

Excision No. 457

I. GRIEVANCE

[Grievant] , [career category] Officer, Class [-] , with [Agency], filed a grievance with the Board on [date]. He contends that the Officer Evaluation Reports (OERs) prepared on his performance at [detail], [Post] for the periods [dates] contain falsely prejudicial and inaccurate statements. As relief, the grievant requests that the two reports be removed from his performance file, that he be non-rated for that interval of two years, and that the Board take other action fair to the Service and to him.

II. BACKGROUND

In mid-[year], [grievant] was assigned to [detail] on a reimbursable basis as [assignment] on the [committee], the component of [detail] concerned with [subject]. He was the only American working full-time at [committee]. [Grievant] wrote speeches for upper-level [detail] officials, arranged conferences and otherwise generated public affairs activities for which he had to depend heavily on the [detail personnel] that also

assisted more than 300 other Working Groups and Committees. Because of his familiarity with the Foreign Service evaluation system, [grievant's] rating officer of record was the [title] an American. In practice, both [grievant] and his rating officer reported directly to the [title], ~~non-American officer~~ a" / who was also [grievant's] reviewing officer.

OERs of the [committee] [assignment] included separate comments from the [detail] [title] and Officer Review Panel. Occasionally, Foreign Service Inspectors have also made reports on [Agency] employees attached to [detail].

On [date], [grievant] formally grieved to his Agency, requesting withdrawal of the aforementioned reports from his performance file. In its response on [date], the Agency found the two reports in compliance with standing instructions for preparing OERs on officers at international organizations, and stated its intention to leave the documents in [grievant's] file. Accordingly, the grievant filed a complaint with the Grievance Board on [date].

The Board accepted jurisdiction and opened a Record of Proceedings on [date]. A record

containing relevant documents was compiled with the concurrence of the parties. The Board, under the authority of Section 906 of its regulations, met on [date] to consider all aspects of the grievance. **III.**

THE TWO OERS AT ISSUE

The particulars of the grievant's complaints, Agency positions, and the Board's findings are discussed below.

A. The First PER [period]

(1) The grievant contends that page six of the first OER has language allegedly violating instructions **for** preparing OERs which prohibit "direct or indirect comments" on retirement plans. He challenges the statement: "He is a fine officer whom the Service should make every effort to retain." (Underlining by grievant.) This clause, in the grievant's view, can be interpreted in either one of two ways: the subject is either facing selection out or planning to retire. Neither circumstance applies, he maintains.

The Agency counters that the sentence does not specifically refer to retirement or selection out, nor does any other portion of the OSR. The Review Panel at [Post], therefore, in the opinion of

the Agency, acted correctly in not removing the language protested.

The Board finds that the rating officer's recommendation that the Service "make every effort to retain" [grievant] does not necessarily suggest that he was about to retire or to be selected out. The rating officer's words can, more accurately, be read as a way of describing the grievant's value to the Service. Moreover, it should be noted the rater also stated that he looked forward to the grievant "serving as a [title] or [title] by [year]. That statement, it seems to the Board, indicates that the rater expected [grievant] to be still working for the Service four years hence. Plainly, the protested words were not meant to refer to retirement or selection out. B. The Second PER [period]

(1) The grievant contends that by his language in the second OER the rating officer implied that he lacked a basis for judging the grievant's capacity to rate others by prefixing the phrase, "to the best of my knowledge" to the statement.

" [Grievant]" is an excellent rating officer". In fact, the grievant points out, the rating officer had reviewed and signed an evaluation which the grievant did on his secretary during the reporting period.

The Agency's position is that the efficiency report related to a local employee, not an American. The Agency states that even without evidence of the grievant's ability to do a proper OER on an American, the rating officer seems willing to say that [grievant] is an "excellent rating officer."

The Board considers that the words "to the best of my knowledge" are not inappropriate in the circumstances. It believes that there is no reason to assume that the rating officer, an American officer abroad for ten years, would not know that American and local personnel were subject to different evaluation systems. In the Board's view, the sentence could reasonably be read to mean that, while the rater had seen no rating of another American by the grievant, on the basis of the latter's report on a local employee he would be prepared to believe that the grievant is proficient in evaluating other Americans.

(2) The grievant has a complaint about the "Discussion of Potential" (IV, B) which reads as follows:

"Assignment to this rather unusual position on an [detail] has demonstrated the capacity to work effectively within varied cultural and linguistic environment. The activities coming under the purview of [committee] present a far-reaching, international perspective of increasingly complex economic, political, social, and technical relations among peoples, and hence an area of increasingly greater significance as a Foreign Service staff resource. [Grievant] has shown considerable potential for further development along these significant directions, which would profit by additional substantive experience in the areas of concern to [committee]."

