

Foreign -Service Grievance Board

August 14, 1972

TO: The Director of Personnel
Department of State

Record of Proceedings Number 71-05-State-F1
1 Order in. the Case of FEO [redacted]

[redacted], F30-3, submitted a formal grievance on September 27, 1971, which was transmitted to the Grievance Board when it became operational in November 1971. The Board accepted jurisdiction over his case at its first meeting in December 1971. After a preliminary investigation, it was determined that a hearing should be held. In correspondence with the Board, the grievant indicated that he would return to Washington from his post in [redacted] in July, at which time it would be convenient for him to attend the hearing take place.

On July 15 a pre-hearing conference was held, at which the grievant and his representative, Mr. Barclay Ward, and the Department's representative, Mr. Douglas Martin, were present, along with representatives of the Board. As a result of the pre-hearing conference, agreement as to witnesses was achieved and a stipulation was worked out that at the hearing there would be no discussion about the personal activities of the rating officer who had written the efficiency reports which are the subject of the grievance. The stipulation further noted agreed to by the parties as follows: "The following: no personal relationship existed between the rating officer and the grievant; efficiency reports written on the grievant in January 1962 were the major cause of his selection out in 1962; this selection out was rescinded by the Department in 1968 in recognition of the fact that these efficiency reports were the major cause of his selection out and to give the grievant a chance to be reviewed by another Selection Board.

The hearing was held on July 21, 1972. A transcript of the proceedings has been made a part of the record in this case and a copy provided to the grievant.

While the stipulation agreed upon by the parties ruled out any discussion at the hearing as to the personal activities of the rating officer who prepared the reports, it is pertinent to an

tinder standing of the background of these reports that the fc-s.fi perscrxs.1 relations between the rating officer and the 9xieva»t steiinied from the gricvant^JE taking issa with the rating officer about his conduct and 'from t^e reseatsent of the rating officer over this- ^Vo sets of reports were prepared by the rating officer and the circumstances of this ce.se :aa3ce it rasndatory -that these reports ,■ characterized by the Department as "extremely hsr-sh*¹, be carefully scrutinised to determine whether they are falsely prejudicial to the

The first report, dated July 1965, s-nd covering trie period fro:r. Sovenber 23, 1965 through. JUHB 15, 1966, was written after the conflict was v/ell established. After seeing this report (s.t .the tlise he was only permitted to see Part I)* the grievant concluded that he could- sot continue to- wc-rfc under the rating officer and that the only solution was to request a transfer. This he die in Culy 196£ in £ letter to a Deputy Assistant Secretary in t&e Pepartzrrerjt, outlining the eituatioa at the post and his reasons for requestinc? a trsr-sfer. iif £ result of this letter, the rating officer was called eaci; to ifashington for consultation at which tine ne learned of the action taxen by the trrievant. Kithout attempting to judge the merits of the dissgreer ier.t, but noting that the situation Involvec both officers* the DepartsaeGt cscided to transfer the grievant to another aesi^nsert, the transfer to be without pre-jtidice to the grievant. A etatement to this effect was to have been placed in his file; this, however, was not done.

The second efficiency report %-as vrittes after the stbove-cescribed events and was subnitted on a voluntary basis by the rating officer. Kc such report was required by the regulations since the rating period was only six wee3ss anc the testimony at the hearing %*s,z ab-uncar-t that stcst officers dislike the chore of writing such reports arid would never voluntarily <fo so "Jiiless they wa.st.ed to ess-ore that an officer receivec either special credit or special discredit. Th.e rating officer erroneously stated the reporting period to be June !f-Septer 2_f 1965,, vher-as the grie~f^t left the post os or before Aiarust ^, 1966, a fact nowhere statsd in the report. Contrary to regulations providing that Interis; reports shcilk be sebziittei thirty days after the close of the rstixi.; perioc (Z T&K 523b), the report was sn&mitted several months after this deadline, ^he report Is dated December 21, 1266, but, according to a notation in the file, was not logged in by the Departzaeari: until March 1, 1967. Given the hostility which existed between the two officers and the presumption

that tills had been exaeorhatsd by the rating officer's learning-
dtirlae the consultation rsfarrsd ■to alove of the grisvant's action
in '.exiting to the Deparissect about the situation at. the post,
the stoti^es of the rating officer in wxitisKJ and submitting the
second set of reports were obviously to aisedredit the

