

EXCISED

FOREIGN SERVICE GRIEVANCE 3CA?;D

March 27, 1972

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TO: The Director of Personnel
Department of State

SUBJECT: Record of Proceedings Kinder 71-12-State-E>10:
Remedial Order in the Case of FSO I tkgxcpv

RLF; 3 FAM 667.2

YÖã↔ã{á^\ÿ, FSO-6- filed a formal grievance with the Grievance Board on October 12, 1971, in connection with his involuntary retirement. He stated that he left the service because of failure to be promoted within the time prescribed for his class. In his grievance he alleged that false and inaccurate statements in the efficiency report for 1969 and 1970 had so misrepresented the real nature of the positions he occupied as to create a false and unjust standard of reference by which Selection Boards would rate him in comparison with others in his class and so had led to his failure to be promoted.

The Board investigated his case and, on the basis of its preliminary findings, ordered a full Board hearing which was held on March 6. At a pre-hearing conference held on February 25, 1972, in anticipation of this hearing, the grievant was accompanied by his representative, Mr. Norman Earth. Mr. Earle Richey represented the Department. Also present were Mr. John Warnock, Executive Secretary of the Board, and Miss Martha Burns, Board Member. At the pre-hearing conference [grievant] added a new facet to his grievance, stating that specific regulations had been violated in connection with his assignments to redacted language training, and redacted.

On March 2 Mr. Richey met with Miss Burns and Mr. Warnock to inform them that the Department needed additional time to prepare its case with reference to the new issues raised concerning violation of specific regulations in connection with assignments, and that a postponement would probably be requested. After consultation with the Chairman of the Board it was determined that the hearing would take place as scheduled on March 6, at which time the Board would hear the Department on its reason for requesting a postponement and give the grievant a chance to comment on this development. Accordingly, the hearing was convened on March 6, with a court reporter present, and testimony was taken on the question of the postponement. A transcript of this proceeding was made a part of the Record of Proceedings in this case, and a copy given to the grievant. The names of the participants are recorded in the transcript.

The Department raised the question of the Board's jurisdiction over the question of assignments, since 3 FAM 562.2 specifically excludes assignments from the jurisdiction of the Board. The Board found, however, that it could not undertake to rule on this point until it had heard the grievant's presentation of his contention that specific regulations had been violated; questions of violations of specific regulations on assignment do fall within the Board's jurisdiction. Since major aspects of the grievant's case were not concerned with it; in fact, the Board was not concerned with the question of assignments out of false and error. In his efficiency reports, the Board was inclined to believe that part of the testimony, but since the grievant was unable to "the postponement requested by the Department and desired to have the case heard as a whole, the Board, after ascertaining that both parties would be fully ready to hear the case on March 13, adjourned the hearing until that date.

On March 13 the parties reconvened and the hearing proceeded. The court reporter's transcript is a part of the Record of Proceedings.

At the hearing the Department's representative raised the question of the Board's jurisdiction over the question of assignments. The Board again ruled that it would have to hear the grievant's contention as to the violation of specific regulations before it could determine whether it had jurisdiction on this aspect of the grievance. The Department's representative then addressed himself to the citations of specific violations given by the grievant and explained how the cited sections of the FAM related to other sections or to the overall discretion of the Department to make assignments in the best interests of the Service.

The Board finds that the charge of the grievant that assignments to redacted, redacted Language training, and redacted violated certain specific regulations was not substantiated by the testimony at the hearing. The Board therefore makes no ruling on this aspect of the case.

The hearing continued with testimony by the grievant as to the misrepresentations of his position descriptions in the efficiency reports covering his redacted assignment and the first year of his redacted assignment.

The Board does not find that the grievant's charge that his position description in his efficiency reports misrepresented his duties has been substantiated. The Board notes that in making this

charge the grievant; quoted from the position description but that he quoted only selected portions of the description. He contended that the portions quoted gave the impression that political and economic reporting were more central duties than they in fact were. The position description when read in its entirety, however, does not give this impression but makes it clear that the duties were miscellaneous and general in nature. The Board therefore does not uphold the grievant's contention on this point.

The Board, however, does wish to concur on the redacted assignment. The Board notes that the description in the ?ZR of the redacted position states that it is designed to train and indoctrinate newly appointed "SO's. [Grievant] ->/as far from being a newly appointed 750 at the time of his assignment to that position, having served for approximately four and a half years, including a two-year tour as a consular officer in redacted, While it has not been proven the assignment to redacted- violated any specific regulation, the Board does not believe that it was an appropriate assignment for the grievant at that stage in his career.

The Board heard testimony, including that of a witness called by the grievant, as to the special circumstances surrounding the position occupied by the grievant during his first year in redacted. This is because the grievant's assignment to the position was to abolish a position at the post following the 3AI.PA directives. Having given the grievant the necessary training in the language, the only yearling was to assign him to the country where the language is spoken. At 3ALPA and the circumstances that obtained at the post after the invasion of Czechoslovakia, and the resulting caution of all surrounding communist countries with respect to communications with Western diplomats, made for a far different situation at the post from that envisioned when he embarked upon his language training. The assignment to the country was a result of this training, but the elimination of a position resulted in arbitrary assignment of duties for the grievant after his arrival at the post to accompany other personnel at the DC3t, As a result of this arbitrary action, the grievant had no clearcut position to fill, but was assigned duties largely on an ad hoc basis. This situation lasted for a year, the period of the first efficiency report written on the grievant at that post. The Board notes that no explanation of the anomalous situation the grievant faced during this year is given in the *ifticier* report, either in the position description or in any other

part of the report. "The result of this failure to give irt the efficiency report a clear and correct picture of the grievant's situation during that period was that no correct judgment of his performance in ths light: of these circumstances could be eada by any Selection Board reviewing his performance folder. The Board therefore finds the grievant'a charge that the report seriously mis represented his duties during the first year of his assignment to the post to be completely substantiated.

the fact that tha grievant was in a class in which *hs* had only four opportunities to be promoted, every report, submitted on the officer during this four-year period va.3 crucial to his chances for promotion in competition, with others in his class. The Board notes that tha first of the four Selection Boards to review his performance during this critical period of his career had only the final stoaths of his redacted assignment as the raost currant evidence of his progress. The Board ha3 already comsented that the redacted a for the grievant for the reasons noted above. 'The second Selection Board to review his performance ~at shortly after he had concluded his period of hard language training; other than a training evaluation, no efficiency report on performance was thus before the Selection Beard at that time. The third year tha Selection Board had before it the r2po~t which *is* the subject of the officer's grievance, which for tha reasons cited above was not a. report on which a Selection Board could isaJca a valid judgment in comparison with officers in the same class; the fourth report, an axceli^nt one covering the second year at the saiaae post, was tha first report that gave a Selection Board a nonaal picture of tha officer's abilities, and it cause too late to make up for tha other three.

The Board finds that the grievant has been seriously ais.v^van-taged by reason of the irregularity znd inaccuracy of the report grieved about and bslievos that hia failure to be promoted within the time allotted can be argued to be directly connected with tha failure to present the Selection Boards with a correct statement of his performance. Therefore the 3oar<i orders the grievaat'a involuntary separation to be rescinded, and the low ranking by tha 1970 Selection 3card and all reference to his scheduled involuntary separation expunged. The Board further orders that the grlevant be fully reinstated in the Foreign Service as a class 6 officer in th^J^inal salary step, w-xth the opportunity to compete for promotion through 1974.

The Board, suggests that, the Department rasks a suitable assignment for the grievant for this period, and suggests that this bs done in consultation with hiss.

Your confirmation of the implementation of this order should ibs provided this office within the next 30 days.

■."iliara E. Simkin Chaiman, ?or2iqn
Service Grievance Board

cc; Grievant
Mr. Barth