The grievant charges that this statement is so nebulous as to be worthless.

The Agency sees nothing clearly objectionable in the "Discussion of Potential". It considers the statement an assertion of the grievant's ability to operate in a complicated, multi-national setting. Moreover, in the Agency's judgment, the grievant has not indicated how the section is prejudicial.

The Board realizes an appraisal of potential is, in part, an attempt to look into the future.

Such an exercise is bound to be speculative and hence certain to be expressed in general terms. Such imprecision does not make a rater's appraisal deficient. Here, the rater's statement would have been a good deal clearer if he had inserted the grievant's name in the first sentence of the appraisal. But that omission has not prejudiced the grievant in any way.

(3) The grievant contends that the reviewing officer erred in characterizing the relations between the grievant and rating officer as "excellent." In reality, he states that the two men disagreed substantially on the appropriate role of the International Staff of [committee].

The Agency maintains that even if the grievant and rating officer had serious personal and policy differences, he has failed to pinpoint how this fact adversely affected the performance evaluation.

The Board is not persuaded that the existence of policy differences between rater and rated renders moot the evaluation itself. Criticisms by the rating officer here were mild and constructive in tone. To the Board, the rating officer's

concrete recommendations for senior training assignments and postings at higher levels of responsibility reflect a positive attitude toward the grievant, whether or not there existed policy differences between them. Moreover, the characterization of the relationship as "excellent" is qualified by the use of the phrase "to the best of my knowledge."

(4) The grievant alleges that defects in his performance discussed in the second OER are traceable to poor supervision. He believes that the [detail] Officer Review Panel corroborates this view by what it wrote about the matter, i.e., that closer guidance would have been desirable.

The Agency argues that although negligence by the supervisor is claimed, an officer at the [class] level should not require intensive supervision. In its opinion, the Review Panel's comment that the rating officer might have discussed more fully and frequently the rated officer's performance does not discredit the remainder of the appraisal.

The Board notes that the rating and rated officers had had two discussions of the latter's

performance [section]; hence the minimum requirement had been met. In the Board's judgment, the Record does not sustain the allegation that supervision had been negligent.

(5) The grievant declares that in light of the uniqueness of the rated officer's position, the aforesaid Review Panel's statement that the rater and reviewer had followed applicable criteria has no basis in fact other than "that the members of the Panel had read the report."

The Agency maintains that the Review Panel's statement accords completely with the function of the Panel.

In the Board's view, the Panel's comment certifies that the rating and reviewing officers in the second OER simply adhered to the instructions for preparing OERs. No violation of those instructions has been proved.

(6) The grievant alleges that the supplementary reviewing statement by the [detail] [title] contained "inaccurate and inadmissible prejudicial comments" that adversely influenced Selection Boards in rating him. He especially singled out as damaging to him the sentence, "The byzantine struggle for influence between two competing

members of the [detail] dealing with [committee] has spilled over into [grievant's] area of responsibility, complicating further his situation."

The Agency states that it has investigated this charge in detail. It concludes that the grievant had been working under special difficulties, that the supplementary reviewing statement helped the reader gain an understanding of the situation, and that this OER, when read in its entirety, disproves the grievant's expressed fear that "the byzantine struggle" had "besmirched" his reputation.

The Board finds that the grievant's anxiety about the allusion to a "byzantine struggle" is exaggerated. The Board can only read this statement in the supplementary review as an expression of sympathy for a wholly innocent bystander. It finds that the grievant has not adduced evidence to support his contention that the Selection Boards had been prejudiced by this particular statement.

IV. BOARD DETERMINATION

The Board is not unappreciative of the career hazards confronting [career category] officer assigned to a multinational body. At the same time, it has been impressed in this case by the Agency's fidelity to established procedures for safeguarding its employees

from damage by raters and reviewers imperfectly informed about Foreign Service systems.

In the opinion of this Board, the totality of documents in [grievant's] performance file, including the extensive supplementation afforded by his fellow [career category]

at [detail], serves to place the work setting for the grievant in the proper perspective.

Finally, the Board has acquired an impression of an officer not only coping with his problems but effectively conducting a wide-ranging program as well. The one-year extension of [grievant's] reimbursable tour until [date] lends credence to such an inference. After examining the entire record available to it, the Board finds the grievance without merit. Accordingly, there is no basis to grant the relief requested. For the Foreign Service Grievance Board

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