ISBA/ ST/AI/2023/1.

<sup>14</sup> *Sarwar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-757, para. 56.

“are purely preparatory in nature and do not produce direct legal consequences affecting staff members”.

23. The ISA Secretary-General submits that, had the Review Panel disagreed with Mr. Carter’s overall rating, it would have been required, pursuant to Section 11.5 of ISBA/ST/AI/2023/1, to assign a new rating on Mr. Carter’s performance evaluation. The Review Panel’s failure to do so is consistent with its agreement with the FRO’s rating.

24. Regarding the applicability of ISBA/ST/AI/2023/1, the ISA Secretary-General observes that Mr. Carter did not challenge its applicability at the relevant time of events.

25. The ISA Secretary-General highlights that Mr. Carter’s allegation – raised for the first time on appeal – that the contested decision concerns his purported placement on a PIP dated 1 October 2023, is contrary to the requirement of ISA Staff Rule 11.2. Specifically, the ISA Secretary-General contends that Mr. Carter is not entitled to appeal to the UNAT an alleged decision without having first attempted to appeal it before the JAB. The ISA Secretary-General further emphasises that, in his appeal to the JAB on 24 December 2023, Mr. Carter clearly identified the contested administrative decision as the 14 September 2023 “decision not to implement the Review Panel’s recommendation to reverse the rating given to [him] of ‘C – Partially meets expectations’”, which remains the only decision subject to appeal. The ISA Secretary-General notes that the 14 September 2023 Memorandum contains no reference to any PIP. Moreover, the ISA Secretary-General asserts that placements on PIPs are not appealable administrative decisions, since they do not produce direct legal effects.<sup>15</sup>

26. In any event, the ISA Secretary-General reiterates that Mr. Carter’s appeal to the JAB was untimely, having been filed more than three months after the 14 September 2023 Memorandum was notified to him.

27. Finally, with respect to Mr. Carter’s request for rescission of the alleged JAB’s decision concerning his request for suspension of action, the ISA Secretary-General submits that, in the absence of any substantive reasoning supporting Mr. Carter’s grounds, this request should be rejected pursuant to Article 8(2)(a) of the Appeals Tribunal Rules of Procedure.

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<sup>15</sup> *Gnassou Judgment, op. cit.*

### Considerations

28. The JAB decided Mr. Carter's case on one of two non-receivability issues advanced by the Agency. It determined that he had not challenged an administrative decision that affected adversely and directly his legal position in employment. That meant that his claims were unreceivable by the JAB. The JAB did not determine the Agency's other non-receivability ground relating to the timeliness of the filing of Mr. Carter's challenges to what he contended was the Agency's administrative decision with which he was dissatisfied. It considered this issue to be moot. If we conclude that the JAB's ground of non-receivability was not erroneous, then Mr. Carter's appeal must fail. If we decide that the JAB erred in that conclusion, it will remain for us to determine whether his case was filed timeously with the JAB. If it was not, then his appeal will fail on that ground. If we conclude it was filed on time, then we will need to consider how to deal with the merits of his claims against the Agency. We will follow that sequential methodology.

29. We now address further the applicable background affecting the appeal.

30. We first analyse the PRP's Final Report to the ISA Secretary-General that was the genesis of this case. The conclusions of the PRP's Final Report set out at paragraph 8 above are enigmatic. At first blush and read in isolation, they appear to both indicate a view that the original rating was unduly low, but at the same time recommended its retention. Each party to the appeal has adopted the interpretation more favourable to its case. It is unfortunate, in retrospect now, that the ISA Secretary-General who was to make a decision based on the review report did not seek clarification from the PRP of its equivocally expressed recommendations. Therefore, it is important in interpreting what the PRP intended, to read the whole of its Final Report in context.

31. The PRP's Final Report contains a number of what might be seen as mild criticisms of the Agency's processes and procedures affecting Mr. Carter's performance of his duties and criticisms of his FRO who undertook the performance assessment of him. The response to these criticisms from the Agency was to say that they were irrelevant to the task of assessing Mr. Carter's performance and went beyond the PRP's powers. However, having considered these criticisms and other analyses of the context in which that performance review was conducted, we interpret them as being among the PRP's reasons explaining why it may have considered the rating given to Mr. Carter's performance to have been unduly harsh. It provided information about systemic or other external factors beyond Mr. Carter's control that explained some mediocre or less than

desirable results which his team had achieved but which the PRP considered were not attributable to him personally.

32. There is a further equivocal element of the PRP's conclusions which favours Mr. Carter's interpretation of its intention. The PRP's sentence reads: "It is recommended not to give *the* lower rating given the abbreviated period, the new FRO and changes."<sup>16</sup> This may be interpreted to have been a recommendation that the FRO's assessment ("the lower rating") not be given because of the factors listed immediately thereafter (the abbreviated period, the newness of the FRO's experience of Mr. Carter and "changes"). Such an interpretation arguably favours Mr. Carter's position. Further, the final sentence in the quoted passage ("Based on the timely delivery of the particular strategy, we agree with the rating.") appears to both favour Mr. Carter by remarking on the timely completion of a project for which he held responsibility, but also to favour the interpretation applied by the ISA Secretary-General that the PRP agreed with the FRO's C rating. Furthermore, in favour of the ISA Secretary-General's interpretation of the report, even if the PRP was to criticise the FRO's rating as unduly low, was its failure to recommend, as required specifically, an alternative and higher rating.

*Receivability of the contested decision*

33. The JAB decided Mr. Carter's appeal against him on the procedural ground that what he had challenged was not an administrative decision that had direct legal consequences for him.

34. At issue are the ISA Staff Rules and ISBA/ST/AI/2023/1, both of which must be considered by us.

35. Before examining ISBA/ST/AI/2023/1 to consider whether it contains consequences of the decision that directly affect Mr. Carter's legal position, we must decide which of two consecutive Administrative Instructions was applicable. We do not accept Mr. Carter's first submission that ISA Administrative Instruction ISBA/ST/AI/2017/3 (Performance Management and Appraisal System) was applicable to the issues in this case. As its successor, ISBA/ST/AI/2023/1 dated 30 May 2023 clarifies at its Section 14.2 only "performance documents issued before the performance, management, and development cycle 2022/23 (...) shall be conducted and completed in accordance with the procedures described in ISBA/ST/AI/2017/3".

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<sup>16</sup> Final Report dated 11 August 2023 (emphasis added).



36. Having established the applicable Administrative Instruction, we conclude that the JAB wrongly determined that the ISA Secretary-General's decision had no direct legal effect on Mr. Carter's employment with the Agency. When its consequences are considered in light of the Agency's relevant documents, it may be seen that there were direct and disadvantageous effects. Direct legal effects that flow from such a rating include, under Section 12.1 of ISBA/ST/AI/2023/1, the fact that the granting of salary increments is subject to satisfactory performance by staff members as evaluated by their supervisors. Under Section 12.4 of this Administrative Instruction, a rating such as Mr. Carter received "shall justify a determination that awarding a salary increment is not warranted". Such a salary increment is withheld pending the outcome of a PIP and is therefore directly linked to the mandatory sanction for receiving such a rating as Mr. Carter did. These are conditions of service of staff members and so decisions leading to them have direct and significant legal effect. That is confirmed by Section 11.8 of this Administrative Instruction, which states that "administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved through the system of justice pursuant to the Staff Regulations and Rules".

37. As to the jurisprudence applicable to the present case, because the JAB relied on these following judgments, we will address and distinguish them. In *Gehr*,<sup>17</sup> what was contended to have been an administrative decision was simply a request by the Organization to a staff member asking the latter how he wished to proceed with his performance appraisal rebuttal. Unsurprisingly, this was found by the UNAT not to have been an administrative decision. This Judgment does not assist the ISA Secretary-General's case.

38. In *Kebede*,<sup>18</sup> the staff member had been given a "partially meets expectations" assessment and had been placed on a PIP. This was held to have been a final administrative decision but lacked the element of direct legal consequences for the staff member's conditions of service. Placement on a PIP was held to have been a preliminary step to address a staff member's shortcomings during a performance cycle and therefore not amenable to appeal. The UNDT stated:<sup>19</sup>

... Additionally, while the rebuttal panel recommended the Applicant's placement on a PIP, the Tribunal notes that the Applicant does not complain that he was in fact placed on the PIP. Further, the Tribunal is cognizant of the Appeals Tribunal's holding that the decision to place a staff member on a PIP is not an appealable final administrative decision

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<sup>17</sup> *Gehr* Judgment, *op. cit.*

<sup>18</sup> *Kebede v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/144.

