

EXCISION NO. 471

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant
and
[Agency]

Record of Proceedings

No. []

Date: November 30, 1979

For the Foreign Service Grievance Board:

Presiding Member:

Board Members:

Special Assistant
to the Board:

Representative for the Grievant

1

Representative 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

On [date] , [Grievant], a former officer with the [Agency] , filed a grievance with the Board. [Grievant] asserts that the Agency is wrongfully seeking to collect from him the sum of [dollar amount] for the Government's share of rest and recuperation travel (R&R) which he took with three family members while stationed in [Post A] in [year].

Since [Grievant] had not previously filed a grievance directly with [Agency], the Board forwarded his grievance to that Agency for comment. On [date], [Agency] provided an Agency decision on the matter. It declined to waive repayment of the R&R costs incurred, on the grounds that his separation had been wholly voluntary and for personal reasons prior to completing a full two-year tour of duty which would have entitled him to payment of a share of the costs by [Agency].

On [date], a panel of Board members, in accordance with Section 906 of its regulations, met to consider the case.

II. BACKGROUND

[Grievant] entered on duty with [Agency] on [date] , as an Jaccountantj, with the initial grade of [] . He served in a similar capacity in three posts - [Post B] , [Post C], and [Post A]. During the summer of [year], after six months in [Post A], he asked the visiting [Agency] Washington

[Agency official] for help in arranging a transfer to the United States for family reasons. His wife was unwilling to remain at the post. Also, his aging father was seriously ill in [his home State]. The [Agency official] informed him that he would not be able to help him obtain an assignment to the U.S., noting that this was a personal matter.

[Post A] is one of the posts for which rest and recuperation (R&R) travel has been authorized. Subsequent to his verbal appeal to the [Agency official], [Grievant] applied for R&R. The designated R&R post for [Post A]-based employees is [Post D]. [Grievant] instead elected to take his R&R in [his home state], paying the difference in fares with his own funds-while on R&R in [his home State], [Grievant] sought employment from the [second agency], for which he had worked before entering [Agency's] Foreign Service. The [second agency] stipulated that he must begin work for them in [month, year]. He accepted the ensuing offer on that condition and returned to [Post A] with his wife just before Christmas in order to pack his belongings- His two minor children remained in [his home State]-

On [date], Embassy [Post A] informed [Agency] by cable of [Grievant's] resignation effective [date], and of his intention to join [second agency] The message stated that the Mission assumed repayment for R&R taken in his present

tour was not required under the Uniform State/AID/USIA regulations. This cable was drafted by the Embassy Personnel Officer and cleared by the [Agency] Administrative Officer. On the same date (Washington time) [Agency] Washington replied that inasmuch as the employee would not have completed two years at post upon his departure, he was not eligible for R&R and repayment was mandatory. In response to this cable, Embassy [Post A] sent a second cable, this one drafted by [Grievant] and cleared by the Embassy Personnel Officer and the Acting [Agency official] in [Post A]:

"3 FAM 698.7 provides that in event [Agency] transfers employees no repayment for R&R required. As personnel action will be 'separation/transfer to [second agency] without break in service' no repayment required. Please advise concurrence."

Later the same day, [date], Embassy [Post A] sent another cable to Washington, which read, in pertinent part:

"Employee is not repeat not separating at post. Final salary payment should be held pending resolution of repayment of R&R travel."

The drafting officer for the latter message was the Embassy Personnel Officer; the approving officer, the [Agency] Administrative Officer in [Post A], with an additional clearance by the [Agency official] , [Grievant's] supervisor.

On [date], Grievant] and his wife left the post. His effective date of transfer from [Agency] to [second agency] was [date]. On [date], [Agency] cabled that no waiver of the R&R would be granted, stating:

"3 FAM 698.7 provides no repayment of R&R required if [Agency] (1) transfers employee at option of and for the benefit of the employing agency. This does not apply to [Grievant] since he is resigning from the Agency and his [form] will read resignation."

Since the required repayment was not deducted by the Mission in [Post A] prior to [Grievant's] departure, the responsibility has been passed on to his present employer, the [second agency]. [Second agency] has agreed to take this action if the outcome of the grievance process should so dictate.

On [date], in a letter to the Agency, [Grievant] made an additional appeal for relief requesting that [Agency] withdraw the Bill of Collection on compassionate grounds, noting that his father now required constant intensive care. On [date], the Chief of [Agency's] Overseas Division, after a review of the [Grievant] files and record, informed [Grievant] that the earlier determination would stand.

The text of the relevant regulation (3 FAM 698.9-1) reads as follows:

The intent of the law is to provide a measure of relief from environmental conditions existing at posts of assignment. To qualify for rest and recuperation travel, an

employee must be assigned to one or more of the posts so designated for a total period at such posts of at least 2 years unbroken by home leave.

Authorized transportation costs will be limited to one round trip during any continuous 2-year tour of duty and two round trips during any 3-year tour of duty unbroken by home leave. Keeping in mind the basic purpose of rest and recuperation travel, posts should generally not grant such travel to be taken within 6 months of the beginning or end of the employee's tour of duty.

If, after an employee takes rest and recuperation, but prior to the completion of the employee's scheduled tour of duty, the Department, AID, or OSIA (1) transfers the employee at the option of and for the benefit of the employing agency, (2) transfers the employee for compassionate reasons, or (3) separates the employee involuntarily, the employee is not required to refund the costs of rest and recuperation travel.

Except for compassionate reasons, repayment of rest and recuperation costs will not be waived when a tour is shortened for the convenience of the employee. Therefore, a request for approval of a shortened tour should state whether the employee has or has not taken rest and recuperation travel.

III. THE ISSUE AND POSITIONS OF THE PARTIES

The question at issue in this case is as follows: Is the Agency warranted in its attempt to collect funds from the grievant for R&R travel taken?

1. [Grievant] contends that at the time of his departure from the post there was evidence that the [Agency] Mission in [Post A] supported his argument that he was not liable for the cost of the R&R. He noted that the Personnel

Officer and [Agency official] in [Post A] both signed off on the telegram of [date] , and neither made any effort to qualify the content of that cable. Moreover, he contends, had it felt differently, the Mission would have been unwilling to grant Mission clearance and air tickets for [Grievant] and his wife, without insisting on repayment of the R&R.

The grievant notes that the cable conveying [Agency] Washington's final refusal to waive the repayment was dated [date] and received by [Post A] on [date] -four days after he had left the country. Thus, he had departed the post under the impression that no bill would be issued by the Mission.

He maintains that in addition to the technical points adduced, there were compassionate reasons for waiving the costs of the R&R: the condition of his father {[Grievant] was an only child); his wife's desire to leave [Post A], and his prior record of service discipline - his eight-month extension of his tour in [Post C] , and three-month separation from his family during that time for the convenience of his employing Agency.

2. The Agency counters that, as the responsible collections officer in [Post A] , [Grievant] must have known it was not unusual to make collections after officers depart their posts. He was aware that [Agency] Washington's view

did not constitute a finding that he would not have to pay, since the question of his liability for making the reimbursement was unresolved at the time he was cleared to leave the post- The Agency believes that the grievant was fully aware that the Government could ask for the money since he was merely transferring to another Federal agency. IV.

DISCUSSION AND FINDINGS

When the grievant took his R&R travel, the post had no reason to question his eligibility for it; he was on a two-year assignment, he had served over six months, and was therefore within that portion of his tour of duty during which R&R should properly be taken. The regulation, quoted above, suggests that posts should not grant such travel within the first six months or the last six months of a tour. The regulation also, however, obliges an employee to repay the cost of R&R if he or she does not serve a continuous two-year tour of duty, except when the Agency waives repayment. In this case, the Agency has repeatedly declined to waive repayment, maintaining that the criteria laid down in the regulation were not met.

The only grounds for waiving a repayment are the three conditions specified in the regulation: (1) the employee transfers at the option of or for the benefit of the employer; (2) the Agency separates the employee involuntarily; (3) compassionate reasons exist.

of his wife about remaining at the post, and the illness of his father.

The grievant's situation was undoubtedly painful to him: to stay at post meant the probable break-up of his family, as he believed, and also the denial to his ailing father back in the United States of the help and support he needed from his only son. He discussed his desire for a transfer with a visiting [Agency official], who told him he was unable to help with a matter of this kind. There is no

It is plain that the first two conditions are not pertinent in this case. The grievant's move from [Agency] to [second agency] was undertaken on his own initiative, for his personal convenience and advantage, and not at the option or for the benefit of [Agency] . Nor was it the result of involuntary separation.

The grievant has argued for relief on compassionate grounds citing personal problems, specifically the attitude of his wife about remaining at the post, and the illness of his father.

The grievant's situation was undoubtedly painful to him: to stay at post meant the probable break-up of his family, as he believed, and also the denial to his ailing father back in the United States of the help and support he needed from his only son. He discussed his desire for a transfer with a visiting [Agency official], who told him he was unable to help with a matter of this kind. There is no evidence that he took any steps to solve his problem, other than this unofficial and informal approach to a man who, in any case, had no responsibility for personnel matters. Had he brought the problem to the attention of proper officials in his Agency, compassionate consideration of his circumstances might have led to the transfer he wished. He did not do this, however. What he did was to apply for R&R, taking it in [his home State] rather than at the designated post

of [Post D], using the trip to make arrangements for other employment, and returning to [Post A] only to announce his resignation and imminent departure from post. Nothing in the regulation can be read, in the Board's view, to justify R&R travel for such purposes. V. BOARD DETERMINATION

The Board finds that the Agency's application of the regulations was proper and reasonable, and that its action in seeking repayment of the grievant's R&R travel is warranted.

The grievance is denied.