5&ien asked at the hearing wliiy the Departsi-snt had sot rest the reports
from the grievant's file sin.ee tliey admittedly had caused the
selection out.- the Depsrtaen-t' 3 representative stated that there was
no basis for rerovin<y theni, that they had been prepared and
sui>s;ittad in accordance :?ith radiations and that they did not
contain any sicnificani: errors^ inaccuracies or falsely prejudicial
sta'ssrists. :!e s--oted the letter of July 2,-1963 frcs: ^?r. i^ce to
the griavant vchic statad that ^Bevery possible consideration^{1*} had been
givsn to the grievast in res-cindisg the selection oat. "

Tha grievant does not agree that every possible consideration ■&a.s
gxvsxk hin. Ha contends that the reports, which ths Department adisits
resulted in tha ISSS selection out, contained errors, inacciiacias
an<5 faisaly prejudicial statements- In rescinding the 1953
salaction out, tha Department noted that there appeared to be =nore
than an elantent of truth in the assertions of the grlevant about tha
situation at the pest", and that it wss probable that *his* selection
oiit was "keyed to this sitttiatic-n*. ~h«s, tha Department reccgnisec
that the grisvant had sustained a wror.g and offsrara a rs-isdy^ -Tha
crisv-ant contends that: ths r-s^edy proved to o-z inadaciiata and
inco^-plats: iis not rer^cvin-q' the afficiency rar?orts which "era ths
catiss cf the -**roagful sslaction out in 2.353, the- Department allcwad
a sifuation to occizr in which a further wrongful selection out slight
taka place.' This, in fact, the grievant contends, is j-i2St what
occur, vhe reports regained in his file and continued to influence
vary strongly selaction boards which subsequsafcly rsvieTpad his
parfor^anca foldsrl *ih*s Board notes, for axanpls, that the 24th
Selection 3oard, the fifth to review his file after the Losrsnco
^fargizes period-which, was a total period of only a little over eight
nocths-put heavy esphasis on the assignment in ãæáá'\æäA&iving it
as such weight as it did his **then** current, assignment in ãæáá'\æä.

In addition, tha riepartsent. toolc no action to isplssient its
acrEsnent, set. out in .Mr. Mace's letter of July 2, 1S£3, to place -two
doesnients in the criavant*s file ■ffhich had a bearing on the I«Oiiirencu
Jlarques apiscas. ^The tastiraony at the hearin.5

establishes the fact that these documents were still not in the grievant's performance folder when he examined it in March 1971 and that while his failure to carry out the Department's agreement was then remedied, after a further reminder by the grievant of the Department's promise, it was by then too late for these documents to achieve the purpose for which they were written. Selection Boards had been allowed to review the grievant's performance folder without benefit of these documents *

The Board further notes that, the Department has now inserted into the grievant's file the undated Kehlman transcript of July 10, 1968, with its references to the grievant's "selection cut". Such references are inadmissible and contrary to regulations.

At the hearing there is a detailed discussion as to the included in the reports, the Board's attention was called to the fact that the reports had no reviewing statement, or any review by a panel, or other safeguard against improperly prepared reports, the grievant notes that whereas critical comments were made, few specific examples were given to back up these criticisms, and even these were distorted and misleading. In the one instance, given in the DAS of the first report, of a lack of good judgment, the rating officer was guilty of errors of fact and inaccurate and misleading reporting of the entire incident in a way that was falsely prejudicial to the rated officer, the Board agrees and believes that the rating officer's erroneous, inaccurate and falsely prejudicial statements to the DAE also bring into question the validity of the charge with its similar, unsubstantiated charge regarding poor judgment on the part of the grievant.

The second report contains statements about the "removal" of the grievant from the post, specifically it states that the rating officer had had no choice but to "request his removal". As established at the hearing, the facts are that in July 1966 the grievant himself asked for a transfer in view of the situation at the post., and that the Department's decision to transfer him was based on his own request. The language used by the rating officer clearly distorts facts and must be judged to be falsely prejudicial. In this report also, the rating officer mentions the lack of good judgment of the grievant calling this factor "a good part of his trouble". He again failed to identify or substantiate this claim and the reference must be associated to be to the single instance given in the previous report, which was shown to have been erroneous in fact and falsely prejudicial. This is considerably

harsher tone of *the* second report and its negative and critical assessment of the grievant is clearly traceable, in the Board's view, to the conflict between the two officers, and particularly the recall of the rating officer to Washington, which he learned had been as a result of the grievant's action in writing to the Department. The grievant's representative viewed this conflict as having little bearing on the case, stating that if a personality conflict existed and the rating officer made no mention of the fact in the efficiency report, the report might be subject to attack, but that since it did not, "with any such grounds for attack. In the Board's opinion, this view simply fails to be responsive to the facts in this case. Mr. Hacs's letter of August 8, 1971 to the grievant speaks of the "serious personal difficulties" that existed between the two officers. The Department viewed these as being of such a nature as to warrant setting aside the grievant's selection out in 1958. In the Board's view this is hardly a simple "personal conflict" which has no bearing on the case.

