

EXCISION NO. 517

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant  
and [Agency]

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No. [  
]  
Date:  
July  
21,  
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.

I. GRIEVANCE

On [date], [grievant], a [FS category] with the [Agency] filed a grievance with the Board because [Agency] denied his request for a Home Service Transfer Allowance (HSTA) in connection with his transfer from [post] to Washington in [year] . He claims he is entitled to this allowance and asserts that Agency officials assured him he was eligible for it and encouraged him to apply for it.

The Agency contends that under applicable regulations and Agency policy [grievant] is not eligible to receive a HSTA.

Under provisions of Section 906 of the Board's regulations, a Record of Proceedings containing relevant documents was compiled. After the Record was closed with the concurrence of the Parties, the Board met to consider the case.

II. BACKGROUND

Because of a policy decision to downgrade the [mission] in [post], [grievant] was transferred in mid-tour to [Agency] Washington in [date]. His Travel Authorization was dated [date]. The Record indicates that prior to his departure from the post on [date] , he was told by the [mission officials] that he would be eligible to receive a HSTA, and he was given a packet of material, which included photocopies of relevant pages from [Agency] administrative [regulations].

On [date], an important [Agency] policy announcement, subject: "Foreign Service Mandatory Retirement," was cabled

(telegram [number]) to the Agency's overseas missions, including [post]. Quoted below is a passage from that cable which particularly affected [grievant]'s future overseas service and his eligibility for a HSTA:

"...employees rotating to the U.S. with 36 months or less to serve before retirement will not be granted a Home Service Transfer Allowance which includes miscellaneous expense and temporary lodging allowances. . ."

At the time [grievant] left [post], he had a remainder of 29 months to serve before he reached mandatory retirement age.

The Record does not show what date the telegram was received in [post]. However, there is substantial evidence that [grievant] was not informed of the substance of the cable prior to his departure.

On [date], [grievant] and his wife obtained temporary lodging at [hotel] in Washington. The following Monday, on [date], [grievant] checked in at [Agency] Washington with his [Personnel Officer]. According to the Record, the latter's assistant gave him, among other papers, a set of Form 1190 - used to apply for a HSTA - with instructions to complete and return them to the Personnel Office in order to receive reimbursement.

On [date], having mislaid the regulations concerning a HSTA, [grievant] called [Personnel Officer's] office and asked for another copy. She sent him a photocopy of "A Guide to the Allowance System", reprinted from [Agency 2] Newsletters. At

the time this material was furnished, the grievant was not informed that he did not have a right to a HSTA.

On [date], the grievant terminated his temporary lodging at [hotel]. On [date], he submitted the required Form 1190, with receipts, to the Personnel office. He requested reimbursement under the provisions of the HSTA regulations for 30 days' temporary lodging for his wife and himself at the rate of \$21 per day, plus \$200 for miscellaneous expenses.

On [date], [Personnel Officer] advised [grievant] by phone that she could not approve his request for reimbursement because under existing [Agency] policy and regulations she could not certify that his assignment in the U.S. was "between foreign assignments."

III. EXCERPTS FROM APPLICABLE LAW, REGULATIONS AND PUBLISHED AGENCY POLICY

A. Foreign Service Act of 1946, as amended. Section 632:

"Sec. 632. Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which he has been appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador or a career minister shall, upon reaching the age of sixty, be retired from the Service and receive retirement benefits in accordance with the provisions of Section 821, but whenever the Secretary shall determine it to be in the public interest, he may extend such participant's service for a period not to exceed five years".

B. Standardized Regulations, Section 251.1 a and b:

a- "Home service transfer allowance" means an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him/herself at a post of assignment in the United States . . . between assignments to posts in foreign areas.

b. "Transfer" . . . means a reassignment that involves travel from a post in a foreign area to a post in the United States . . . with an understanding certified . . . to by the agency and the employee that he/she will, upon completion of such assignment, again be assigned to a post in a foreign area.

C. [Agency] Policy transmitted in [Agency 2] Telegram [number]:

"The following information is provided for mission and employees to better plan and prepare for the program and personal impact of retirement. . . -Section 251.1 of the Standardized Regulations states that home service transfer allowance is authorized only with an understanding certified to by the agency and the employee that the employee will, upon completion of rotation assignment, be assigned to a post in a foreign area. Therefore, employees rotating to the U.S. with 36 months or less to serve before retirement will not be granted a home service transfer allowance which includes miscellaneous expense and temporary lodging allowances..."

IV. DISCUSSION AND CONCLUSIONS

The above quoted mandatory retirement requirement was in effect when [grievant] was transferred to Washington in [year] and is still in effect- At the time of his transfer, [grievant] had a remainder of 29 months in the Foreign Service before reaching the mandatory retirement age of 60. Given the circumstances described in the foregoing, the Board has

concluded that the Agency's denial of the grievant's request for a HSTA was consonant with applicable law and Agency policy. [Agency] did not intend to transfer him to an overseas post in the remaining 29 months prior to his scheduled mandatory retirement. Accordingly, his application for a HSTA, by law, could not be certified by his Agency.

The Board has looked into the grievant's allegation that he was the victim of unfair treatment in that a number of other [Agency] employees allegedly in circumstances similar to his own were granted a HSTA. On the basis of our examination of each of the examples given by [grievant] – and the information provided by the Agency at the Board's request in connection with the names listed by the grievant – we find no reason to believe that [grievant] received disparate treatment in the consideration of his eligibility for further overseas service or for a HSTA. In each instance, the circumstances of the employees listed by [grievant] with regard to overseas assignments or eligibility for a HSTA were different from the grievant's.

However, while [grievant] is not entitled by law to a HSTA, the Board finds strong justification in the history of this case for granting some monetary relief to him to offset the additional expenses he incurred as a result of being misled by Agency personnel into believing he was eligible for a HSTA.

Up to the time the Agency cabled its overseas missions the policy already quoted, [grievant] had every reason to expect that he would be entitled to receive a HSTA. Prior to leaving [post], he had received no indication whatsoever that he would be precluded from further assignments overseas. With this expectation of a HSTA, he incurred the temporary lodging expenses at the [hotel]. At no time during his lodging there, was he given any indication that he was not eligible for this allowance. On the contrary, the Record shows that in answer to a specific question addressed on [date] to a personnel assistant in his [Agency] backstop office, he was told that he was eligible for a HSTA. It is worth noting too, that he moved out of the [hotel] the very day on which he believed his subsidy was to expire. That fact indicates that had he known he was not to receive a HSTA, he would have made other arrangements for temporary lodging.

From the Record it is clear that because of the erroneous information given the grievant, he acted to his financial detriment. As a matter of equity, we believe he should be given appropriate relief.

V. BOARD DETERMINATION

The Board recommends that the Agency confer with the grievant concerning the sum he expended for temporary lodging in Washington that was in excess of the amount he would have spent but for the inaccurate and misleading information given him; and that the Agency make a good faith effort to seek a way to reimburse him for such extra expense.