

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant  
and  
[Agency]

Record of Proceedings

NO. [ ]

Date: February 15, 1980

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For the Foreign Service Grievance Board:

Presiding Member: Board Members:

Special Assistant  
to the Board:

[ ]

Representative for the Grievant:

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.

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to the American Embassy in [post A]. There he worked in both the [Section] and the [Section] until home leave and transfer to the American Consulate in [post B] in [date] . He was promoted from [Class \_] to [Class \_ \_\_] in [date] .

Earlier, grievant received an [evaluation report] on [date] covering his performance in the [Section] for the three

## I. GRIEVANCE

The grievant, a [FS category], Class [ ], filed a grievance with the Board on [date]. He contends that a falsely prejudicial [evaluation report] covering his performance as [position] in [post A] [for about 4 months] remained in his performance file for one year before it was removed on [date] as a result of a grievance he filed at the Agency level on [date]. Grievant claims the defective evaluation unfairly disadvantaged him in competition for career status while it was in his file. As relief he asks for one additional year time-in-class to achieve tenure.

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

## II. BACKGROUND

Grievant entered the Service in [date] as a Class [ ] officer. After training in [Agency] he was assigned in [date] to the American Embassy in [post A]. There he worked in both the [Section] and the [Section] until home leave and transfer to the American Consulate in [post B] in [date]. He was promoted from [Class \_ ] to [Class \_ ] in [date].

Earlier, grievant received an [evaluation report] on [date] covering his performance in the [Section] for the three

months between [dates]. He was told this [evaluation report] would replace a Memorandum [evaluation report] which covered the same period and had been written on [date].

[Grievant] disputed this action in his rebuttal to the [evaluation report], but he did not formally file a grievance about the matter until [date] . He then claimed that the [evaluation report] was, in essence, unfair and unbalanced. As relief he requested that the [Agency] "provide whatever redress [it could] accomplish." In its review of the grievance on [date] [Agency] indicated that the disputed [evaluation report] "[could] be considered falsely prejudicial," and ordered both its removal from [grievant's] performance file, and its replacement by a copy of the Memorandum [evaluation report] which had been initially prepared for the [date] rating period.

[Grievant] wrote to the [Agency] on [date] contending, in essence, that the award was insufficient, and that it be supplemented by granting him an additional year to achieve tenure. The [Agency] declined to so order, and the grievant came to the Board. III. STATEMENT OF THE ISSUES

Did the admittedly defective [evaluation report] prejudice grievant's chances to achieve career status while it was in his file? If it did, is the further relief he requests warranted?

A. Grievant's Position

Grievant says, in essence, that the [evaluation report] which [Agency] removed was extremely damaging despite the fact it covered only a three-month period, and that it served to prejudice him before the Tenure Boards. Its presence in his file has caused him to lose one year of the five available to reach career status. He says an additional year to compete for tenure is thus due him.

He argues further that the [Agency's] claim of undue delay in his filing of the grievance is without merit. He says the time prior to filing was needed to build his case.

Grievant says his promotion to [Class \_] in [date] is irrelevant to his complaint that he did not receive fair consideration for tenure.

Finally, grievant rejects as specious [Agency's] argument that even in the absence of the defective [evaluation report] from his file he would not have been tenured. Grievant says he is not asking for "tenure as a remedy for the damage done by the falsely prejudicial [evaluation report]." Rather, he says he asks "only for the full amount of time of fair consideration to which [he is] entitled."

B. Agency Position

The [Agency] offers several reasons why the extension of grievant's time-in-class is not an appropriate remedy. The defective [evaluation report] described only a three-month

period. The balance of grievant's career is otherwise fully documented by extensive evaluation reports.

The [Agency] says grievant knew the [evaluation report] was being placed in his file in [date] for review by Selection Boards for possible promotion and later for possible tenure, yet the grievance was not received by the [Agency] until [date] after both Boards had completed their reviews and made their recommendations.

The [Agency] points to grievant's promotion to [Class

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in [date] while the [evaluation report] was in his file as indicative of the [evaluation report's] less than critically damaging effect.

Finally, the [Agency] notes that the [date] Tenure Board reviewed [number] files and recommended only [number]

officers for tenure. It concludes his failure to be tenured by that Board did not flow from the presence in grievant's performance file of the [evaluation report]. IV. DISCUSSION

AND FINDINGS

The Board is not convinced that grievant's promotion to Class [ ] in [date] is evidence of his lack of injury nor that those Selection Boards discounted the importance of the [evaluation report] because of the relatively brief period it described or because of the otherwise extensive evaluations of grievant's performance in his file.

The Board notes [Agency] regulations promulgated during the time in question indicated that the "then current [type] Board Precepts would be amended to direct the promotion of: (1) All participants of Class [ ] in the [type] Junior Officer Program who have satisfactorily performed duties for 18 months in that class..." (FAMC 749, dated April 24, 1978). The Record shows that grievant entered the Service in June [date] as a Class [ ] officer. No evidence has been adduced that grievant was not thus virtually automatically qualified for promotion under such amended precepts.

Moreover/ the Grievance Board cannot rule out the possibility that grievant would have been tenured by the [date] Boards. Given the fact that grievant's performance file before this Board was not accurately constituted, the Grievance Board finds that grievant was deprived at that time of the opportunity to have a fair assessment made of his file. Under the circumstances, the Board finds warranted the one extra year time-in-class grievant requests to compete for tenure. V. BOARD DETERMINATION

The Grievance Board finds the grievance meritorious and directs that the grievant be given one extra year of time-in-class to compete for tenure.