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INTRODUCTION

These Appeals Board Rules of Procedure are established under the authority of the Secretary General in consultation with the Staff Association and the members of the Appeals Board, pursuant to ICAO Staff Regulation 11.3. These rules govern the conduct of parties to those proceedings and, expanding upon ICAO Staff Rule 111.1, provide the procedural framework within which appeals before the Board are handled – to tell the parties how and when things must be done in the course of the appeal and to provide procedural safeguards throughout the process to promote the fair and timely resolution of appeals by staff members against administrative decisions alleged to be in non-compliance with their terms of appointment or contract of employment.

These Rules enable the ICAO Appeals Board to deal with cases fairly, justly and independently of the Administration. The overriding objectives of these rules include:

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways that are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as is compatible with proper consideration of the issues; and
- (e) promoting and, where appropriate, facilitating the amicable resolution of disputes.

The Board shall seek to give effect to the overriding objectives in interpreting or exercising any power given to it under these rules, while always fulfilling its primary aim of securing the just adjudication of disputes in accordance with the substantive rights of the parties. The parties and their representatives shall assist the Board to further the overriding objectives of these rules and shall cooperate generally with each other and with the Board.



I. STANDARD FORMS

Rule 1. As the first step in the appeals procedure, within sixty 60 calendar days of receiving written notification of the impugned decision, the staff member must submit a completed Form 177, *Staff Member Request for Administrative Review by the Secretary General* (Rev. 1, 4 June 2021), through the Board Secretary/Registrar to the Secretary General. An appeal to the Board may not be filed if the staff member has not sought administrative review of the decision by the Secretary General. The Secretary General's answer to the request for Administrative Review shall be communicated to the staff member in writing within 45 calendar days of the staff members' submission of Form 177.

Rule 2. Staff members who are not satisfied with the Secretary General's response to their request for Administrative Review may file an appeal with the Board within 45 days of receipt of the written decision of the Secretary General. If there has been no decision from the Secretary General within 45 days of the request for Administrative Review, the staff member may file an appeal with the Board within 45 days after the time limit when such request should have been answered. They must utilize Form 178, *Appeal to the Appeals Board* (Rev. 1, 4 June 2021). Forms 177 and 178 are accessible on the ICAO Intranet via the Human Resources webpage through the "ALL HR FORMS" link, or through the "Administration of Justice" link, which listed under "Useful Links" on the same webpage.

II. FILING OF DOCUMENTS AND MATERIAL WITH THE BOARD

Rule 3. Submissions to the Board in connection with an appeal will normally be in English. Any document submitted by a party that is not drawn up in English shall be accompanied by a certified English translation.

Rule 4. Documents and material should be filed with the Board by electronic means and in PDF format. Electronic files should not be sent in compressed or archived form (for example, ZIP files should be avoided). Following the filing of an appeal, all subsequent emails to the Board in connection with the appeal, including those transmitting submissions from the parties, must include the appeal number and the last name of the Applicant in the subject line of the email communication, and be addressed to the Board's email account (AppealsBoard@icao.int).

Rule 5. Filing by hand or post may be done if electronic means are not available. In the event it is done by mail, the date of submission will be the date of shipping or the postal stamp. If filed by hand or by post, documents or material are to be submitted to the Board at the ICAO Headquarters address provided on the ICAO public website.

Rule 6. A copy of each written submission and document submitted to the Board in connection with an appeal (or "the Application") will be sent by the Board Secretary/Registrar, upon receipt, to the other party. If a party or witness refuses to produce a document on the grounds of confidentiality, the Board may direct its production for the limited purpose of determining whether its relevance overrides its confidentiality, without first transmitting a copy to the other party. Should it be so determined, a copy of such document, or only the relevant parts thereof, may be transmitted to the other party. The Board shall not take into account in its deliberations any document offered by a party that has not been disclosed to the other party.

Rule 7. For filing purposes, the working hours of the Board are 0900 to 1700 hours (Eastern Time Zone) (GMT/UTC-5), Monday to Friday.



