

Foreign Service Grievance Board May

8, 1973

Director of Personnel
Department of State

SUBJECT: Record of Proceedings 72-93-STATS-60
Reicial Order in the Case of FSSO-4:Grievant

On November 15, 1972, [grievant] filed a grievance with this Board concerning allegedly false and misleading statements in efficiency reports covering the periods June 1967 to May 1968; May 1968 to May 1969 and May 1969 to May 1970. In the grievant's view, deficiencies in these reports resulted in her failure to be promoted. Some of the deficiencies concern specific remarks, others have to do with a failure on the part of the rating officer to give an accurate description of her duties, and to give due weight in box scores and narrative portions of reports to duties which absorbed the HiaJDr part of her time.

In the informal stage of the grievance, the Department found merit in the grievant's claim with regard to the description of her duties. As a remedy, it offered to insert, and did insert, a memorandum in her file, calling to the attention of Selection Boards and others who might have occasion to consult her performance folder the opinion of the Director of Personnel that certain aspects of her performance might appropriately have received more attention in efficiency reports, and also noting that a Memorandum dated August 2, 1968, concerning the grievant's work, was not placed in her file until January 1970, and thus was not available to the 1968 and 1969 Selection Boards. The Department also agreed to insert in her performance folder a statement obtained by the grievant from the former Director of the Visa Office, giving information about the grievant's performance and the nature of her duties during the period 1966 to 1969. The Department did not, however, agree with the grievant's objections to certain statements in the efficiency reports, and found no basis to delete such statements, as requested by the grievant. The Department also did not agree that the grievant had been unjustly denied promotion by reason of the deficiencies complained about.

Relief requested from the Board

In her submission to the Board, the grievant sought the relief denied by the Department, i.e., deletion from her efficiency

reports of certain statements, and a retroactive promotion, to FSSO-4 effective 1968, and to PSSO-3 effective 1971.

The grievant was promoted to FSSO-4 by the action of the 1972 Selection Board. This fact does not, however, change the relief requested: she continues to seek to have this promotion, and a further promotion to FSSO-3, made retroactive, as outlined above.

Investigation

The Board's investigation included an examination of its own Record of Proceedings in this case, the grievant's personnel and administrative folders and her career counseling folder. In addition to the grievant herself, consultations were held with - '■ Peter Pereny'i, her representative; her Career ° Counselor; Ambassador formerly the Director of the Visa Office in the Department; and , formerly with the EUR/SES office.

In its investigation the Board found that the crucial events so far as the grievance is concerned occurred during a period covering roughly two and a half years. In November 1966, the grievant, while continuing to carry out basic duties as Visa Examiner in connection with departure control cases, was assigned to special additional duties. She continued to perform these extra duties until early 1969. This work involved determining visa eligibility for performing groups such as the Bolshoi Ballet, as well as individual scholars, scientists and artists from the Soviet Union and Eastern European countries. It necessitated close coordination with desk officers in the European Bureau concerned with carrying out this Soviet and Eastern Europe Special Exchange (SPLEX) Program. Two of these officers have volunteered information on the grievant's behalf concerning both the quantity and the quality of her work.

It is clear from the testimony of these officers that the work was very heavy at times, and that though she was normally under the supervision of . initially in SPLEX matters, she in fact bore the brunt of the work in these cases and was by far the more effective of the two in her handling of the work, particularly when Mr failing health began to impair his ability to carry even a limited share of the work. In a memorandum submitted to the Board, one of the officers Buramed up their view by saying that [grievant] had shown herself to be "highly effective, forthcoming, and imaginative in the handling of the cases," and that because of her cooperativeness and productivity she had "helped insurably in the smooth operation of the West-East exchange program."

