

EXCISION NO. 468

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceedings
No.

and

Date: August 13, 1979

[Agency]

For the Foreign Service Grievance Board:

Presiding Member: Board Members:

Special Assistant
to the Board: [

Representative of Record for the Grievant:

Representative of Record for the Agency:

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.

I. GRIEVANCE

[grievant], a Foreign Service [officer, class] submitted a grievance dated [] which was forwarded to the Foreign Service Grievance Board on [date]* He claims that a statement entitled "Criticism of Rating Officer" (CRO) which has been inserted in his performance file is inaccurate, erroneous, and falsely prejudicial and he seeks its removal.

In its final review letter dated [], the Agency said that it had not found any evidence to support the grievant's claim, and accordingly had no basis for removing the disputed statement from the grievant's file.

A Record of Proceedings containing relevant documents was compiled under the direction of the Board and closed with the concurrence of the parties on [date). The Board, under authority of Section 906 of its regulations met on [date] to consider all aspects of the grievance.

II. BACKGROUND

The grievant served in the [section] at the American Embassy in [post], as [chief of the unit] from [dates]. During the course of this assignment, he supervised [name], a Foreign Service [officer, class], who was the second officer in the unit. As part of his supervisory duties, grievant wrote an Officer Evaluation Report (OER) covering [name's] performance for the period [] -

This report was among the documents reviewed by the 19 77 Threshold Board in considering [name's] candidacy for promotion to Class [], a promotion which would have conferred career tenure- Other documents reviewed in the course of this exercise included [name's] performance file and a Career Prospects Appraisal Statement (CPAS), dated [], by [ranking official].

The Threshold Board concluded after its examination of the various documents that the grievant "showed a lack of candor in his OER on [name]." Under the authority of precepts governing the Threshold Board's work, a statement entitled "Criticism of Rating Officer" (CRO) was prepared for insertion in the grievant's own performance record.

In a letter dated [], the [title in the performance evaluation office] advised the grievant of the finding of the Threshold Board and of the fact that the statement—the text of which he enclosed—was being placed in [grievant's] performance file. The CRO which is not dated, reads in its entirety as follows:

"[grievant's] report alludes briefly to some of [name's] weaknesses, which are fully documented in other OERs, but fails to address them directly. The OER is also of considerable variance with the reviewing statement of [previous reviewing officer]. Furthermore, [ranking official's] Career Prospects Appraisal Statement of [date] on [name] indicates that, in response to a direct question, [grievant] admitted [name] had not demonstrated the

capacity to perform and compete effectively at ranks up to and including class []* In addition [grievant] posed no objection to [ranking official's] recommendation in his Career Prospects Appraisal Statement on [name] that [name] be separated from the Foreign Service* The Board, therefore, believes that [grievant] showed lack of candor in his OER on [name] for the period []."

It is this statement which [grievant] grieves as being falsely prejudicial and which he is asking the Board to remove from his file. III. DISCUSSION AND FINDING

The sole issue before the Board is whether the [year] Threshold Board's "Criticism of Rating Officer" s tatement, which concludes that the grievant "showed a lack of candor" in his [date] OER on [name], is inaccurate, erroneous, or falsely prejudicial.

Judging from the CRO itself, the Threshold Board based that conclusion on three factors. We have examined each of these and will discuss them individually.

1. [grievant] "alludes briefly to some of [name's] weaknesses, which are fully documented in other OER's, but fails to address them directly."

The grievant disagrees with this judgment of the Board and responded to it in a letter dated [], addressed to the [Agency's] grievance staff as follows;

The statement that I "...showed lack of candor.." in the OER is compared with statements in "..other OERs,..". These

other OERs were prepared by another or other rating officers. I, of course, did not have access to them and I did not base my report on other officers' evaluations of [name's] performance during another rating period. I mentioned weaknesses of which I had direct knowledge covering the rating period and I evaluated them as minor- That another rating officer might have evaluated [name's] performance in a similar kind of work over another rating period in a poorer light appears to be a function of the performance rating system. That different supervisors might see an officer's performance from different subjective vantages and that an officer's performance at different times might be better or worse than some objective criteria is to me entirely normal* Personal interaction virtually assures differing interpretations or evaluations. The OER system is designed to minimize personal bias or conflict in one report carrying over to another prepared by another rating officer.

With respect to the difference in the [grievant] OER on [name] from that written by other supervisors in other rating periods, the Grievance Board finds the grievant's position entirely reasonable. Furthermore, the Board notes that in the OER in question [grievant] specifically criticized [name] for his drafting and for a tendency to fail to maintain objectivity in dealing with cases. It is not clear to the Board what further criticisms the Threshold Board believed necessary, since the CROS lacks specificity on this point-

2. The OER prepared by [grlevant] is "of considerable variance with the reviewing statement of [former reviewing officer]."

The CRO does not identify what variance the Threshold Board perceived and, absent such detail, it is difficult to know what it had in mind- We have carefully examined the OER from the standpoint of any variance between [grievant's] and [former reviewing officer's] evaluations. They stress the same strengths and weaknesses in [name's] performance. Indeed [former reviewing officer] wrote in his Reviewing Officer's statement that he "agree[d]" with [grievant's] observations. He seems to have simply restated those observations in different terms. He at no point suggested that [grievant's] statement was in any way unfair or incomplete. The Board notes also that a Review Panel was used at the Post and that this Panel apparently found no internal inconsistency between what [grievant] and [former reviewing officer] had said.

In other words, we do not find any kind of variance between these men's statements which would warrant a ruling that [grievant] had shown a lack of candor.

Furthermore, in considering the record relevant to this part of the grievance, the Board believes that the validity of this criticism is brought into question by

the OER prepared on the grievant for the period of []-the period during which the grievant wrote the OER on [name]-by [previous reviewing officer], the same man who was the reviewing officer for [name's] OER. In a passage with significant bearing on this issue, [previous reviewing officer] has the following to say under the heading "Effectiveness and Candor as a Rating Officer" about the [name] OER criticized by the Threshold Board:

"The efficiency report which [grievant] prepared during the rating period was balanced and effective. While sympathetic to the rated officer, it included the kind of criticism and suggestions for improvement which marked it as a carefully prepared and thoughtful evaluation."

[ranking official] reviewed the OER on I grievant] , and the Board notes that [ranking official] stated that [previous reviewing officer's] assessment was "complete, balanced, and fair."

3. The CPAS prepared fay [ranking official] on [name] was taken by the Threshold Board as a further indication that (grievant] lacked candor as a rating officer. The CRO refers to the CPAS as indicating that,

"...in response to a direct question, [grievant] admitted [name] had not demonstrated the capacity to perform and compete effectively at ranks up to and including class []. In addition [grievant] posed no objection to [name's] recommendation in his Career Prospects Appraisal Statement on [name] that [name] be

separated from the Foreign Service." With regard to this factor it may be noted at the outset that the Record does not contain a copy of the CPAS, and that we know what it is alleged to say only through the references to it contained in the CRO. It is clear, however, that the CPAS refers to [grievant] by name and purports to give his views about the potential of [name] for further advancement.

There is no dispute about the fact that [ranking official] and [grievant] had a conversation about [name] in connection with [ranking official's] task of preparing the CPAS for the use of the Threshold Board- There is also no dispute that [grievant] did not see the CPAS. He, therefore, did not know until he received a copy of the CROS in what way the views he expressed in the meeting were reported. He claims that what he actually did say, or did not say, in the meeting is not accurately reflected in the CRO.

His version of the conversation was set out in a letter dated [], which he wrote to the [title of Agency's performance evaluation office] to protest the CRO:

"At the time [ranking official] discussed the matter with me in connection with his preparation of a Career Prospects Appraisal Statement on [name], I stated that I felt he

still had potential for advancement in the consular field. [name's] question to me was, 'Do you believe he will ever make Class []?' Given his Service time and his stated intentions, I was obliged to answer no. I still feel that he can perform acceptably at the FSO-[] and, possibly FSO-[] levels up to the time he plans to retire. I was not offered the opportunity to see the Career Prospects Appraisal Statement when it was completed, so I was unable to speak about the wording described in the critical appraisal by the Threshold Board."

The CRO imputes to [grievant] a conclusion that [name] had not demonstrated the capacity to perform and compete effectively at ranks up to and including Class []. It is clear, however, that this was [ranking official's] conclusion, rather than [grievant's]. [grievant] thought he had potential to advance in the [specific] field. In answering "No" to the direct question put to him by [ranking official], "Do you believe he will ever make Class U ? , " [grievant] was not agreeing that [name] "had not demonstrated the capacity to perform and compete at ranks u_p_ _t_o and including Class £]" (underlining added). In fact, in his [date] statement, he makes it clear, he "still feel[s] that he can perform acceptably at the FSO-[] and possibly FSO-[] levels up to the time he plans to retire-"

The Board is persuaded that the Threshold Board in relying on this hearsay statement was misled into a

belief that [grievant] actually did agree in all respects with [ranking official's] view of [name's] potential. Upon this basis, it concluded that [grievant] lacked candor in his appraisal of [name] in his OER. In essence, the Threshold Board seems to have thought that [grievant] wrote in his OER something other than what he believed, and that he glossed over grave deficiencies he perceived in [name's] performance. In fact, however, there is no convincing evidence that this is the case.

For all of the reasons noted above, the Grievance Board concludes that the CRO is erroneous, inaccurate, and falsely prejudicial to the grievant and should be removed from his file-

IV. ORDER

The Foreign Service Grievance Board hereby orders that the [year] Threshold Board's "Criticism of Rating Officer" statement be removed in its entirety from the performance file of [grievant] and that no notation be entered in the file to indicate such material has been removed.