

\
s



Foreign Service Grievance Board

August 30, 1972

TO: Temple G. Cole, Esquire
S/R, Boon 7430 Department
of State

SUBJECT: Secord of Proceedings Humber 71-08-State-B7
Findings of the Board in the Case of Temple G. Cole

You submitted a formal grievance on October 12, 1971, to be considered by the Board when it became operational. At its initial meeting in December 1971, the Board determined that it could not accept jurisdiction since the procedures of the informal review process had not been completed. When these were finally completed in May 1972, the Board accepted jurisdiction/ and after a preliminary investigation determined that a hearing should be held. At a pre-hearing conference on July 17, 1972, at which you, Mr. Joseph Roland, the Department's representative, and representatives of the Board were present, you confirmed that you intended to represent yourself at the hearing, and both you and the Department's representative confirmed that no witness would be called.

The hearing took place on July 24. A transcript of the proceedings has been made a part of the record in this case, and a copy provided to you.

The case concerns your contention that reports written on you in Lusaka contain inaccuracies and omissions as well, as a falsely prejudicial statement which gave selection boards an incorrect basis on which to judge your performance and which have, in fact, been a principal factor in your low-ranking by selection boards and your selection for involuntary retirement from the Service.

The testimony highlighted three specific inaccuracies and three specific omissions which you complained had occurred in efficiency reports from Lusaka.

Alleged Inaccuracies

The first inaccuracy was a statement by the rating officer that you failed to write up memoranda of conversation, although

requested to do so by the Ambassador. You denied that this happened more than once and explained the circumstances of the one such incident that did occur involving a refugee leader and the Ambassador, stating that the Ambassador had agreed with you that there was no necessity to prepare a memorandum of conversation after you pointed out that the essence of the refugee leader's views had already been reported several times. You noted also that the rating officer referred to the incident again in his second report as though it were an additional example. A reference to the rating reports seems to bear out your contention that this complaint was really only one incident, not several, and that the rating officer erred in repeating in a second report an incident which had already been fully covered in the preceding period.

The second inaccuracy had to do with the rating officer's statement in the report dated July 1966; "In at least one other case he made the mistake of 'saving the material' to be incorporated in a more comprehensive report which seemed to get lost in the shuffle because it became too complex to write in the time available." You contend that you did write the report and that the rating officer erred in stating that you did not. The Board has no way of knowing which officer is correct but notes that, in any case, according to the statement of the rating officer himself, the incident apparently happened only once, if it did occur, and the reporting of it seems somewhat misleading, if not inaccurate.

The third inaccuracy related to a contention by the rating officer that you failed to prepare a DA.R on another officer within the time frame the rating officer thought desirable. The testimony brought out that the report was done within the required deadline and before a number of similar reports required of other officers had been undertaken.

"The Board concludes that, on the three specific inaccuracies, your contention is borne out by the record and the testimony developed at the hearing.

Alleged Omissions

As to the three specific examples of omissions—that you were not given sufficient credit for your accomplishments in Lusaka in connection with the refugee scholarship program, for your assistance with the school for refugees, and for your consular responsibilities, the Board finds that, on the contrary, recognition was given to all three aspects of your

work- The record shows that the first report from Lusaka had already covered your pioneering efforts with refugees and also your work in establishing the consular section at the post. Reports written by the second officer to rate you in Lusaka—the ones that are the subject of your grievance—were long and detailed and gave you high praise, particularly for your work in connection with refugee programs, which was characterized as "superb". While, in his comments to the Department of May 1972, the rating officer acknowledged that he could have written in more detail about this work, nevertheless the Board does not believe that selection boards were influenced as to the excellent work you did in this field.

The essence of your claim as to omissions, particularly on your work with the refugee programs, seems to be a misunderstanding between you, on the one hand, and your rating officer and the reviewing officer, on the other, regarding the priority this work should have: you understood yourself to have a special mandate from the Department to place such work above all other duties and you believed that the rating officer erred in not assessing your work priorities from this viewpoint. The Board concludes from the evidence that you and your supervisor had a serious difference of opinion on this point; that your supervisor undoubtedly had a right to establish guidelines as to duties and requirements; that while you had a right to state your views, ultimately, as you acknowledged at the hearing, you had the obligation to conform to guidelines which had been established by your superiors at the post; and that when you did not, you had to bear the consequences of a performance rating which reflected unfavorably upon what was regarded as your willful failure to profit from guidance from your supervisor on crucial performance factors. The Board notes that the Ambassador, who was the reviewing officer for the Lusaka report, stated his regret that you had not taken your supervisor's advice.

The Board cannot sustain your contention that the omissions specifically the subject of your grievance constitute a serious deficiency in the report.

Alleged Falsely Prejudicial Statement

With regard to your claim, that the February 1967 report contained a falsely prejudicial statement that you allegedly had a speech problem, the rating officer, as brought out at the hearing, later acknowledged that he should not have used the word "impediment", and that his discussion of your speech

characteristics may have been unfair. The Department itself in its investigation of the case during the informal procedures recognized the error of the rating officer in making such a statement when it agreed to resolve the report and to expunge the low ranking which occurred in 1967. This agreement to remove the report and to expunge the 1967 low-ranking should be put into effect immediately and the Board by copy of this Memorandum to the Department so orders, with, request that notification of compliance be given the Board within ten days.

The Board agrees that the reference to your speech constitutes an error in the efficiency report but finds no evidence that it was a factor in selection board decisions.

1961 Memorandum

At the hearing a question was raised about a memorandum dated February 1961 which was in your performance folder apparently in contravention of regulations. The memorandum makes reference to the fact that the 14th selection board did not promote you and to the fact that the Department was electing not to select you out at that time. That the 1569 selection board took the information contained in this memorandum into account seems clear from its passing reference to the fact that you were "just saved from the time-in-grade penalty in Class 8." This fact is not otherwise mentioned in your performance file.

Subsequent to the hearing, the Department was asked by the Board to comment on the fact that such a document had been allowed to be entered in your file. In response, the Department submitted a memorandum to the Board, dated August 2, 1972, asserting that, in its view, nothing in the regulations precluded the insertion in 1961 of the memorandum, nor was there any directive, order or regulation subsequent to that date which would require removal of the memorandum. The Department further explained that the action was taken in implementation of a decision on January 13, 1961 by Ambassador Roy Henderson to amend the regulations to allow Class 8 officers to be considered by a fourth promotion board instead of by only three boards as was the case prior to this change in the regulations. A copy of the Henderson memorandum was attached to the Department's explanatory memorandum.

The Board has carefully reviewed the Henderson memorandum but finds nothing in it that directs the Office of Personnel to place notations in an officer's performance folder indicating

how previous boards have ranked an officer, or referring to a decision of the Department regarding the selection out of the officer. Furthermore, placing such memoranda in an employee's folder is clearly not in harmony with regulations regarding inadmissible comments which have been on the books for a number of years, or with the general understanding embodied in precepts to selection boards that statements regarding previous standing with any particular selection board should not be irade available to succeeding selector. boards.

The Board understands that the reasons for placing the memorandum in the file were laudable but believes that the 19f9 selection board interpreted-it in a way that was contrary to the Department's intention when it inserted the document in your file. The Board notes, however, that you have been Dror-iOtec three times since the r-ercorandun has been in your file.

The Board concludes that while the continued presence of the 1961 isenorandur. in your file was an error, it has not hindered your advancement in the Service, nor was it a major factor in the decision of the 1S6S selection board to low-rank you.

Department' s Contention on Low Rankings

During the hearing, the Department's representative emphasised that, although there seemed to be soise sierit in your charges, they did not encompass what the Department perceived to be the reasons for your selection out. Specifically, he pointed out that the 1965 and 1570 selection boarc-¹ statenents for low ranking you referred only incidentally to Lusaka and concentrated almost entirely on Xabat, yc- subsequent post. He also pointed out that these statements iid not focus on any deficiencies peculiar to the Lusaka reports in question, but rather or- a pattern of repeated weaknesses mentioned in reports pre-datinc those which are the subject of your grievance; repeated in the reports in question; and culminating in those prepared upon you in Rabat. It was for this reason, he explained* that the Department was unable to find any basis to provide you with the relief you requested, the reversal of your selection out.

Conclusion

On the basis of the record, the Board concludes that your grievance concerns itself with issues only peripheral to the Department's decision to separate you involuntarily. As a consequence, the Board, while having found in your favor on a number of the points in your grievance, cannot provide you with the relief you desire. Specifically, the Board finds that, although the reports covered in your grievance do contain a number of inaccuracies and one falsely prejudicial statement, they were not the primary basis for your selection out. The Board further finds that in your grievance you did not address yourself to the overall deficiencies in performance cited by the selection boards in low-ranking you.

The Board concludes that the evidence does not sustain your contention that your low-rankings in 1967 and 1970 were caused by the reports which are the subject of your grievance. The Board, therefore, is unable to find in your favor and must sustain the Department's position in this case.

Killias; E. Siiskin
Chairman Personnel
Service Grievance Board

cc: DG/PES - Mr. Brewster