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It was at the instigation of these two officers that in August 1968 a commendation from the EUR/SEE office was awarded to [grievant]. This commendation was not, however, included in her performance folder until January 1970, as was noted by the Director of Personnel in his re-examination statement **for** - her file. '***'

While the grievant's SPLEX work was properly described in the efficiency report prepared by [redacted] for the period ending June 1967, in the succeeding reporting period her new rating officer, failed even to list these special duties. When he was unresponsive to the grievant's protests that his rating gave a false and erroneous picture of her work in omitting from her position description duties which occupied the major portion of her time, she submitted a letter dated July 22, 1968, for inclusion as an addendum to her efficiency report. This letter gave the necessary information about her duties and corrected to that extent the deficiencies in the position description-

Virtually the same thing happened in the succeeding rating period, covering her work from June 1968 to June 1969. As originally prepared, her efficiency report for this period omitted all consideration of her SPLEX duties. Although, after protests by the grievant, the rating officer did add the statement of the EPLEX duties which the report now contains, his action in failing even to mention these in his original report makes it clear that he did not take these duties into account in the narrative and box scores. Unlike [redacted], who had himself been charged with responsibility for carrying out SPLEX duties, [redacted] was not aware, as he should have been, of the actual workload of this program in relation to the grievant's other duties.

It may be noted that while the grievant could, in the case of the first report, add the factual list of duties, or finally succeed, in the case of the second report, in getting the rating officer to add such a list, she was not in a position to add the evaluation of how she carried out those duties, since this was properly the responsibility of the rating officer.

In the Board's opinion, this aspect of the grievant's case deserves further clarification in her record. The Board has therefore prepared a memorandum for inclusion in her performance folder to augment the remedial statement of the Director of Personnel, which refers primarily to the omission of the grievant's SPLEX duties from her position description.

FINDINGS OF THE BOARD WITH REFERENCE TO GRIEVANT'S *SEQVBST* FOR DELETION OF PORTIONS OF EFFICIENCY REPORT

The Board has carefully examined the grievant's efficiency record with a view to determining whether, as alleged by her, ; statements are false, misleading, or in other ways inadmissible or contrary to regulations. The Board has found justification for the grievant's charges in some instances, and therefore orders that corrections be made as follows:

A. Development Appraisal ^{irRej}>or t, 6/16/67 - 5/15/68

Part I, Section C, Limiting Factors

Delete sentence, beginning, "Personally, I doubt...*

This is speculation, not verified factually as a limiting factor, and therefore should be omitted.

Part I, [^]Section D, Leadership and Executive Capabilities

Delete second sentence, beginning "considering her personality..."

In the Performance Rating Report, the rating officer has marked Executive Ability as "not applicable." The rating officer does not substantiate his statement in the DAR that "she is not the executive type,"

Part I, Section E, Growth Capacity

Delete sentence beginning, "At this stage of her career..."

This sentence is inconsistent with the recommendation for promotion made in the Performance Rating Report.

Part I, Section F, Advancement Potential

Delete phrase, "age {she is 54), after years of service..."

In the context, this reference may be considered discriminatory and a violation of Executive Order 11141 of February 12, 1964, which seeks to assure that older people are not discriminated against because of their age, and that they receive "fair and full consideration for employment and advancement in Federal employment." ✓

E. Development Appraisal Report, 5/16/68 - 5/15/69

Delete in its entirety.

The **rating officer offers personal opinion** ^{^^^} lation, unsubstantiated by concrete **evidence, about:** the grievant's supposed desire not to return to the field, and about her not being in a position to assume greater responsibility, with such an inadequate consideration of growth potential, any recommendation regarding promotion is rendered jaoot.

With the removal of the rating officer's statement, the reviewing officer's' statement has no basis.

The attached Memorandum in Place of PAR should be substituted for the DAK ordered removed. (Attachment 1)

The grievant requested certain other deletions, as indicated below, but, for the reasons stated, the Board did not find a basis for concurring with the grievant's request.

I. Efficiency Report, period June 16, 1967-May 15, 1968

The grievant in a recent letter to the Board requested the deletion of Parts I and II, except the reviewing officer's **state-** ment, for the reason that Part II rates the officer as having her primary responsibility departure control worfc, whereas her primary responsibility was in fact the SPLSX program.

Board's coratsent: Xn the Board's view this matter hae been adequately explained in (1) the grievant's letter of July 28, 1968, and (2) the grievant's letter of October 4, 1971, both of which are in her performance folder. Removal of Parts I and II, as requested by the grievant, would necessarily entail removal, or extensive editing, of these documents, as well as removal of the memorandum of the Director of personnel.

XI* Efficiency Report, period May 16, 1968-May 15, 1969

The grievant requests deletion of the entire report **on the** grounds that the list of duties was added after the report **was** prepared. She also objects to the word "assists" as she believes this denigrates her responsibilities. She also feels the report shows a "laarked decline" in her performance, for which, in her opinion, **there was** no valid basis.

Board' s comment: The first point has been explained fay the grievant's letter of October 4, 1971v Saaovat of ..~t&e report would require removal or extensive editing of thl* document. The Board does not agree that the word "assists* haa ithe narrow meaning attributed to it by the grievant in this context, Soe did not carry out the whole program alono; »he■ ^^^j o«t. this Board do«s not vi«w this as an «rxo2ri*otf» *er-statement. While the change in format in the forms used in the two years makes an exact comparison impossible, the Board also does not believe that an examination of the two reports reveals the "marked decline" claimed by the grievant.

IXI_ for period 5/16/69 - 5/1S/7Q

The grievant contends that the tone of the DAR is inconsis- tsnt with the OER narrative. She also believes that the rating officer's statement in the DAR that she .is not assigned the more complicated matters or expedite cases is Inconsistent with his comments in the OER that "frequent discussion on the more com plicated cases assigned [grievant] are held..." and with the coniments of the reviewing officer in the OER that on a number of occasions she had been called upon to handle soste Kiattere "required a degree of urgency," and that she had b«en extremely helpful in such cases.

Board' s coramentT The Board finds no necessary inconsistency in the language cited, which clearly implies *n element of rela-tlvity with regard to -the concepts of "routine," "ecsnplcated," . and "urgent." It is clear that both rating and reviewing officers regarded her performance on matters assigned to her as «ntirely satisfactory. As for inconsistency in the tone of the two parts of the report, the Board fails to find this argument persuasive.

C. The Board further orders that the attached Meraorandjjgn on SPLEX Duties be added to the officer's performance fodder". "Attachment 2).

FINDINGS RND RECOMMENDATIONS OF TKS BOARD ON GRIEVAKT'S REQUEST FOR

The Board notes that the efficiency report for the period May 1970 to May 1971 strongly recoEaaended her promotion, out that the work the grievant did was exactly the same aa fchat perfonadd by much more senior officers in the same office; that her work was in no way inferior to theirs. The report, for the period May 1971-May 1972, stressed the same factors, and again strongly recommended her promotion. Th& grievant was promoted by the 1972 Board, whieii Saw fchi* most current report. In this year, however, &*r. file tained the statement dat«d November 14, 1972,

as her
also con-
Director

of Personnel, pointing out deficiencies in earlier reports, and a strong statement from the former Director of the Visa Office, regarding the grievant's performance in both SPLEX and departure control work during the period, from late 1966 to early 1969, that she was assigned to SPIEX duties. - . ■. ■

The Board concludes that the Director of Personnel was a very influential factor in the deliberations of the 1972 Selection Board, and believes that in the circumstances of this case, there is a valid presumption that the 1971 Selection Board would have reacted in a similar fashion had the full explanation been available to it that was available to the 1972 Board.

The Board does not find a basis for recommending a promotion to FSSO-3. The Board does believe, however, that this case presents a strong argument that the grievant's recent promotion to PSSO-4 should be made effective retroactively, to the date that promotions were effected as a result of the findings of the 1971 Board.

The Board urges the Department to seek legislative or other necessary authority to effect retroactive promotions, so that in circumstances where it is found to be the only appropriate remedy, justice can be done. The Board realizes, however, that as a practical matter it may not be possible for such action to be taken in time to give the grievant in this case such relief, in view of the fact that she will face mandatory retirement in 1974.

The Board therefore recommends that if her promotion to FSSO-4 cannot be made retroactive, the grievant should be put in the step of Class 4 that will provide her the financial redress most nearly equivalent to that which retroactive promotion would provide.

Certification of compliance with the Board's order, and response to its recommendations, should be forwarded within thirty days from receipt of this memorandum.

Killiara E. Simkin
Chair
Foreign Service Grievance

Attachments:

1. Memorandum in Place of DRK.
2. Memorandum on SPLEX duties

cc: Grievant