A. Time limits for filing appeals

Rule 8. A staff member may submit a written request to the Board seeking waiver or extension of the time limits referred to in Staff Rule 111.1(5) and (7) due to exceptional circumstances. Such request shall succinctly set out the circumstances that, in view of the applicant, justify the request, and shall not exceed two pages in length.

B. Comments of the Secretary General

Rule 9. Unless otherwise determined under Staff Rule 111.1(11), the Comments of the Secretary General (or the Secretary General's Reply to the appeal) shall be submitted to the Board within sixty (60) calendar days of receipt of the Application. The signed original copy of the Reply and the annexes thereto shall be submitted together. The document may be transmitted electronically. The Board shall have discretion to extend this time limit, not exceeding 14 calendar days, if a reasoned request is made prior to the expiry of the prescribed time limit.

Rule 10. After ascertaining that the requirements of the preceding paragraph have been complied with, the Board Secretary/Registrar shall promptly transmit a copy of the Secretary General's Reply to the Application as an email attachment originating from the Board's email account.

C. Additional submissions

Rule 11. A party shall request permission from the Board prior to submitting any comments or submissions concerning the merits of the Application or Reply, as the case may be, and such comments or submissions may be accepted if the Board Chair (hereinafter referred to as "the President") determines it to be relevant to the issues in the case and necessary for a fair, just and expeditious disposal of the proceedings.

Rule 12. Consistent with Rule 19, below, the Board may, of its own volition, order the production of such additional documents or further information including written answers or submissions from the parties, if the Board determines that it is in the interest of justice and the efficient and expeditious disposal of the case to do so.

Rule 13. Additional submissions shall avoid repetition of previously presented information and may be otherwise limited at the discretion of the President. No post-hearing comments or briefs shall be accepted.

D. Representation

Rule 14. An Applicant who wishes to designate a representative pursuant to Staff Rule 111.1(15) (i.e., "Counsel") shall complete Section IV of Form 178, or, after the filing of the appeal, shall so advise the Board by sending a signed letter of representation as an attachment to an email addressed to the Board's email account (AppealsBoard@icao.int), which letter shall state the following:

- (a) Full name;
- (b) Place of work and job title;
- (c) Email address;



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- (d) Contact phone number;
- (e) Fax number;
- (f) Mailing address;
- (g) Whether the representative is an ICAO staff member or a former ICAO staff member; and
- (h) A statement authorizing such Counsel to receive any and all notifications and other communications from the Board on behalf of the Applicant.

Rule 15. Upon receipt of the Applicant's designation of a representative on the Form 178 or by letter of representation, all Board contact with the Applicant shall be exclusively through the designated Counsel.

E. Appeal record

Rule 16. Appeals before the Board (including appeals transferred from the old Advisory Joint Appeals Board system) are registered in an appeal management system and the matter is assigned an appeal number which is communicated to the parties via email. The appeal number is composed of the year the appeal was commenced and the serial number of the appeal for that year, e.g., ICAO Appeal No. 2021-001.

Rule 17. Applicant requests to gain access to the records of their appeal before the Board under relevant Staff Rules are to be addressed to the Board's email account (AppealsBoard@icao.int). Practical arrangements for such consultation are determined by the Board Secretary/Registrar.

F. Numbering procedure for decisions and case management orders

Rule 18. The decision number is composed of, first, the acronym "ICAO", for the International Civil Aviation Organization, second, the year in which the decision was issued, and, third, a serial number that is sequential across all Board decisions, e.g., ICAO/2021/001.

Rule 19. A case management order is a decision taken by the Board of its own volition or in response to a written request from a party, which (a) instructs a party to provide further information, clarification or to produce documents in their possession, custody or control; (b) instructs an ICAO official or staff member to give testimony; or (c) instructs a party on the execution of the Board's decision. An order number is composed of the appeal number, a serial number, followed by, in brackets, the year of issuance, e.g., [...], Order. No. 119 (2021).

G. Method of notification

Rule 20. Documents, exhibits, case management orders and decisions are notified to the parties as an attachment to an email originating from the Board's email account. The email, and any correspondence from the Board that may be attached to it, constitutes the notification to a party.

Rule 21. Where it is not possible to notify documents, material, orders or decisions electronically, they may be notified by facsimile, by post or by hand together with a notification note.

III. SUMMARY DECISION

Rule 22. The provisions of Staff Rule 111.1(18) for Appeal Board consideration of an appeal without a hearing notwithstanding, the Board may of its own motion, or in response to a request of a party, issue a Summary Decision when there is no dispute as to the material facts and a party is entitled to a decision as a matter of law, utilizing the form approved for this purpose (if available). Where the Board considers that such consideration may be appropriate the Applicant, or Secretary General, as the case may be, shall have fourteen (14) calendar days in which to file a written response.

IV. HEARINGS

A. Venue

Rule 23. The Board will exercise its functions at ICAO Headquarters in Montréal or, if the Board deems it appropriate, hearings or a part thereof may be held virtually via electronic communications.

B. Consideration by the Board

Rule 24. The hearing of Appeals shall be conducted by the Board on an inquisitorial basis, whereby the Board may assist the parties as necessary by clarifying the issues in contention and by adopting an inquisitorial approach to elucidating such evidence as is relevant and necessary to determine the facts in issue, to include calling and examining witnesses as requested by either of the parties or such other witnesses as it determines will assist the Board.

Rule 25. Appeals shall be considered by three-member Board comprising: the President and two staff members who shall assist the President in an advisory capacity. The President shall provide appropriate guidance to the members of the Board, oversee the Board's deliberations and determine the outcome of each appeal. The composition of the Board shall be notified to the parties once it is constituted.

Rule 26. The members of staff serving as Board members shall act in an independent capacity, taking instructions from nobody and, save for other members of the panel, they shall not discuss any matters touching upon any appeal before their panel with any person. The staff members of the Board shall sign a declaration that they have no conflict of interest, have had no involvement in and have no direct or indirect interest in the outcome of the subject matter under appeal and are not on familiar terms with any of the individuals involved in the case such that their impartiality may be called into question.

C. Confidentiality of closed proceedings

Rule 27. Board hearings are held in open session, unless the Board determines, at its own initiative or at the request of either party, that exceptional circumstances require all or part of the proceedings to be closed, in which case Board members, parties, and counsel must uphold the confidentiality of all aspects of the closed proceedings.



D. Management of proceedings

Rule 28. The Board Secretary/Registrar ensures, under the direction of the President, that the necessary practical arrangements for the conduct of the hearing are in place. During hearings, the Board Secretary/Registrar acts as a focal point for all hearing room-related matters, otherwise issues raised by participants related to the management of hearings should be addressed to the Board by writing to the Board's email account (AppealsBoard@icao.int).

Rule 29. The Board has no provision for expenses related to appeals, travel or issuance of visas.

E. Scheduling of hearings

Rule 30. The Board Secretary/Registrar shall notify the parties of the date and time of a hearing in advance and confirm the names of witnesses for the hearing of a particular appeal.

Rule 31. Subject to Rule 33, below, the parties or their duly designated representatives must be present at the hearing, either in person or, where unavailable, by video link, telephone or other electronic means, as directed by the President.

F. Standard of conduct of Counsel

Rule 32. Counsel appearing before the Board must comport themselves in accordance with standards of conduct expected of counsel. In particular, they must uphold the highest standards of honesty, integrity, civility, diligence and efficiency.

G. Board etiquette

Rule 33. Access to ICAO Headquarters for Board hearings is determined in accordance with applicable ICAO rules and regulations, so non-staff members who do not have access to the headquarters building may not be permitted to participate in-person.

Rule 34. All ICAO staff members have a duty to cooperate with the Board. The Board shall refer any failure to cooperate to the Secretary General. All participants are expected to appear on time and to be polite to the Board members and others present. Throughout the hearing, Board members will be addressed by the parties, first, in the case of the Board Chair as “Mister President” or “Madam President”, as appropriate, and, in the case of the other Board members, by their surname. Addressing the Board or other participants rudely, abruptly or with a raised voice is unacceptable. All participants at a hearing are under a duty to conduct themselves with courtesy and respect.

Rule 35. Inside the hearing room cell phones must be turned off completely (not just put it on vibrate) and recording devices of any kind are prohibited.

H. Witnesses appearing before the Board

Rule 36. The parties have the right to give evidence as witnesses and may request that other witnesses or experts be called to testify before the Board and the Board may grant such a request if, in the opinion of the President, such evidence is or may be relevant to an issue to be decided in the case.



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Rule 37. Each person testifying must individually make a declaration in one of the following forms:

- (a) In the case of a witness: “I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth.”
- (b) In the case of an expert: “I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.”

Any breach of the declaration by a staff member giving evidence shall be referred for accountability under the ICAO Service Code and Staff Rules.

Rule 38. The parties shall provide the Board (and the opposing party) with the names of the witnesses they request be called at the hearing at least twenty-one (21) calendar days before the hearing or by the date set by the Board. They must ensure that the witnesses they request are available for the hearing and arrange for their presence. They must also provide information about the location and contact details of the witnesses they wish to call and explain how the testimony of the witness is relevant to one or more of the issues to be decided. At least fourteen (14) days prior to the hearing date, the Board will advise the parties of whether it considers that the proposed witness(es) or expert(s) will be called by the Board.

Rule 39. When the Board requests a witness to appear pursuant to Staff Rule 111.1(17), the Board Secretary/Registrar transmits the request to the person concerned.

Rule 40. The Board shall decide whether the personal appearance of a witness or expert is required at oral proceedings and determine the appropriate means for satisfying the requirement for personal appearance. Evidence may be taken by video link, telephone or other electronic means. The Board retains discretion to refuse or require the presence of a particular witness, for the purpose of the proper conduct of a hearing.

Rule 41. A witness of a party may discuss his or her statement with the party’s counsel prior to giving oral testimony, but may not read testimony from a prepared statement. A party, or any person acting on behalf or in the interest of a party, shall not discuss the appeal with the witness once the testimony has started and until the testimony is completed. Neither party nor counsel may contact or seek to contact a witness for the purpose of influencing the witness's testimony. The Board shall refer any violation of this rule, including any attempted retaliation against staff members who bring appeals or provide information or evidence in proceedings before the Board, to the Secretary General.

Rule 42. The Board shall first examine the witnesses and will provide the parties with a reasonable opportunity to cross-examine them as deemed necessary. Pursuant to Rule 19, above, the Board may also issue orders to the parties and/or their witnesses for the production of documents in their possession or requiring the testimony of an ICAO official or staff member.

Rule 43. Any party may object to the testimony of a given witness or expert, stating reasons for such objection. The Board shall decide on the matter and its decision shall be final.

I. Evidence

Rule 44. The Board shall determine the admissibility of any evidence.

Rule 45. There shall be no formal pre-hearing discovery. A party wishing to submit evidence that is in the possession of the opposing party may request the Board to order the production of the evidence.

Rule 46. Pursuant to Rule 19, above, the Board may order the production of evidence from either party at any time, as necessary for a fair and expeditious disposal of the proceedings.

Rule 47. The Board may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Board may also limit oral testimony as it deems appropriate.

J. Remote testimony by means of audio or video-link or other technology

Rule 48. The Board Secretary/Registrar makes necessary arrangements whenever a party, witness or any other hearing participant is to be heard by means of audio or video-link or other technology. At the date set by the Board and no less than seven calendar days before the hearing, the party calling the witness must provide the Board with contact details and any other information necessary to facilitate the remote testimony of the relevant individual.

Rule 49. In the case of a video-link, any person giving evidence by way of video-link should be able to see and hear the Board members and the person questioning him or her. Likewise, the Board members and the person questioning him or her should be able to see and hear the witness as well as any evidence submitted from the remote location.

K. Sequence of proceedings

Rule 50. The normal sequence of proceedings at the hearing shall be as follows:

- (a) The hearing is convened by the President.
- (b) The Applicant or Counsel makes an opening statement (limited to five minutes or such greater time as the President shall allow).
- (c) The Representative of the Secretary General makes an opening statement (limited to five minutes or such greater time as the President shall allow).
- (d) Witnesses and experts are called by the Board and are examined first by the President and, if appropriate and necessary, by each of the staff members of the Board. The parties may then be permitted to clarify aspects of the witnesses' testimony and/or to cross-examine the witness for such time as the President considers appropriate to a just handling of the proceedings.
- (e) Closing statement by the Applicant, or Counsel (limited to ten minutes or such greater time as the President shall allow).
- (f) Closing statement by the Representative of the Secretary General (limited to ten minutes or such greater time as the President shall allow).



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- (g) Reply by the Applicant to the closing statement of the Representative of the Secretary General (limited to ten minutes or such greater time as the President shall allow).
- (h) End of hearing.

Rule 51. The Board may alter the sequence of the presentations to accommodate special situations or requests (e.g., the appearance of witnesses or experts who are available during a limited period only). As a general rule, the Applicant or their Counsel shall be the last to address the Board.

Rule 52. The Board may suspend proceedings in a case at the mutual request of the parties for a time to be specified by it in writing.

L. Record of hearing

Rule 53. In accordance with Staff Rule 111.1(20), the Board's decision, comprised of a written decision providing reasons, fact and law, shall be considered as constituting the official record of the proceedings.

M. Decisions

Rule 54. The Board may decide to uphold the impugned administrative decision, or may decide to sustain the appeal. If the appeal is sustained, remedies awarded by the Board may include:

- (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Board shall also set an amount of compensation that the Administration may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance, subject to subparagraph (b) of the present paragraph;
- (b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the Applicant. The Board may, however, in exceptional cases award the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

Rule 55. The Board may issue orders and directions as provided for by these rules. Staff members are under a duty to cooperate with Board proceedings, including giving an accurate and truthful account of actions, witness account and/or other relevant information, as the Board may need for the purpose of the proper conduct of a hearing.

Rule 56. The President shall make the decision on the appeal, which shall be on behalf of the Board and shall be final and binding on all of its members.

Rule 57. Decisions shall be issued in writing in English and shall state the reasons, facts and law on which they are based.

Rule 58. The Board Secretary/Registrar shall transmit a copy of the decision to each party as an email attachment originating from the Board's email account. Except in disciplinary cases, a copy of the decision will also be transmitted to the Executive Committee of the Staff Association.

Rule 59. An application to anonymise and or redact a decision may be made by the parties before the conclusion of the appeal, or the Board may so determine of its own motion that such is appropriate in the circumstances of the appeal.

Rule 60. Either party may apply to the Board for an interpretation of the meaning or the scope of the decision, provided that it is not under consideration by the United Nations Appeals Tribunal. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may be corrected by the Board at any time, either on its own motion or on the application of any of the parties.

V. EXECUTION OF DECISIONS

Rule 61. If the decision of the Board is not appealed, it shall be executable following the expiry of ninety (90) days, being the time provided for appeal to the United Nations Appeals Tribunal under the UN-ICAO Agreement.

Rule 62. Once a decision is executable, either party may apply to the Board for a directive for execution of the decision if the decision requires execution within a certain period of time and such execution has not been carried out.

VI. PUBLICATION OF DECISIONS

Rule 63. Decisions of the Board shall be made available on the ICAO Intranet via a dedicated webpage, being anonymised and redacted only as the Board deems appropriate in accordance with Rules 27 and 59, above.

VII. SETTLEMENT OF APPEALS

Rule 64. The parties may agree to a settlement of the dispute that is the subject of an appeal at any stage in the proceedings prior to the publication of the Board's decision. At the request of both parties, the Board may suspend proceedings for a period not exceeding twenty-one (21) calendar days to facilitate settlement. If a settlement is not reached in that period, the Board shall resume consideration of the appeal, unless both parties mutually indicate that progress is being made and request, and the Board grants, some additional time to conclude their discussions. If a settlement is reached, the Applicant or his/her Counsel shall submit a written statement to the Board advising that the parties have reached a settlement and stating that the Applicant is withdrawing the appeal.

Rule 65. Settlement efforts shall be without prejudice, and any such efforts or the terms considered, whether occurring prior to or after the filing of the appeal, are inadmissible as evidence and may not be referred to in the course of the Board's consideration of the appeal.

VIII. WITHDRAWAL OF APPEALS

Rule 66. As the result of a settlement or otherwise, the Applicant may withdraw his/her appeal at any time prior to the publication of the Board's decision. Withdrawal of an appeal must be in writing and signed by the Applicant or Counsel.



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Rule 67. An appeal that is withdrawn after the time limit referred to in Staff Rule 111.1(7) has expired may not thereafter be filed again, unless the time limit is waived or extended by the Board consistent with the procedures set forth in Rule 8, above.

IX. CONFLICTS OF INTERESTS

Rule 68. A “conflict of interest” (as described in paragraph 15 of the ICAO Framework on Ethics) includes any factor that may impair or reasonably give the appearance of impairing the ability of any Board member to independently and impartially adjudicate an appeal assigned to him or her.

Rule 69. A conflict of interest arises in the context of an appeal before the Board, when an appeal involves any of the following:

- (a) A person with whom the Board member has a personal, familiar or professional relationship;
- (b) A matter in which the Board member has previously served in another capacity, including as an adviser, counsel, expert or witness;
- (c) Any other circumstances that would make it appear to a reasonable and impartial observer that the Board member’s participation in the adjudication of the matter would be inappropriate.

X. RECUSAL

Rule 70. The provisions of Staff Rule 111.1(19) for the disqualification of a Board member from a specific appeal notwithstanding, a President who has or appears to have a conflict of interest as per Article X, above, shall recuse himself or herself from the appeal and shall so inform the Secretary of the Board.

Rule 71. A party may submit a reasoned request for the recusal of the President on the grounds of a conflict of interest to the Board Secretary/Registrar, who, after seeking comments from the President, shall refer the request to another three-member Board panel for decision.

Rule 72. The Board Secretary/Registrar shall communicate the Board’s decision on the request for recusal to the parties concerned, which shall be final and without appeal.

XI. CALCULATION OF TIME LIMITS

Rule 73. The time limits prescribed in the rules of procedure:

- (a) Refer to calendar days and shall not include the day of the event from which the period runs;
- (b) Shall include the next working day of ICAO when the last day of the period is not a working day;
- (c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.



XII. PROCEDURAL MATTERS NOT COVERED BY THE RULES

Rule 74. All procedural matters that are not expressly provided for in either the Staff Rules or these rules of procedure shall be dealt with by the Board on the particular appeal, consistent with Article XI of the ICAO Service Code and Staff Rule 111.1.

Rule 75. The Board may issue Practice Directions related to the implementation of these rules of procedure.

XIII. AMENDMENT OF THE RULES OF PROCEDURE

Rule 76. The Secretary General may adopt amendments to the Appeals Board Rules of Procedure after consultation with the representative association or associations of staff members, as well as with the Board Chairs and staff members currently appointed as members of the Board.

XIV. ENTRY INTO FORCE

Rule 77. The Appeals Board Rules of Procedure shall enter into force upon approval by the Secretary General and any subsequent amendment thereto shall enter into force on the first day of the month following their approval by the Secretary General.

XV. TITLES

Rule 78. The titles in these rules are for reference purposes only and do not constitute an interpretation of the article concerned.

— END —