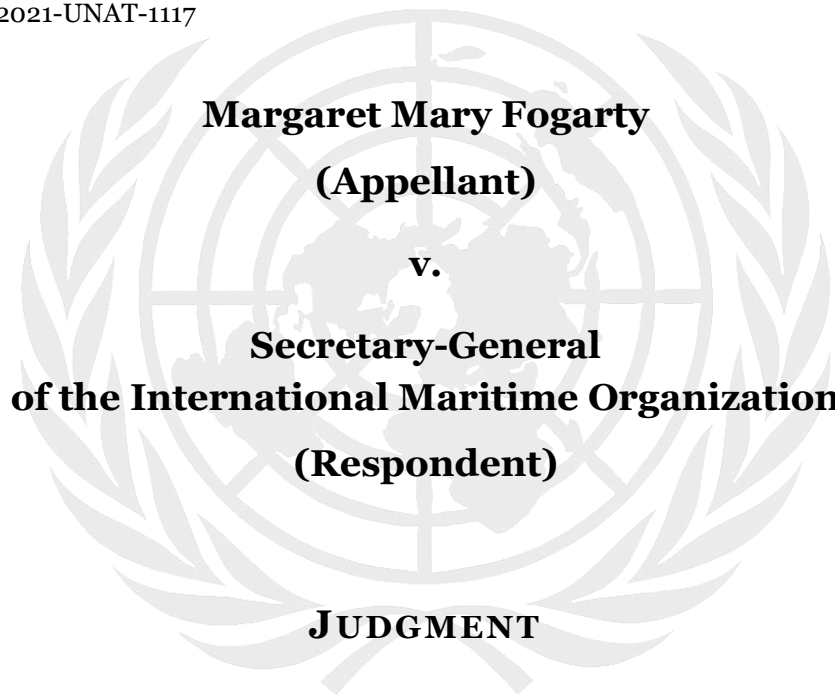




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1117



**Margaret Mary Fogarty
(Appellant)**
v.
**Secretary-General
of the International Maritime Organization
(Respondent)**

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Martha Halfeld
Judge Graeme Colgan

Case Nos.: 2020-1457

Date: 25 June 2021

Registrar: Weicheng Lin

Counsel for Appellant: Jordan Howells
Counsel for Respondent: Dorota Lost-Sieminska

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal from Ms. Margaret Mary Fogarty against the ‘decision’ of the Staff Appeals Board (SAB) to uphold the determination of the IMO’s Advisory Board on Compensation Claims (ABCC) that Ms. Fogarty’s disability termination was not service incurred pursuant to Staff Rule 106.3 and Appendix D. For the reasons set forth herein, this Tribunal remands the matter to the SAB for a determination pertaining to jurisdiction.

Facts and Procedure

2. Ms. Fogarty is a 61-year-old former staff member of the International Maritime Organization (IMO or Organization) employed by it between November 1999 and 7 September 2020, as a Senior Telephonist, at the G-5 level.

3. Over the years of her employment, Ms. Fogarty raised various grievances about her working circumstances and the frustration of her efforts to progress within the Organization. She applied unsuccessfully for numerous positions and was aggrieved by the outcome. This, she maintains, caused her to suffer stress rendering her incapable of work. She currently receives a disability pension from the UNJSPF.

4. During 2014-2015, Ms. Fogarty submitted a grievance alleging: i) unfair treatment amounting to discrimination on the basis of age, accompanied and manifested by way of harassment and abuse of authority; ii) harassment constituting improper and unwelcome conduct towards her; and iii) abuse of authority, through the improper use of a position of influence, power or authority against her, improperly to influence her career and employment conditions and in particular, promotion opportunities. These allegations arose out of the fact that Ms. Fogarty believed that she was never given a full and proper opportunity to interview for numerous positions for which she applied. She is of the view that her efforts to discuss and apply for promotion were met with “dismissive contempt and incorrect information”. She also bore a grievance against her line manager who, she alleged, failed to discharge his responsibilities towards her. Her complaints in that regard, she said, were met with inaction, which prevented her ability to progress, whilst also subjecting her to harassing conduct.