<sup>19</sup> *Ibid.*, para. 35 (internal footnote omitted).

because pursuant to ST/AI/2010/5, the PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle. Such a preliminary step is not an administrative decision subject to appeal.

39. The authority for the proposition in the citation was said to be the UNAT's Judgment in *Gnassou*.<sup>20</sup> In that case, however and unlike in this, the UNAT considered *obiter dicta* (that is as an observation), the question of whether the placement on a PIP stemming from a performance assessment constituted an appealable administrative decision. That was because the issue was ruled unreceivable as having only first emerged on appeal. At paragraph 31 of its Judgment, the UNAT opined:<sup>21</sup>

... Even if the ground of appeal was receivable, the order to place Ms. Gnassou on a PIP is not an appealable final administrative decision. Pursuant to ST/AI/2010/5, the PIP is merely a preliminary step instituted to address a staff member's shortcomings during a performance cycle. ST/AI/2010/5 sets out a series of steps which may ultimately lead to a reviewable final administrative decision. The Appeals Tribunal has held that such preliminary steps or actions are not administrative decisions subject to appeal.

40. Case law on comparable provisions applicable to the United Nations and other agencies' staff rules has added non-statutory requirements to the statutory necessity to have an administrative decision that can be the subject of an appeal to the JAB. Those additional requirements include that the administrative decision must have a direct and immediate (as opposed to future) legal consequence affecting the staff member's contractual rights.<sup>22</sup>

41. Whether any communication is of an appealable administrative decision or not must be determined in the particular circumstances of the parties at the time. Reliance on other prior cases determining similar questions but which arose in different contexts can be erroneously misleading, as this case illustrates. The cases relied on by the JAB to support the ISA Secretary-General's position concerned staff members contesting the decision to place them on a PIP, rather than the specific decision relating to their performance assessment rating. Those cases are therefore distinguishable.

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<sup>20</sup> *Gnassou* Judgment, *op. cit.*

<sup>21</sup> *Ibid.*, para. 31 (internal footnote omitted).

<sup>22</sup> *Ramesh Balakrishnan Menon v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1355, para. 26 (internal footnote omitted); *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 52.

42. The UNAT Judgment in *Hossain* is more directly on point with the present case. In that case, the staff member was also challenging his performance assessment rating. The UNAT held that:<sup>23</sup>

... Mr. Hossain's performance assessment, affirmed by the Rebuttal Panel, as 'partially satisfactory' was an administrative decision and was, by its very nature, adverse to him. His proceeding was therefore receivable by the Dispute Tribunal.

43. Therefore, the JAB erred in its determination that there was no administrative decision by the ISA Secretary-General capable of triggering a receivable appeal to the JAB.

44. We turn now to the time-limitation ground relied on by the ISA Secretary-General but which the JAB considered to be moot. Because of our decision above, it is no longer moot. There were a number of time limits applicable to preliminary stages of Mr. Carter's case but there is no question of either the relevance of these or of compliance with them in this case. The various periods that Mr. Carter had under the ISA Staff Rule 11(2)(a) were as follows. Following the contested decision of 14 September 2023 affirming the C rating after consideration of the Review Panel's recommendation, Mr. Carter had a period of two months within which to seek a review of that decision. He did so within time on 13 November 2023. Following the ISA Secretary-General's rejection of that review on 24 November 2023, Mr. Carter had a period of one month within which to appeal to the JAB. He did so, again within time, on 24 December 2023. His appeal was therefore receivable by the JAB.

45. Mr. Carter's appeal to the JAB was receivable by it. However, the absence of a decision by the JAB on the merits means that it is not possible for us to do other than allow Mr. Carter's appeal. Because of the equivocality of the Review Panel's recommendation to the ISA Secretary-General, it is not possible to predict what would have been the consequence of a JAB decision. The JAB will now have to determine Mr. Carter's appeal to it on its merits.

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<sup>23</sup> *Mohammad Tofazzel Hossain v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1135, para. 26.

**Judgment**

46. Mr. Carter's appeal is granted, and the impugned JAB Decision of 8 May 2024 is hereby reversed. This Judgment having determined that Mr. Carter's appeal was receivable by the JAB, his case is remanded to the JAB for a decision on the merits.

Original and Authoritative Version: English

Decision dated this 31<sup>st</sup> day of October 2025 in New York, United States.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Gao

Judgment published and entered into the Register on this 25<sup>th</sup> day of November 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar