

EXCISION NO. 513

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

and

[Agency]

---

Record of Proceedings

No. [    ]

Date: August 6, 1980

Foreign Service  
Grievance Board:  
Presiding Member:

For the

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

[Grievant], a [FS category], [grade], with the [Agency] filed a grievance with the Foreign Service Grievance Board on [date]. He contends that his [performance evaluation] for the period [date to date] is not a valid appraisal because of a number of claimed deficiencies, including the following:

The [performance evaluation] was not prepared within the time-frame required for the rating period in question; a violation of [Agency regulation];

No [performance evaluation] was available for review by the [evaluation panel] in [date] for the period in question; a violation of [Agency regulation];

The [evaluation panel] which met in [date] failed to critique the [performance evaluation], or lack of a [performance evaluation], as required by [Agency regulation];

He was denied the opportunity to review the comments of the Rating and Reviewing Officers either prior to the [special] review or the submission of the [performance evaluation] to the [evaluation panel] for [year] ;

Substantial and improper changes were made in the [performance evaluation] without informing him;

The [evaluation panels] which met in [date] and [date] were improperly provided with this invalid [performance evaluation] and made their recommendations on the basis of it.

As redress, the grievant requests that the [performance evaluation] be corrected in order to make it an accurate and valid evaluation. He requests also that he be considered for promotion retroactive to a date between [date] and [date], the

years in which, he states, he was prejudiced in competing for promotion because of panel determinations based on his improperly constituted performance file. II. BACKGROUND

[Grievant] was appointed a [FS category], [grade], in [date] and was promoted to [grade] a year later. His first assignment was in the position of [title, office, and agency]. While in that position, he was sent on temporary duty (TDY) to the [office, post] for a period of ten weeks beginning about [date].

In [date] he reminded his supervisor in [Agency in Washington] , [name 1, title, office] , who had prepared his previous [performance evaluation] for the period ending in [date], that a new [performance evaluation] was required to cover the period [date to date] . He said he would like to review the new [performance evaluation] prior to his departure from the office to attend a three-month course at the Foreign Service Institute beginning in [date], in preparation for his scheduled transfer to [post]. He provided him with a detailed description of the work he had performed in the rating period to be covered. However, the [performance evaluation] was not rendered before he left the office nor before he left for [post]. A cable from [post] in [date] on his behalf failed to elicit the over-due [performance evaluation] . [Grievant] then prepared a draft report which he sent to [name 1] in [date] to

assist him with the task of writing the [performance evaluation]. Meanwhile, the [date, evaluation panel] reviewed his performance file without benefit of a [performance evaluation] for the [year] rating period in question.

The grievant continued to send cables to [Agency in Washington] while in [post], requesting that the delinquent [performance evaluation] be completed. In [date], while in Washington on consultation, he discovered that the [office] had assigned [name 2] , [title, office] in [Agency in Washington], to rate his performance for the period [date].

[Name 1], according to the Record, had declined to prepare the [performance evaluation] because in the period to be covered he had been doing primarily [specialty] work, and had not been under his direct supervision.

Changes were made in the [performance evaluation] prepared by [name 2] after he had been shown it and had been led to believe that the evaluation he reviewed would be the one that would be entered in his performance file. Details of those changes are contained in the following extract from his grievance submissions:

During the consultation in Washington in [date], I requested that [bureau] provide me a copy of the [performance evaluation] which was submitted by the [title, office, name 2]. At that time I noted that my signature and comments had been retained from the [date] draft, in spite of the fact that each page of the [performance evaluation] had been revised. Because the [performance evaluation] appeared to be a fair and honest appraisal of the work I had performed, I decided not to raise the issue of who

prepared the [performance evaluation], or the fact that my comments and signature had been retained from a previous draft.

In [date], I received the employee's copy of the [performance evaluation] from [office]. Major changes had been made as compared to the [performance evaluation] which I reviewed in [month] of the same year. The changes were fundamental and damaging, and included down-grading of my overall performance from outstanding to very good, and of overall evaluation of potential. These changes are pointed out in Attachment II of the grievance. I was never informed of these changes. More seriously, I was never given an opportunity to review the final [performance evaluation], to change my comments based on a different rating, and to sign the [performance evaluation] on the bottom of the last page, as required by the [performance evaluation] format. Finally, the [performance evaluation] was inserted into my official personnel file in this incomplete and invalid condition. It remained in my file during reviews by two [evaluation panels] which met in [date] and [date] respectively.

The record discloses that from [date] until the [evaluation panels] met in [month] of that year, [grievant] corresponded with the Agency seeking unsuccessfully to obtain an explanation for the changes made in the [performance evaluation]. On [date], the [post], where he was then assigned, sent a cable to [Agency] requesting that the [performance evaluation] be removed from his file. This cable was cleared in draft by [name 2], the officer who had prepared the [performance evaluation], and who was then in [post] on temporary duty. In [date], following his return to [post] from home leave, the grievant found an

undated letter from [name 3], [title, office] of [Agency in Washington] . He informed him that the [date] cable had arrived too late for removal of the [performance evaluation] prior to review of his file by the [year] [evaluation panel]. He advised that he would have to file a grievance in order to have the Agency consider his request for its removal after it had already been reviewed by an [evaluation panel]. This he did in [date].

In the Agency's reply to the grievance dated [ ] , it agreed to his request to remove the [performance evaluation] from his file. The Agency stated: "For the reasons you have specified we find it to be in non-compliance with the pertinent regulations cited previously." A brief statement attesting to the removal without prejudice to him was to be placed in his file in its stead. The Agency,, however, opposed his claim that he had been substantially adversely affected by the [performance evaluation] and denied the other remedies he requested.

[Grievant] responded to the Agency's decision in a letter, dated [ ], in which he asked that the [performance evaluation] be put back in his file and that the brief statement concerning its earlier removal be withdrawn. He had decided that the defective [performance evaluation] was preferable to no record of performance for the eight-month period concerned, and that any statement which was intended to

replace the [performance evaluation] would be prejudicial to him. He reiterated in the letter his objection to the changes that were made in the [performance evaluation] between the time it was shown to him in [date] and the time in [date] he received a copy of the revised [performance evaluation].

In [date], [Agency] informed the grievant that his request for reinstatement of the [performance evaluation] in his file had been granted. It did not accept his claim that the [performance evaluation] was rendered inconsistent by the changes or approve his request to rescind the changes in the altered report.

[Grievant] then forwarded his grievance to this Board.

### III. DISCUSSION AND CONCLUSIONS

The Agency acknowledges that the protested [performance evaluation] suffers a number of procedural deficiencies and violations of regulations that render it seriously defective. For that reason, as remedy, it is willing to remove the [performance evaluation] from the grievant's file. The Board finds that to be an insufficient remedy. The Board supports the grievant's position that the Agency-proposed remedy, in the circumstances of this case, does not come near to meeting the Agency's responsibility to correct what clearly was an improper action. Removal of the report, as grievant points out, would create a gap in his file and leave no record of his performance for an eight-month period. During that period.

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On the basis of the history of this grievance and the entire Record, we find strong justification for retaining the report in his file but rescinding the changes that were made in it without his knowledge and without giving him an oppor-

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We note the high praise given the grievant's work while he was on TDY as contained in the following quoted passage from a cable sent by [post] to [Agency in Washington] , dated

1- We want to express our deep appreciation for the outstanding job [grievant] has done on his just completed TDY...through extremely hard work and long hours, he has been most instrumental in bringing these two projects to the point where they are ready for final consideration.

2. [Grievant's ability to organize, to analyze clearly, to negotiate effectively and to write well have been of first rate importance in producing two [projects] of very high quality.

3. We should also note [grievant] has been most helpful in the negotiations, now virtually complete, on the [project]. He did a significant part of the groundwork necessary for these negotiations and was an excellent participant in them...

Further support for the remedy the grievant seeks is found in the lack of any evidence that the proper rating officer made the changes or that they were effected for legitimate reason.

IV. BOARD DETERMINATION

The Board has decided that a meaningful and appropriate remedy for the irregularities connected with the protested [performance evaluation], including the violation of the grievant's rights in the performance rating process, is to restore the present [performance evaluation] to its form and substance when it was reviewed by the grievant in [date] and before it was wrongfully altered in the circumstances described.

Accordingly, the Board directs that the first three pages of the [performance evaluation], as it now appears, be retyped in accordance with the following corrections:

-page I, under Part II - EVALUATION OF PERFORMANCE

#11 SUPERVISORY EFFECTIVENESS - restore the box rating to show "superior to outstanding;"

#14 QUANTITY OF WORK - restore the box rating to show "superior to outstanding;"

#15 QUALITY OF WORK - restore the box rating to show "superior to outstanding;"

-page 2, under B. DISCUSSION OF WORK PERFORMANCE -

In the first sentence of the last paragraph, replace the words "very good" with the original "outstanding;"

-page 3, under C. GENERAL OVERALL APPRAISAL OF TOTAL PERFORMANCE - restore the box rating to "performance was outstanding;"

Part III - EVALUATION OF POTENTIAL - restore the box to "I believe the employee is ready to assume greater responsibility."

In addition, the alteration made in the [performance evaluation] concerning absence of supervisory responsibility-

ties of the rated officer is not consistent with the narrative description in the report of his duties as a supervisor- The appropriate box should be marked as originally intended, crediting him with supervisory responsibilities.

The Board notes that the grievant was promoted to [grade] in [year] even though the defective evaluation report was in his file. Grievant's previous promotion to [grade] had been in [year] . This is not an extraordinary period of time to remain in [grade]. On the basis of the full Record the Board concludes that grievant's service in [grade] would not have been shortened even though the changes directed by this Board had been a part of his file. Therefore, the Board cannot endorse the grievant's request for a retroactive promotion.