The Department presented a witness to testify to events that occurred at the post with a view to establishing the credibility and veracity of the reports insofar as they mentioned such events. His testimony revealed that, he arrived at *the* post in *the* fairly late in the grievant's stay, and that he had no first-hand knowledge of many of the incidents referred to in the reports. His assignment was to study Portuguese for a period, after which he was to replace the administrative officer. He was new to responsibilities as an administrative officer and it was clear from his testimony that when he did assume his duties in that position he and the grievant had disagreements over interpretations of regulations. He was not able to prove, however, that any violation of regulations had occurred. He showed himself to be unfamiliar with certain regulations relating to the use of official cars. He was in error as to the facts and circumstances connected with the grievant's selling of his car and was ignorant of the circumstances surrounding the cancellation of an order for a consular vehicle. In short, while the testimony of the witness established that, his own relations with the grievant were, in his words, "difficult but correct", it did not, in the Board's view, establish the veracity and credibility of the reports themselves.

His testimony also established that, contrary to the assertion of the Secretary of State that it would be done, the Department failed to place in the grievant's performance folder an exchange of correspondence in August and September 1970 between the

Secretary and the Chairman of the Board of the American Express Company relating to the services rendered to the grievant by the grievant.

The Board does not uphold the contention, of the Department that the efficiency reports were prepared and submitted to the Department in accordance with regulations and that there is no basis for removing them.

The Board upholds the grievant's contention that the efficiency reports from Zoureco Marques, which admittedly were the major cause of his selection out in 1968, contain errors, inaccuracies, distortions and falsely prejudicial statements. The Board finds that this applies to both sets of reports.

The Board does not uphold the contention, of the Department that, "every possible consideration" was given, to the grievant when, after reversing the selection out of 1968, it, on the one hand, failed to remove the efficiency report which had admittedly been the cause of the selection out and, on the other, failed to ensure that two memoranda—the Inkens and SusL of Koveisber 14, 1966 and an edited version of the Memorandum of July 10, 1968—were placed, in the file as Mr. Kace promised would be done in his letter to dated July 2, 1963.

The Board upholds the grievant's contention that the Department erred in omitting from the grievant's performance folder the letter from the Chairman of the Board of the American Express Company to the Secretary of State and the Secretary's reply, in spite of the assertion of the Secretary that this would be done.

The Board, therefore, orders as follows: I-

Per 3 FAK 667.2aCD

a. That the reports written on the grievant in redacted be removed from his file;

b. That other memoranda relating to the redacted period be removed from the grievant's file, specifically;

redacted. dated September 6, 1967, signed by the

{2} Memorandum dated March 15, 1971 from Howard Hace to the grievant;

{3} nersorss&acL dated June 10, 1955 to Er. Mace
from Thosss K. KcSlhijaey;

date Scvestber 14, 1956 from
Alan iUkeiiE to Kr. Robert Eoughtoa;

(3) Kerorand-ais frost Jim Farber dated March 15,
1971.

c, that the letter of August 25, 1970 from the Chair of the
Board of the American Express Company to the Secretary of
State and the reply of the Secretary of State, dated
September 15, 1970, be placed in the grievant's performance
folder:

d. that information folder in place of the efficiency
the attached memorandum be placed in the reports
ordered removed;

e. that the low ranking by the 1955 and XS-70 boards,
which reviewed his performance file when it contained
efficiency reports with errors, inaccuracies and falsely
prejudicial statements, be eliminated.

Per 3 PAE 667.2E(5)

a. that the Department rescind its action to select out
the grievant which it took following the rankings by the
1955 and 1970 Boards, which action rendered the grievant
ineligible for consideration by a subsequent Selection
Board;

b. that the grievant's performance folder be reviewed
by the next Selection Board which sits to consider office:

Certification of [redacted]
submitted to the Board with, the best SO data vs

Alexander Z. Porter
Acting Chairman
Service Grievance Board