

Excision # 459

I. GRIEVANCE

[The grievant], a probationary Foreign Service Officer, Class 7, was involuntarily separated from the [Agency] on [date]. His grievance over his separation was filed with the Foreign Service Grievance Board on [date]- In it he complained that the Agency denied him a full and fair trial of his capacities, character and conduct as required by the Agency [regulations] when it separated him from the service during his probationary status.

As relief, the grievant asks that he be reinstated as a probationary [officer], with back pay.

II. BACKGROUND

The grievant joined [the Agency] in [date] probationary [class of officer]. His first tour of duty was spent at

the following posts: [Post #1]-[dates] (six months); [Post #2]-[dates] (nine and a half months); and [Post #3]-[dates] (approximately eight months). After home leave in the fall of [year], he reported to [Agency] headquarters in Washington where he was assigned as [title] from [date] approximately 9 *mov' bri.* later until his involuntary separation on [date]. The grievant claims that he was assured by the Agency upon taking up his duties in Washington that he would remain on the job for at least one year in order that he might be evaluated for a full rating period for the first time.

On [date] the grievant was notified by the Agency that the January [year] Junior Officer Selection Board had recommended his separation because "it is the considered judgment of the Board that [the grievant's] performance and potential for development are clearly below class level..."

In a letter dated [date] protesting the proposed separation, the grievant disagreed strongly with the Agency that he had been given a full and fair trial and that his performance in the Foreign Service had been carefully reviewed. He also argues that this letter, written before his separation, constitutes the initial step in his grievance.

He told the Agency that his repeated transfers, sometimes on very short notice, had not always provided enough time for him to see assigned projects through to completion. Nor was it possible to have adequate and meaningful evaluations on his performance prepared by superiors who had sufficient opportunity to judge his work and potential- He requested a personal meeting with [Mr. A, an official of the Agency] to argue his case. The record shows that on [date] such a meeting was held with [Mr. B], then the Agency's [official in charge of personnel]. [Mr. B] informed the grievant on

'9 that he had considered his appeal but had concluded that there were insufficient grounds to reverse the Agency's decision to terminate his appointment on [date].

On [date], approximately two years and five months after his termination, the grievant wrote to the Agency expressing his interest in filing a grievance over his involuntary separation in [year] and asking if he had until [date] to do so. On [date] the Agency replied that, based on the information provided in his query, it was unable to determine whether the proposed complaint was grievable and, if it were, whether it would be within the proper time limits. To assist the grievant in determining the validity of his case, the Agency sent him a copy of the Foreign Service Grievance regulations.

On [date], approximately two years and eleven months after his termination, the grievant submitted a grievance to the Agency alleging that his separation violated regulations. One such regulation required that supervisors "issue warnings to probationers whose standards of efficiency were deficient." When the performance failed to improve, it provided that supervisors "prepare a special evaluation report prior to any action to separate." The grievant alleged he that he was terminated without these steps having been taken.

He also complained that his series of short assignments on his first tour of duty deprived him of a full and fair trial of his performance.

The Agency replied on [date] that it had found no procedural or substantive errors on its part that would warrant the invalidation of his separation. It also asserted that his separation was determined by the Selection Board which found that his performance, in comparison with other probationary officers, did not merit his retention in the service. Therefore, the Agency concluded, there was no requirement for supervisory warnings or special evaluation reports prior to separation. The Agency stated that, while it agreed his assignments were relatively short, the Selection Board which recommended his termination was also aware of the length of his assignments when reaching its conclusion. Furthermore, as a result of his appeal to the Agency in [date], the Agency had carefully reconsidered its determination to separate him in light of the duration of his assignments and comments made by his former supervisors and had, nevertheless, decided to proceed with the termination.

A prehearing meeting was held on [date], 1978, and a hearing conducted on [date]. Transcripts of the hearing were sent to the Parties on [date]. III.

DISCUSSION AND FINDINGS

We have before us several jurisdictional issues and - should we reach them - a number of questions concerning the merits of the grievant's claim that he was separated without the full and fair trial of his capacities, character and conduct required by the Agency's [regulations]- Before considering any of these issues, however, we think we must confront the fact - clear on the records in evidence - that the grievant was a probationary officer at the time of his termination, and that he was terminated pursuant to Section 635 of the Foreign Service Act which reads:

Sec. 635. Any Foreign Service officer in class 7 who is appointed under the provisions of section 526(b) and any Foreign Service officer in class 8 shall occupy probationary status. The Secretary may
_____ terminate his service at any time.
(emphasis
added)

The final sentence of this provision, we think, stands as a complete bar to the grievant's claim that his termination was improper. Regardless of

his contentions concerning the manner and propriety of his termination, his grievance obviously must be denied. Under the circumstances, we think it unnecessary to rule upon the Agency's jurisdictional objections. IV. BOARD DETERMINATION

For the reasons stated, this grievance is denied.