5. On 18 February 2016, Ms. Fogarty had a panic attack at work and was put on sick leave. She remained on leave for about a year until 11 January 2017 when she returned to work. During that period, she was diagnosed with anxiety and depression, and additionally suffered the loss of her front tooth and a sprained ankle, which affected her mobility. As she was already on sick leave, she sought permission from the IMO to travel to Budapest for dental work, as it was considerably less expensive than in the United Kingdom. The IMO's medical advisor refused to grant her request to travel, which decision was reversed by the Secretary-General of the IMO. On 3 August 2016, Ms. Fogarty filed a retaliation complaint against the medical adviser.

6. Ms. Fogarty's grievances and complaints were not resolved to her satisfaction.

7. Ms. Fogarty filed an Accident Report on 11 September 2017 regarding the panic attack she experienced on 18 February 2016 which she claimed was due to work related stress. In October 2018 she suffered another panic attack at work and was placed on sick leave until the IMO notified her by letter dated 7 September 2020 that it had terminated her employment on medical grounds a year prior in 2019.

8. In 2019, Ms. Fogarty submitted a claim to the ABCC for her illness to be attributed as service incurred. A meeting of the ABCC was held on 26 June 2019 to review the claim. The ABCC considered the evidence in relation to the alleged stress and panic attacks, the diagnosis of chronic adjustment disorder with secondary anxiety and depression arising from the general workplace environment, in particular lack of promotion and professional development opportunities. The ABCC accepted the medical adviser's opinion that based on the information submitted, Ms. Fogarty's illness could not be determined to be directly related to her service for the Organization and unanimously recommended that the case submitted should not be considered as service incurred.

9. Ms. Fogarty appealed to the SAB, which on 28 April 2020, issued a determination unanimously dismissing her appeal and confirming that her illness should not be considered as service incurred. The SAB determined that the ABCC's decision of 26 June 2019 was in line with the rules and regulations in force at the time and should stand.

10. The SAB agreed with the finding of the ABCC and held:

The SAB unanimously decided that the decision taken by the ABCC on 26 of June 2019 is in line with the appropriate rules and regulations in force at the time and that it should stand. The SAB specifically agrees with the statement in paragraph 7 of the summary of deliberations of the ABCC... ‘in the absence of any findings indicating that there was exposure to a harmful event, the requirement for an “incident” is not met as described under Appendix D. It was the Medical Adviser’s opinion that based on the information submitted, Mrs. Fogarty’s illness could not be determined to be directly related to her service for the organization. He also indicated that informal medical advice as provided by the Senior Medical Officer of the United Nations ABCC, in which the same conclusion was reached.’ The SAB fully agrees with the decision reached by the ABCC as stated in paragraph 8 of the above referenced summary of deliberations, i.e.: ‘Following a thorough review of the evidence and merits of the case, the Board unanimously recommended that the case submitted should not be considered as service incurred’.

11. The SAB dismissed Ms. Fogarty’s appeal and her request to reconvene the ABCC subject to additional procedural directives concerning information, its composition, record keeping and communication.

12. In June 2020, the IMO medical adviser submitted a case for disability to the IMO Staff Pension Committee (SPC). In September 2020 the UNJSPF approved the SPC’s recommendation to grant Ms. Fogarty a disability pension.

13. On 16 November 2020, Ms. Fogarty filed the instant appeal. The Secretary-General of the IMO filed his answer on 19 January 2021.

Submissions

Ms. Fogarty’s Appeal

14. Ms. Fogarty submits that the SAB report fails to satisfy the requirement of a decision as it does not provide a written record, a written decision, setting forth reasons, facts and law by a neutral first instance body.

15. Moreover, she contends that the SAB erred in not finding her illness was service incurred. The preponderance of the evidence supports that she was suffering from work-related stress and this illness was a consequence of exposure to numerous harmful events, together with systemic, structural and cultural failures at the IMO, which taken individually and together satisfy the meaning of “incident” within the Appendix D. The SAB agreed with

the ABCC in three short paragraphs and did not engage with the points raised by her. The SAB report was devoid of reasoning and gave a cursory and dismissive decision of three paragraphs that were just a cut and paste.

Secretary-General of the IMO's Answer

16. The Secretary-General of the IMO requests the appeal to be dismissed in its entirety. Ms. Fogarty's suggestion that the SAB did not issue a decision but rendered advice to the Secretary-General of the IMO is incorrect as the SAB issued a decision not a recommendation in line with the Appeals Tribunal's jurisprudence (*Sheffer, Spinardi, Dispert & Hoe*)¹ notwithstanding the Staff Rules and Regulations which are in the process of being revised to comport with the Appeals Tribunal's jurisprudence.

17. The Secretary-General of the IMO submits further that the SAB did not err in finding that Ms. Fogarty's illness was directly caused by her work – meaning that it was service incurred. She mistakenly conflates the grant of a disability pension by the UNJSPF with the ABCC decision of service incurred injury/illness. There is no dispute that Ms. Fogarty suffers from depression, anxiety, mental illness of sufficient order to warrant a disability pension. However, there is insufficient evidence proving that such health status is related to her work and is service incurred.

Considerations

18. This appeal is in terms of Article 2(10) of the Appeals Tribunal's Statute, which reads:

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment

¹ See *Sheffer v. Secretary-General of the IMO*, Judgment No. 2019-UNAT-949; *Spinardi v. Secretary-General of the IMO*, Judgment No. 2019-UNAT-957, *Dispert & Hoe v. Secretary-General of the IMO*, Judgment No. 2019-UNAT-958.

of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions *vis-a-vis* the agency, organization or entity. Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

19. The intention of Article 2(10) is to allow specialized agencies by agreement to accept and submit to the terms of the jurisdiction of the Appeals Tribunal consonant with the Statute of the Appeals Tribunal. As the ordinary jurisdiction of the Appeals Tribunal is to hear and pass judgement on appeals against a judgement rendered by the United Nations Dispute Tribunal, Article 2(10) requires the special agreement to include provisions establishing a neutral first instance process that includes a written record and a written decision providing reasons, based on factual and legal findings. It is intended that the neutral first instance process will result in a decision based on a record that can be the subject of a possible appeal. Appeals before the Appeals Tribunal are appeals on the record.

20. Article XI of the IMO's Staff Regulations and Rules governs appeals from the SAB of IMO to this Tribunal. It is based on the terms of the Agreement between the United Nations and the IMO which took effect on 1 July 2009 extending the jurisdiction of the Appeals Tribunal to the IMO and, in turn, to Article 2(10) of the Statute of the Appeals Tribunal. Rule 111.1(a) of the IMO Staff Regulations and Rules constitutes the SAB as a "neutral first process that includes a written record and a written decision providing reasons, fact and law..." Rule 111.1(gg) – (jj) however indicate that the SAB does not have decision-making power but only recommendatory power. These rules provide:

(gg) The Staff Appeals Board shall adopt its report by majority vote, and submit it to the Secretary-General. The report shall provide a written record and a written decision providing reasons, fact and law, and shall include the Board's recommendation. Votes on the recommendation shall be recorded, and any member of the Board may have his or her dissenting opinions included in the report.

(hh) The Staff Appeals Board shall submit its report to the Secretary-General within four weeks after receiving all written submissions and hearing all oral statements concerning the issues before it. The Board may, however, extend this time limit in

exceptional circumstances. The report shall take the form of the template set out under the Staff Appeals Board guidelines.

(ii) The final decision on the appeal shall be taken by the Secretary-General within four weeks following receipt of the Staff Appeals Board's report, and shall be communicated to the staff member, together with a copy of the Board's report. The Secretary-General's decision and a copy of the Board's report shall also be transmitted to the Staff Committee, unless the staff member objects.

(jj) To enable staff members to exercise their right to make application to the United Nations Appeals Tribunal (UNAT), the Chairman of the Staff Appeals Board shall, at the request of the staff member, communicate the Board's report to him or her, if the Secretary-General has not made a decision upon the report within four weeks after the date on which the report was submitted.

21. Thus, while the SAB may satisfy the requirement of a neutral first instance process, its decision is only advisory or recommendatory. In terms of these provisions, the SAB only gives advice to the Secretary-General of the IMO who takes the final decision. As this Tribunal held in *Sheffer*² and *Dispert & Hoe*,³ the Secretary-General of the IMO is not a neutral or disinterested body because he is the executive representative of the IMO.

22. When the SAB made its report in this case, on 28 April 2020, as in *Sheffer*, it dealt with all aspects of the appeal and provided written reasons. However, acting in terms of Staff Rule 111.1, properly interpreted, it did not issue a final decision. It could only make a recommendation to the Secretary-General of the IMO. It had no power to do otherwise.

23. On 30 July 2020 in response to the decisions of this Tribunal, the Secretary-General of the IMO circulated an internal memorandum to all staff. In the memorandum, the Secretary-General of the IMO announced that he had ordered a review of the Staff Rules and Regulations, particularly with respect to the dispute resolution and disciplinary mechanisms. As this was likely to take time, he had determined that “the introduction of some interim measures [is] necessary in order to ensure that our system complies with recent jurisprudence”. He thus directed as follows:

Staff Rules 111.1 (gg) and (ii) are partially suspended. The SAB will no longer make recommendations to the Secretary-General regarding the cases before it. Instead it will serve as a neutral first-instance appellate body and will issue decisions in respect

² *Sheffer v. Secretary-General of the IMO*, Judgment No. 2019-UNAT-949.

³ *Dispert & Hoe v. Secretary-General of the IMO*, Judgment No. 2019-UNAT-958.

to the case, which will be binding on both the staff member and the Organisation. Both the staff member and the Organisation may have the opportunity to further appeal the decision of the SAB to the UNAT, if appropriate.

24. The memorandum then went on to address the composition of the SAB to allow for the appointment of experts with judicial and administrative law experience.

25. These efforts by the Secretary-General of the IMO are commendable and may be a sufficient means of prospectively bringing the internal processes into line with the requirements of the Article 2(1) of the Appeals Tribunal's Statute. Unfortunately, they do not adequately resolve the problem of appeals resolved by the SAB subsequent to the decisions of this Tribunal but prior to the Secretary-General of the IMO's memorandum amending Staff Rule 111.1, such as the appeal of Ms. Fogarty.

26. Counsel for Ms. Fogarty has made the argument as follows in the appeal brief:

... Subject to the Tribunal's decision on Jurisdiction, this appeal concerns either the Decision of the Secretary-General to accept the recommendation of the Staff Appeals Board ('SAB') – no contrary decision having been sent by the Secretary-General within four weeks of the Report of the SAB2 – or if the recommendation of the SAB is construed as a decision, the Decision of the SAB to dismiss the Appellant's appeal The lack of clarity as to whether a lawful decision has been taken and by whom is indicative of the procedural irregularity that appertains in this case and others from the IMO which have come before the Tribunal, as dealt with in the section on Jurisdiction, below.....

... JURISDICTION

... This matter arises from the failures of the IMO's SAB processes and falls within the context of the line of recent cases of Sheffer... and Dispert & Hoe... with analogous points taken in those cases to the factual and procedural circumstances applicable in this instant case. There are three types of SAB cases at the IMO: 1) those which were considered by the SAB before the decision in Sheffer...of 25th October 2019; 2) those which concern disputes which straddle the decision in Sheffer... but were formally decided after that decision, but before the Secretary-General purported to suspend Staff Rules 111.1(gg) and (ii) of the Staff Regulations and Staff Rules by his Internal Memorandum (the 'Memorandum') of 30th July 2020.... and 3) those which occur(ed) entirely after the issuance of that memo. This case falls into the second category.

...The Staff Rules that were in place at the time that the SAB made its recommendation (February 2019)... like the current October 2020 version, specified at Rule 111.1(ii) that the “final decision on the appeal shall be taken by the Secretary-General” and Rule 111.1(gg) that the “report shall provide a written record and a written decision providing reasons, fact and law, and shall include the Board’s recommendation.” Irrespective of the capacity of the Secretary-General to suspend elements of the Staff Rules by memorandum – which does not currently appear to be an issue in this case, which predates the Memorandum – the Staff Rules cited remained in force at least until the Secretary-General’s Internal Memorandum of 30th July 2020 and, no suspension having been issued, were in force when the Report of the SAB was produced (dated 28th April 2020) and transmitted to the Appellant on 30th April 2020. As such, the position articulated by the UNAT at paragraph 26 of... *Sheffer* appears to apply, for “even if what was issued by the SAB was a “decision”, it was nevertheless only advisory or recommendatory.

... The Tribunal is invited, in the first instance to rule on whether this matter falls within the scope of *Sheffer* and should be remitted to the SAB. Conversely, where the Tribunal considers that the Report of the SAB does amount to a lawful Decision which satisfies Article XI of the IMO’s Staff Regulations and Rules, which is based on the terms of the Agreement between the United Nations and the IMO which took effect on 1 July 2009, extending the jurisdiction of the Appeals Tribunal to the IMO and, in turn, complies with Article 2(10) of the Statute of the Appeals Tribunal which governs jurisdiction and powers, then the Tribunal is invited to exercise its appellate jurisdiction to correct the substantive and procedural irregularities that do, in any event, apply in this case, as set out below.

...Further and in addition to the points in respect of the jurisdiction of the Tribunal above, it is submitted that in failing to take a decision in circumstances where Staff Rules 111.1 (ii) and (gg) remained in force, no suspensory memorandum or other administrative issuance have been issued, the Secretary-General failed to exercise his discretionary power in respect of the Recommendation of the SAB.

27. The submission of Ms. Fogarty’s counsel that this Tribunal may not have jurisdiction to hear and determine the appeal to it rests on two factual premises (questions of mixed fact and law). The first is that when Ms. Fogarty filed her appeal with the SAB, and at the time of its decision in April 2020, the Staff Rules and Regulations conferred no power on the SAB to make a decision on the appeal. It had only advisory or recommendatory powers. The second is that the decision of the Secretary-General of the IMO to “partially suspend” and amend the applicable rules was ineffective – presumably for two reasons: the

Secretary-General of the IMO had no power to partially suspend or amend the Staff Rules and the amendment (if such) did not operate retrospectively.

28. The Secretary-General of the IMO in his answer addressed the argument in relevant part as follows:

... The first ground of the Appeal, as per paragraph 4.4 of Appellant's brief, is that the Secretary-General failed to exercise his discretionary power in respect of the recommendation of the SAB. In sum, the Appellant appears to be arguing that the SAB and the Secretary-General should have strictly followed the procedures for the SAB contained in IMO's SRSR, despite the Tribunal's superseding judgements to the contrary. As explained below, this argument defies logic, is perverse, and should be rejected. ...

... The judgements in *Spinardi*, *Sheffer*, *Hoe* and *Dispert*, required IMO to undertake several measures to comply. These included: (1) a comprehensive review of the system of administration of justice in the Organization, including whether the Organization should continue using the SAB as its first-instance appellate body, or move under the jurisdiction of the UNDT, (2) revisions of the SRSR to reflect any changes required in light of *Spinardi* and the considerations above, (3) consultations with the IMO Staff Assembly on the way forward, and (4), as the Tribunal noted in *Spinardi*, renegotiation and revision of the agreement between UNAT and the IMO to clarify the role of the neutral first-instance body. This negotiation is still in progress. However, as these conforming measures were being implemented, there were other cases before the SAB, including Appellant's.

... In light of these judgments, the SAB constituted for the Appellant's case, being aware of UNAT's jurisprudence, on 29 April 2020 issued a final decision, as the neutral first instance judicial body in line with *Spinardi*, instead of a recommendation to the Secretary-General as per the SRSR. The SAB concluded: "The Staff Appeals Board unanimously decides that the appeal is to be dismissed in its entirety". On 30 April 2020, the Chair of the SAB transmitted to the Appellant the SAB report and informed her on the possibility to appeal such decision to UNAT and of the timeline of 90 days to appeal to UNAT, should she consider it appropriate (Annex 3 of the Appellant's brief). The Secretary-General chose not to appeal the decision.

... On 30 July 2020, the Secretary-General issued a memorandum to all staff to inform them of interim measures being taken in light of the *Spinardi* line of cases, including the partial suspension of SRSR Rules 111.1 (gg) and (ii), specifically, that the SAB would take final decisions vice making recommendations..... As the SAB had already been operating in this manner, in conformance with *Spinardi*, including in Appellant's case, the Secretary General's memorandum should be viewed as memorialization of a practice already in place, and not attributable to any error on the part of the SAB. Curiously, the Appellant argues that the SAB should have issued a recommendation in

her case, in line with the superseded provisions of the SRSR, the result being a certain remand by the Tribunal. This argument is nonsensical and should be dismissed.

29. This Tribunal is sympathetic to the point of view of the Secretary-General of the IMO. But unfortunately the facts do not disclose whether he had the power to amend the powers of the SAB retrospectively (through partial suspension or otherwise) to permit the SAB to make a decision rather than a recommendation or, more pertinently, by subsequent fiat to convert a recommendation made by the SAB on 28 April 2020 into a decision.

