

Decision Chron  
2145  
2015

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

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

██████████ n ██████████  
Grievant

Date: July 25, 1991

and

INTERIM DECISION ON  
PRESCRIPTIVE RELIEF

The Department of State

EXCISED

---

For the Foreign Service Grievance Board:

Presiding Member:

James M. Harkless

Board Members:

James S. Landberg  
Paul 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

The issue before us is grievant's request that we stay his separation pending disposition of his case.

I. GRIEVANCE

██████████ ██████████, a career candidate Foreign Service officer with the Department of State, class FS-04, filed an appeal with this Board on April 15, 1991. Shortly thereafter, on April 18, 1991, the Department denied the substance of his grievance at the agency level. The June 1990 Commissioning and Tenure Board (CTB) had not recommended ██████████ for tenure on final review of his candidacy before expiration of his four-year limited appointment. However, his separation from the Service was suspended while his grievance was under consideration at the agency level, as provided by 3 FAM 664.1(b)(2). Upon his appeal, ██████████ requested the Board on April 24, 1991 to stay his separation as prescriptive relief pending resolution of his appeal, under the provisions of 3 FAM 666.3. He is scheduled to leave the Service effective August 3, 1991.

II. STANDARDS FOR GRANTING RELIEF FROM SEPARATION

In an Order issued on February 14, 1990 in grievance G-089(89), the Board outlined the standards which it should apply in ruling on requests for prescriptive relief by career candidates. It noted that section 1106(8) of the Foreign Service Act of 1980 does not contemplate automatic stays of agency actions, but that such relief should be granted only "if the Board determines that ... such action should be suspended." The Board pointed out that career candidates cannot grieve termination as such. Only the underlying

violation of law, regulation or published policy is grievable. The Board concluded that it should not grant prescriptive relief to stay separation of career candidates unless a preliminary assessment of the merits shows that the candidate has a reasonable prospect of attaining relief that will result in being retained in the Service.

### III. DISCUSSION AND FINDINGS

██████ alleges that his separation from the Service violates 3 FAM 662(c)(1), which pertains to: "Separation of a member allegedly contrary to law or regulation or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member." He contends that five Employee Evaluation Reports (EERs) dated May 1987, August 1987, September 1987, May 1989 and May 1990 were in various ways falsely prejudicial in that they did not fairly reflect his performance accomplishments and potential, contained unsubstantiated criticisms, or were written without giving him counseling and time to improve perceived weaknesses. The nature of grievant's complaints in this regard, and his account of the circumstances affecting his performance, do not convince us in this preliminary assessment that grievant has provided a reasonable basis for his obtaining the principal remedy he seeks, retroactive tenure to June 1990. We find therefore that granting prescriptive relief based on ██████'s allegations concerning his five EERs is not justified at this stage of the proceedings.

More central to grievant's case, in our view, is his allegation that an individual and a group superior honor award, he was granted for his performance as a political officer in 1988 and 1989 at the time of the crisis in [REDACTED], were not properly taken into account by the June 1990 CTB. The record is not clear whether he was given an individual award, or a group award, or both. There are two award nominations in grievant's Official Performance Folder. The group award nomination form indicates that it was approved by the area office awards committee, as required by the regulations. However, there is no such approval of an individual award and it is not clear whether grievant's supervisors ever intended to nominate him for an individual award. If so, it is uncertain what actions concerning such an award were subsequently taken in the Embassy and in the area office. Grievant also maintains a personnel clerk advised him that his group award arrived after his file went to the CTB. But, he has provided no names or evidence to substantiate his contention. Grievant's allegations that his group award was not seen by the June 1990 CTB thus are not supported by testimony as to specifics and therefore must be considered speculative.

We conclude, on the basis of the record now before us, that grievant has not shown a reasonable prospect that he will prevail on his allegations that five of his EERs were flawed in violation of the regulations, and on his claim that his candidacy for tenure was harmed because agency error precluded consideration of his group superior honor award and an alleged

individual award by the June 1990 CTB. The Board remains open to any additional evidence grievant may wish to provide prior to closing the Record of Proceedings (ROP).

IV. DECISION

Grievant's request for prescriptive relief against his proposed separation by the Department is denied.

For the Foreign Service Grievance Board.



James M. Harkless  
Presiding Member



James S. Landberg  
Member



Paul Modic  
Member