

Foreign Service Grievance Board

June 13, 1972

TO* The Director of Personnel
Department of 3-tata

3UBJECT: Record of Proceedings number 71-11-5tata-D9
Remedial Order in the Case of Grievant
FSS-7

RSF: 3 ?AM 667.2.a.

{Grievant}, FSS-7, filed a grievance with the Department on October 10, 1971, which, at the request of [grievant], was referred to the Foreign Service Interim Grievance Board to be considered by the Board when it became operational. The Board accepted jurisdiction of this pre-existing grievance at its first meeting, notifying [grievant] on December 8, 1971, that it had done so.

In his grievance submission [grievant] requested that an efficiency report covering the period October 12, 1968 - June 13, 1969, prepared on him in redacted by rater, be removed from his file. He alleged that in addition to containing procedural errors, the report was biased, and had affected his chances for promotion. He also requested the removal of a Memorandum dated October 7, 1971, containing the recommendation of an Ad Hoc Panel set up by the Department to review [grievant's] case, on the ground that the findings of such a panel could not be conclusive or binding. As redress for his grievance [grievant] that in addition to removal of these two documents, he be granted an immediate promotion.

The Board investigated his case and on the basis of its preliminary findings ordered a hearing before a Panel of the Board. At a pre-hearing conference [grievant] and his representative, Mr. Irwin Parnick, confirmed that the grievance and the request for redress remained substantially as originally presented.

hearing took place on May 17, 1972_F with the grievant and his representative present and Mr. S. Douglas Martin acting as the Department's representative. A transcript of the proceedings has been made a part of the Official Record of Proceedings file in this case, and a copy has been made available to the grievant.

At the hearing the case presented by the grievant and his representative covered three main points: (1) the request for the removal from the grievant's file of the efficiency report he grieved about and the Memorandum of the Ad Hoc Panel; (2) the desire of the grievant to move from C & S work into other fields; and (3) his request for a promotion.

The grievant and his representative reviewed for the Board the procedural errors they claimed had affected the acceptability of the efficiency report—including its late submission and improper reviewing statement—as well as their contention that the report was biased and falsely prejudicial to him and that it had also influenced subsequent reports written on him during his tour in Reacted. The grievant further contended that efforts he had made through normal channels to have alleged errors brought to the attention of authorities with a view to their taking corrective action did not result in a satisfactory solution of his grievance.

The Department's representative acknowledged that procedural errors had occurred and that the Embassy had erred in its handling of the grievant's request for corrective action. He pointed out, however, that the improper reviewing statement was removed at the instance of a Foreign Service Inspector three months after its submission; he also explained that the report as it now stands has no reviewing statement, no appropriate reviewing officer was available, and where this is the case, it is not mandatory to have a reviewing statement but only an explanation of this fact.

On the point raised by the grievant that there had been no proper guidance from his supervisor, the Department's representative noted that, it is clear that there was a lack of communication between the supervisor and the grievant; however, he was an experienced communicator who knew how to do the job and who presumably did not need guidance on that score. He doubted that, discussion between them would have served any useful purpose since relations between the two were poor.

The Board believes that whereas the grievant was not entirely at fault in the situation in which he was placed, the superior and supervisor bears a greater share of the blame. The lack of sympathy between them stems from personality differences. In the efficiency report he was rated with marked severity, even giving him poor marks in what was admitted by the Department's representative to be one of his strong points—his relations with foreigners. The Board believes that the report reflects her undeniable bias toward the grievant in a way that is unfairly prejudicial to him.

The Board notes that the recommendation of the Ad Hoc Panel convened by the Department to hear the grievant's case is that the redacted report remain in his file along with his rebuttal statement and the Memorandum containing the findings of the Panel. The Panel also strongly recommended that special consideration be given to the grievant's next assignment, in consultation, with *him*. The Board considers the latter recommendation appropriate and notes that the Department's representative stated this will be done. The Board believes that the Panel's remedial action was inadequate in leaving the efficiency report in the grievant's file.

After consideration of all factors presented at the hearing, the Board orders the removal from the grievant's file of the following:

- 1- the efficiency report covering the grievant's performance in redacted from October 12, 1968 - June 13, 1969
2. documents relating to this report, including a memorandum from the grievant to Personnel Unit Department dated February 26, 1970; Tokyo's letter of March 15, 1970; letter, including enclosure, dated April 8, 1970 from Francis X. Ready to Robert E. Peck
3. the Memorandum dated October 7, 1971, of the Ad Hoc Panel, together with covering letter dated November 25, 1971 from Hal X to Burris.

The Board notes that; the grievant has expressed an interest in moving into work other than C a R. while the discussion of the situation at the hearing indicated that possibilities for transfer to other fields seem to be remote at the present time, the Board believes that the grievant has real potential for a useful career in the Foreign Service and suggests that appropriate measure be considered to enable him to realize his potential.

As respects the grievant's request for promotion, the Board is inclined to agree that the possibilities for promotion have been affected by the report; however, they are being removed. Nevertheless, even taking that report and its possible consequences into consideration the evidence does not sustain a recommendation for promotion at this time. The Board, therefore, makes no recommendation for promotion.

The following statement, should be placed in [grievant's] performance folder in lieu of the efficiency report being removed by this Remedial Order:

"The efficiency report covering the period October 12, 1958 - June 13, 1969 has been removed by order of the Foreign Service Interim Grievance Board, which found it to be biased and unfairly prejudicial to Mr. Fitzpatrick. While the Board did not order removal of the subsequent efficiency reports written on [grievant] during his tour in redacted, the Board suggests that future Promotion Panels may wish to take into account the Board's belief that these reports may have been influenced by the efficiency report ordered removed. The Board noted that while an Ad Hoc Panel set up by the Department to consider [grievant] case did not provide him with the remedy he requested, it did come to the conclusion that, in its own words, [grievant] was a victim of peculiar circumstances beyond his control and of an unresponsive Embassy.¹"

Certification, of compliance with the Board's order should be submitted to the Board within the next 30 days.

William W. Siskin Chairman, Foreign
Service Grievance Board

CC: Grievant