30. 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. It is central to the conception of the constitutional order that administrators in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. Whether the Secretary-General of the IMO has the power to amend the Staff Regulations and Rules is a mixed question of law and fact. He either has the power or not. The source, nature, conditions precedent and extent of that power (if it in fact exists) will be questions of law.

31. The Staff Regulations and Rules filed of record in this appeal are not entirely clear regarding the power of amendment. Under the heading “scope and purpose”, they provide:

The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the Secretary-General and staff of the Secretariat of the International Maritime Organization. They represent the broad principles of human resources policy for the staffing and administration of the Secretariat. The Secretary-General, as the Chief Administrative Officer, shall provide and enforce such staff rules consistent with these principles as the Secretary-General considers necessary.

32. Staff Regulation 12.1 provides that the Regulations may be supplemented or amended by the Council, without prejudice to the acquired rights of staff members, while Staff Regulation 12.2 provides that the Secretary-General of the IMO shall report annually to the Council such staff rules and amendments thereto as he or she may make to implement these Regulations.

33. These provisions suggest that the power to amend the Staff Rules does indeed vest in the Secretary-General of the IMO while the power to amend the Staff Regulations is beyond his remit. Staff Rule 111 is a Rule not a Regulation. However, in his memorandum of 30 July 2020, by which he purported to partially suspend the operation of parts of Staff Rule 111, the Secretary-General of the IMO intimated that there was a process that needed to be followed before amendment and this involved the consideration of recommendations by the Senior Management Committee. That is why he introduced “some interim measures”. The source of his power to do that is equally not clear. Moreover, Staff Rule 111.1(d) could be interpreted to mean that changes to the appeals procedure may require consultation with the SAB. There may also be other constraints upon the Secretary-General of the IMO’s power of amendment in other legislative instruments that are not immediately evident or known to this Tribunal.

34. In addition, there is the problem of the retroactive operation of the Secretary-General of the IMO’s administrative decision to suspend the operation of parts of Staff Rule 111. There is a strong presumption that administrative or regulatory decisions do not obtain retroactively. They obtain prospectively. And the language of the Secretary-General of the IMO’s memorandum of 30 July 2020 is prospective in nature. There is no indication that the administrative or regulatory decision of 30 July 2020 suspending the operation of Staff Rule 111 was intended to apply to that which had already been concluded on 28 April 2020 (the SAB decision regarding Ms. Fogarty’s appeal). Normally, administrative or regulatory action may not be retrospective unless legislative authority allows for such effect. We are not aware of any provision that authorises retrospective amendment by administrative or regulatory action. It is therefore not clear whether the Secretary-General of the IMO had the power to take the action (legislatively suspending parts of Staff Rule 111) retrospectively. It should be noted however that if the Secretary-General of the IMO indeed enjoys an unconstrained power of amendment, there would be no objection to the exercise of that power retrospectively where it was concerned with mere matters of procedure or benefited all staff members affected by its operation (as may be the case here).

35. In the final analysis, the difficulty remains that at the time it made its report, in April 2020, the SAB did not have the power to take a decision in relation to Ms. Fogarty’s appeal that was appealable to this Tribunal. The question arising, as explained, is whether

its recommendation has now retrospectively been converted by the action of the Secretary-General of the IMO to a decision. Alternatively, it may be argued that the SAB has the power to re-visit its earlier recommendations and to convert them to decisions as a consequence of the Secretary-General of the IMO's administrative or regulatory action of 30 July 2020. If the SAB does not have such power, either because the decision of the Secretary-General of the IMO was an invalid exercise of the power of amendment, was not retroactive, or the SAB is *functus officio*, the SAB has only advisory powers, and the logical consequence of the argument made by counsel for Ms. Fogarty is that her appeal may not be receivable by this Tribunal.

36. The evidence and submissions on record are insufficient to determine these issues. As the resolution of these questions is likely to impact on other appeals from the IMO (besides that of Ms. Fogarty), it will be prudent to remand the decisive jurisdictional questions to the SAB (in terms of Article 2(3) of the Appeals Tribunal's Statute) for proper ventilation on full facts with more thorough legal argument. The question for determination by the SAB is 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.

Judgment

37. The appeal is remanded to the SAB to determine the jurisdictional question discussed in this Judgment.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Colgan
Auckland, New Zealand

Entered in the Register on this 6th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar