

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Record of Proceedings
No. G-91-018-State-14

███████
Grievant

Date: May 6, 1991

and

DECISION ON JURISDICTION

The Department of State

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

James M. Harkless

Board Members:

James S. Landberg

Paul A. Modic

Special Assistant
to the Board:

Michael J. Gould

Representative for the Grievant:

Self

Representative for the Department:

William O. Wallace
Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

DECISION ON JURISDICTION

██████████, an untenured Foreign Service officer with the Department of State, filed a grievance with this Board on April 15, 1991. In it, he alleged that a number of his Employee Efficiency Ratings (EERs) contained falsely prejudicial information. He also claimed that two performance awards were omitted from his personnel file. ██████████ contends that as a result of these alleged Department errors he was denied tenure and is scheduled for separation from the Service.

On April 18, 1991, the Department issued a decision on ██████████'s grievance submissions at the agency level. It stated the Department did not have jurisdiction over two of the EERs grieved by ██████████: one for the period ending in January 1987, and one for the period ending in March 1987. The Department claimed that grievances concerning these EERs failed to meet the three-year time limit on grievance filings contained in Section 1104 of the Foreign Service Act of 1980. The Department contests the Board's jurisdiction over these two EERs.

The Board has determined in a number of previous decisions that grievances regarding EERs are admissible beyond three years if they meet the filing requirements of 3 FAM 663.7 (A). This occurred most recently in its "Reaffirmation of Jurisdiction" in G-90-010-State-05, dated December 26, 1990. That section provides, in part:

...grievances concerning an employee efficiency report or other documents in the Official Performance Folder may be filed without regard to the 3-year time limits provided:

- (1) The material is specifically referenced by a selection board and relied upon by the agency in a retirement proceeding under section 608 of the Act; or
- (2) The material is otherwise adversely affecting the grievant and no more than 5 years have elapsed since the date of its issuance...

The grievance regarding the two EERs in question was filed within five years of their dates of issuance, and grievant alleges he was adversely affected by them. Therefore, the Board accepts jurisdiction over them, as well as over the other issues raised in grievant's submission.

In the interest of a prompt resolution of this case, the Board encourages the parties to make timely responses to enable an early closing of the Record of Proceedings.

The Board will address grievant's request for prescriptive relief in a separate decision.

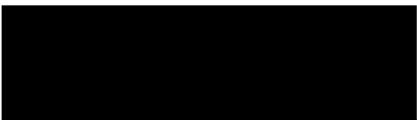
For the Foreign Service Grievance Board.



James M. Harkless
Presiding Member



James S. Landberg
Member



Paul A. Modic
Member