

GRIEVANCE

On [date], [grievant], an Officer in the [Bureau] of the [] Agency, filed a grievance with the Foreign Service Grievance Board. He claimed the Agency had abrogated a commitment to promote him from FSRU-3 to FSRU-2, and requested as relief that the Board grant him a retroactive promotion to be made effective on or about [date].

Shortly after the grievant filed with the Board, his Agency did grant him a retroactive promotion to FSRU-2, with an effective date of July [date]. While the major issue, the promotion to Class 2, was settled by this action, the grievant continued to claim that the effective date of the promotion should be in March/ the date his supervisor forwarded a recommendation for his promotion, instead of July. The Agency maintains that a promotion to Class 2 earlier than the July [] date is not possible because certain administrative actions prerequisite to the granting of the promotion had not been completed until shortly before the July date.

Thus the present issue concerns the effective date of the retroactive promotion already granted.

In order to prevent an unwarranted invasion of privacy, names of individuals and other identifying information have been deleted from this material in accordance with Section 552(b)(6) of the Freedom of Information Act. These names and other identifying information are also withholdable under the Privacy Act.

A Record of Proceedings containing all relevant documents was compiled at the direction of the Board. Then under the authority of Section 906 of the Board's regulations, the Record was reviewed for accuracy and completeness by both parties and was closed with their concurrence. A panel of the Board met to decide the merits of the grievance on [date] and [date].^{1/} II.

BACKGROUND

On [date], [grievant], then a Foreign Service Limited Reserve Officer, Class 3 (FSLR-3), was appointed to the position of [title of position] in his Agency's [name of bureau]. Grievant had applied for the Washington-based job after it had been advertised as a Class 2 Foreign Affairs Specialist position equivalent to a GS-15 position (FAS-[]-2/G3-[]-15). •

On [date], grievant was converted to a Foreign Service Reserve Officer with unlimited tenure (FSRU) Class 3 under his Agency's Foreign Affairs Specialist (FAS) Program. Sometime after this, he

^{1/}. By letter of [date], the Agency brought to the attention of the panel two decisions of the Comptroller General, one of which addressed a claim for backpay and the other a retroactive promotion.

became subject to regulations governing the Domestic Specialist category of employee.

On March [in the year after the conversion], a request for the grievant's promotion to Class 2 was initiated by his supervisor. The Agency responded [three weeks later] as follows:

We have received your official request to promote [grievant] from FSRU-3 to FSRU-2 and regret to advise that we are unable to honor this request. As you can see from the attached copy of the official position description, the job is graded at the GS-15 level. With the approval of the revised personnel system (February 1978), all Domestic Specialist positions in Washington are classified under the civil service (GS) classification system and the new equivalency table for GS/FAS/FSIO jobs was published in the revised Merit Promotion Plan (3/22/78). Thus, the GS-15 now properly equates to an FSR/FSIO-3 and not to the 2, and [grievant] is therefore not eligible for promotion.

Mr. [name] has requested a review of the [job categories] positions under the new organization. Until that review is completed and the new organizational structure is in place, it will be difficult to determine whether or not this position is properly classified.

[Grievant] filed a grievance with his Agency [date] claiming an "unjust denial of promotion." In addition to the review of the [job categories]

positions noted above, a desk audit and a new position description were completed. Other actions were also initiated. The record shows that the Agency wrote the Civil Service Commission on July [date] and requested "an advisory classification opinion on the position of [grievant's job title]-" Pending a response to this request, the Agency delayed an answer to [grievant's] May [] grievance.

On August [date], having had no response from the Civil Service Commission, the Agency responded formally to the grievant.^/ This response repeated its statement about the equivalency of GS-15 to the FAS-3 grade level under the revised civil service classification system, but also noted that it had not yet received an "advisory grade level classification" from the Civil Service

2/ The Agency subsequently explained the reason for taking ninety days to respond to the grievant in a letter to the Board dated September [date]. It reads in pertinent part:

"[The Agency's] resolution of the matter was to have hinged on a Civil Service Commission 'advisory' grade-level classification which we requested in mid-July. The opinion had not been received on the date of the statutory deadline for our response to the grievant. This circumstance was discussed with grievant and he opted not to await the CSC opinion. This left us no choice but to deny the grievance on the basis of evidence in the record at the time."

Coinmission (CSC). "Until and unless the- Commission advisory suggests that the grade be raised to the GS-16 level," the Agency maintained it could not promote the grievant above the GS-15 level. As already noted, on August [date], the grievant asked the Foreign Service Grievance Board to review the Agency determination. On September [], the Agency wrote the grievant as follows:

"The position you currently occupy was redescribed and allocated on July [date]. Your supervisor at the time,..-had recommended that the position be allocated as GS-16. We were supportive of that grade level but lacking authority to allocate supergrade positions we forwarded the position description to the Civil Service Commission for an advisory classification. The Civil Service Commission supported the request and we are, therefore, in a position to classify your position to Class 2 and to promote you to FSRU-2, step 1 (42,114) retroactively to July [date]. July [] is the beginning of the first pay period after the Agency completed its analysis of your revised position description and reached a preliminary conclusion it was classifiable at a level equivalent to GS-16."

The above constituted a partial resolution of the grievance since the grievant received a promotion to to FSRU-2 effective July [date]. On September [date].

however, the grievant advised the Board that he was continuing to pursue through the Board a claim that the effective date of the promotion should be in March rather than July [date - 4 months later].

III. DISCUSSION AND FINDINGS

The Board has before it only the question of the effective date of [grievant's] promotion. The grievant appears to accept as appropriate a date "closely associated with" the March [date] recommendation for promotion made by his superior. The Agency contends that until the Civil Service Commission ruling in August [date], the position could not be classified at the GS-16 level, and the grievant could not be promoted to the equivalent FSRU grade, that is. Class 2, The Agency further claims that July [date] is the appropriate' date because it is the beginning of the first pay period after completing all the steps needed to justify the upgrading of the position prior to approaching the Civil Service Commission for its opinion.

The Board finds that the Agency responded to the supervisor's recommendation without undue delay. In its reply of April [date] , (quoted above) the Agency explained its inability to honor the recommendation and

noted that an administrative review was forthcoming which would reexamine [job category] positions under the new organization.

In May the grievant filed a grievance with the Agency on his claim for a promotion and the Agency pursued its investigation of the grievance and of all the circumstances of the dispute. As the record indicates, the outcome of the grievance investigation hinged to some extent on the outcome of the various other reviews that were being undertaken in connection with the subject matter of the grievance.

Whatever discussions may have occurred during this period have not been specifically described, but on July [date], the Agency formally requested of the Civil Service Commission an advisory classification on the grievant's job. There is evidence of prior communication between the Agency and the CSC. The CSC supported the position of the agency by letter of August [date]. The Agency then advised the grievant by letter of September [date] that the position would be upgraded and he would receive a promotion.

All of the above makes it clear to the Board that the Agency was considering in an appropriate manner all

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of the issues involved in the grievant's claim. Such consideration included revising the grievant's position description, consulting, as required, with the CSC, and supporting the grievant's claim before it. The Board does not consider that there was here the kind of delay that would make appropriate the equitable considerations which the grievant requests. Accordingly, the grievant's claim is denied. For the Foreign Service Grievant Board