

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Record of Proceedings  
No. G-91-048-State-38

Grievant

Date: March 31, 1992

and

The Department

ORDER ON DISCOVERY  
- EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Leroy Merrifield

Board Members:

Paul A. Modic  
Marilyn Johnson

Special Assistant  
to the Board:

Michael J. Gould

Representative for the Grievant:

Attorney

Representative for the Department:

Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

ORDER ON DISCOVERY

This order addresses grievant's Motion to Compel Discovery as amended March 10, 1992. It is noted that some of grievant's earlier requests have been answered by the Department and others have been withdrawn. Five requests remain for our consideration. They are numbered in the same way as in the amended Motion.

6. Please supply a copy of grievant's entire Career Development Counseling (CDC) file.

Grievant contends that one of the most expeditious means for him to obtain his CDC file is through a discovery request which also gives such records official status. The Department states that grievant has access to this file, has been assisted in obtaining copies of much or all of the file, and can easily obtain further copies if needed by the same means. It avers that such copies are equally authentic as any provided through the agency's grievance staff, c-tl/~e.

DECISION. Grievant should obtain whatever additional CDC records he requires through *Dffic*, Any CDC documents submitted to the record will be accepted as authentic.

7. Do you acknowledge that Assistant Secretary of State for f3U'tetii.A. [fiQft)eJ [1V1~111c.J, had authority to grant final approval of the group honor award referenced in the NQ~~ 1/21/81 letter (9/25/90 Grievance Ex. A)? If not, please explain.

DECISION. The 1981 group honor award is no longer an issue in this grievance. The Board has found that it fell outside of the statute of limitations under the provisions of 3 FAM 663.7.

8. The O{~~~ file furnished to grievant's counsel does not appear to contain the statements from chairs and members of the Senior Threshold and Commissioning Boards which are relied upon in paragraph 11 of the cabled agency grievance decision. Please furnish all written statements and/or notes of such verbal statements; if there are none please explain exactly what you relied upon and why there are no records.

The Department reiterates its position as stated in the October 17, 1991 letter (.)+f~te sent to grievant's counsel, that is:

"We referred to no specific statement or statements in making our comments in paragraph 11 of the cabled agency grievance decision. These comments are based on general remarks made to Office officers over time by C(f~'CK' staff and at debriefings of selection board members."

DECISION.

The agency makes clear that it is offering a generalized statement which it attributes to chairmen and members of Senior Threshold Boards. This statement will be accepted and considered by the Board as a generalization. We see no purpose is pursuing the matter further.

10. Grievant has revised interrogatory 10 concerning the processing of the 1989 Group Superior Honor Award. The agency states that it abides by its responses in its December 11, 1991 and January 10, 1992 submissions. It indicates that /VQ~e

who may be knowledgeable about this issue is a part-time employee who has been unavailable because of illness, but may return to work this month (March). Grievant also raises other

questions about the processing of awards and the regulations governing how records of awards should be maintained.

DECISION. The Department is directed to respond to interrogatory 10 with the information available to it at this time.

11. Grievant raises questions concerning his nomination for a Superior Honor Award in 1982. He contends this interrogatory is relevant to his request that the Board consider the "gestalt" of his entire record in this case. In its October 17, 1991 letter to grievant's counsel, the agency stated that the 1982 award was not at issue in this case. In its memorandum of March 13, 1992, the Department maintained that the amended motion to compel discovery for item 11 is rendered moot by our interim decision on jurisdiction of February 21, 1992.

DECISION. We find that grievant here raises questions about issues which are time barred as determined in our decision of February 21.

In summary, the agency is directed to respond to interrogatory 10 within two weeks of receipt of this order and the grievant is directed to file his final submission within two weeks of receipt of the agency's response, to facilitate prompt closing of the record and consideration of the grievance on its merits.