

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceedings
No.

and

Date:

Agency

For the Foreign Service Grievance Board;

Presiding Member: Board Members:

Special Assistant
to the Board:

Representative for the Grievant:

Representative for the Department:

I. GRIEVANCE

[Grievant] a Foreign Service Officer, [Rank,] submitted a grievance to the Board on [date] claiming that an Inspector's Evaluation Report (IER) written on his performance in [City A, Country A] is unfair and unbalanced, and as a result, falsely prejudicial. He requests as relief the deletion of the IER in its entirety together with the comments about it he later submitted for inclusion in his performance file. He also asks that he be awarded an additional year 's extension in the time-in-class regulations of his present class.

The [Agency] maintains that the IER is accurate and otherwise lends balance to the grievant 's performance file.

A prehearing conference was held on [date] I The hearing followed on [date] and was concluded on [date]. Included in the Record was a Board Deposition from one of the grievant's witnesses taken on [date]

II. BACKGROUND

Grievant entered the Foreign Service in [date]. He was promoted to [rank] in [date] to [rank] in [date] and to [rank] in [date].

During his career he served in the [Area A] in Washington, and in [Area B].

Grievant served a four year assignment in [Country A] beginning in [date]. The first two years of this tour were in [city B] as Political Officer; from [date] until his departure from the country in the summer of [date] he was posted as Consul General in [City A], a post he had helped open. From [date] until late [date], [Grievant] was detailed back to [City B] where he served as Political Counselor and Acting DCM. During this time, he, nevertheless, retained overall managerial responsibility for the [City A] Consulate.

[Grievant] was inspected in [City A] by Inspector [X] on [date] and by Inspector [X] on [date]. On [date] he grieved the resultant IER claiming it contains "certain important inaccuracies, presents a misleading emphasis, and includes... an inadmissible statement regarding [his] health."

[Agency] issued its decision on [date]. Dissatisfied with the outcome, grievant petitioned the Board for a further review on [date].

III. ISSUE

Does the (date} Inspector's Evaluation Report (IER) prepared by [Mr. X] and [Mr. Y] on the grievant's performance in [City A, Country AJ contain unfair and inaccurate statements which make the report unbalanced and falsely prejudicial?

IV. MERITS OF THE GRIEVANCE

Grievant argues that the following examples of "inaccuracies, misleading emphasis, and the inadmissible comment.--justify the IER's removal from the files."

A. The Actual Time at Post

The IER states that the grievant was "physically present in [city A] only for portions of the rating period," and that he was "continuously present and in charge of the post only for the last three months of the period." Despite the fact that the inspectors¹ statement is technically correct in a narrow contextual sense, i.e., that it refers to the period covered by the Officer Efficiency Reports (OERs) on which the inspectors were commenting covering a nine-month period

[grievant maintains that a reader's

1/ On {date}a little more than a month after his return from the TDY infcity Jf, Grievant suffered a heart attack. He was hospitalized in \City AJ until (elate} after which he took home Teave in the US. He returned toiCity A1 on [date]

tendency is to interpret such a statement to cover the entire period between his move to [City A] and the completion of the inspection in [date] Grievant states that he had been in charge of the post for fourteen months as of that time, and not for three as the IER misleadingly implies.

The Agency notes the grievant's own records support the chronology of the inspectors' comments. Moreover, the Agency claims, in essence, that the broad interpretation of the disputed passage is unlikely given the close reading of such materials which Selection Board members are trained to make.

⁸. Criticism of OER Written on the Subordinate Officer

Grievant contends the disputed IER criticizes the OER he wrote on a subordinate by saying [Grievant] did not give full credit to his subordinate for the period he was in charge of the Consulate. The IER also states this OER "did not adequately stress the deficiencies which [Grievant] perceived - and still perceives - to be the most serious." Grievant contends the remark is inaccurate because the OER does, in fact, strongly criticize the subordinate and "candidly reflects the deficiencies...perceived in the officer during the rating period in question."

The Agency disputes the grievant's claim that there is any specific criticism of the grievant for failing to give full credit to his subordinate. As regards the second part of this complaint, the Agency says that certain aspects of the subordinate 's performance which the grievant believed were the most serious deficiencies were not stressed in the OER. Accordingly, the inspectors felt that the subordinate's performance had not been fully and candidly criticized.

°• Use of "Management Tools"

The IER states that "management tools" might have been used more effectively to cope with the deficiencies of the [subordinate!. The inspectors give as an example the use of measures to assure full observation of official working hours by the [subordinate! The grievant contends that the use of the suggested disciplinary measures would be an impractical and self-defeating step at a two-man post.

The Agency says the inspectors felt the grievant could have "used and enforced regulations which would have resulted in a less fragmented operation," as well as more fully documented the subordinate's performance. This would have facilitated any personnel actions

subsequently required because of the subordinate's deficiencies.

D. Management Task Complicated

The ISR notes that "[grievant's] management task is complicated by negative appraisals of the [subordinate 's] suitability which have developed on the part of Mission Management in [city J]."

The grievant contends the statement is incorrect. The grievant says, in essence, that [City]'s[aware-ness was reached independently and resulted in support of his efforts to manage the employee rather than a "complication" of them. Moreover, the statement leaves the impression that some criticism of the grievant is implied but cannot be spelled out.

The Agency says that it is the opinion of the inspectors that the Embassy's "negative appraisals" of the subordinate made the grievant's management task more difficult, but that this clearly was not a criticism of the grievant.

^E. Limitation on Future assignment

The grievant notes that in an apparent reference to the heart attack he had suffered, the IER had previously maintained the grievant should receive

"well-selected, onward assignments, which will not involve exceptionally acute or prolonged stress." Although the passage was removed^ after its inclusion was protested by the grievant to both the inspectors and later to the [Agency] grievant says the passage illustrates the inspectors' proclivity to find fault with the grievant's performance.

In noting that the statement has been deleted, the Agency argues that the inspectors made this comment because they believed if he were to have another assignment involving prolonged professional stress, he would have another heart attack.

F. Additional Observations

The grievant alleges that the IER, based upon a brief, superficial visit to the post, fails, in general, to give proper attention to his "fulfilment of the work requirements and goals set by the Ambassador and DCM." The ISR, grievant contends, contains no specifics about his political reporting or about his representational responsibilities.

Moreover, the IER makes two highly negative statements about grievant's management of the Consulate.

Referring to a passage in an OER on the grievant's performance, the IER states "more generally, the inspectors have reservations about what the rating officer wrote in 'red ink' about {Grievant's} managerial abilities as demonstrated so far in [City A]" Elsewhere the IER states "but there is more that he can do – both at [city] land during his future assignments – to establish fully his ability to manage Foreign Service operations." The grievant characterizes these statements as inaccurate and falsely prejudicial since they are expressions of opinion without basis in fact. Further, in referring to an alleged autonomous quality in the way the grievant's subordinate managed the consular operation, the inspectors state "some degree of polarization of loyalties among local employees has occurred". The grievant asserts there is no such evidence for such a statement and that no such division among the local employees occurred.

Finally, the grievant maintains, in essence, that the main emphasis of the report is on the problem employee with a resultant disregard of grievant's general effectiveness in resolving the post's management problems. The grievant contends that "all Consular

services have been carried out efficiently and promptly, and the public effectively served." That this was achieved "despite the necessity of dealing with a problem employee, and that staff morale was maintained at a high level", in grievant's view, should reflect favorably on his managerial abilities.

The Agency responds that IERs are intended to "supplement and give another dimension to an officer's performance as described in the OERs." Where the inspectors are in agreement with the OER, little additional comment is necessary; where they disagree or where the OERs give inadequate coverage, the inspectors comment more extensively.

The Agency argues that the IER reflects the inspectors' independent perception of the officer 's performance, that taken with the grievant's own comments on the IER, and the comments of the rating and reviewing officers in the OERs, the report provides the reader of the performance file with a complete and balanced picture of the grievant.

The Agency asserts that the IER, written after an inspection visit of normal duration, focused quite properly on what it considered to be management defic-

iciencies that the inspectors observed at the Consulate, which had not been adequately documented in the file of the officer on the basis of the OSRs written by his superiors. V. DISCUSSION AND FINDINGS

The Board finds the disputed IER to be unfair and falsely prejudicial for the following reasons:

As regards the actual time grievant served at the Consulate, the Board agrees with the grievant's contention. It is clearly possible to misinterpret the phrase "rating period" in the IER to refer to the twenty-two months covered by the IER, rather than the nine months which the supervisors¹ reports cover. The result of this former interpretation is to diminish the credit the grievant would otherwise receive for opening up and managing the post.

Kith respect to the various contentions which stemmed from the difficult subordinate, the Board finds efforts to resolve them to the satisfaction of his superiors at the Embassy and in the [Agency]. The Board is persuaded that the grievant exercised sound the IER generally unhelpful and insensitive to the problems the grievant faced and unsympathetic to his

managerial judgment in his handling of the subordinate. Morale of the entire office was clearly taken into account as were the concerns of Embassy [city Bj, and the Board has been presented with no compelling evidence that a "polarization" of loyalties thereby occurred among the local employees. The Board understands the initial reluctance of the grievant to document fully the shortcomings of the [subordinate] as possibly counterproductive.

It appears to the Board that criticism of how the subordinate should have been handled might have been more appropriately directed at Embassy [city SI. (The record is unclear as to whether this was also done.) To suggest that there were "management tools" the grievant could have used overlooks the fact that the use of these "tools" would have been antipathetic to the wishes of his superiors. The grievant was faced with a dilemma - to obey his superiors or to pursue a more forceful role in getting rid of a troublesome subordinate.

There is testimony to the Board suggesting, in effect, that comments in the IER about grievant's managerial ability are not to be interpreted negatively. This is at odds with the "reservations" noted by the

inspectors about [Grievant's] rating officer's praise of these same skills. The Board has little doubt that the IER does indeed mark the grievant down for managerial weaknesses. Parenthetically, the Board observes that the IER was the product of a relatively short exposure to {city A}. Testimony has established that Inspector [X 's] stay lasted from noon of one day until the close of business the next. Inspector [Y's] visit the following week was limited to a single day.

Finally, the Board is impressed that the IER recommended the grievant for promotion - something the Board is assured should be done only for the upper ten percent of officers. The disputed remarks, however, can reasonably be interpreted to imply a criticism of the grievant's performance and serve to dilute the effectiveness of this recommendation. The Board sees the IER as harshly negative, as well as insensitive to its effect on the grievant's performance file and members of selection boards.

VI. BOARD ORDER

The Foreign Service Grievance Board finds merit in the grievant's claim that the [date] IER is
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unfair and unbalanced, and as a result, falsely prejudi-

the IER in its entirety together with the "Comment on the Inspector's Evaluation" which has been appended thereto. The deletion is to be effected without the further inclusion in the file of explanatory comment.

The Board further orders that the grievant be extended an additional year in service if he is not promoted before the expiration of his allowable time in class.