Decision Chron #~~2482~~ 1182

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[redacted]
Grievant

and

The Department of State

Record of Proceedings
No. G-91-071-State-61

November 13, 1991

INTERIM DECISION ON
JURISDICTION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member: Howard W. Solomon

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:

Joanne M. Lishman,
Acting Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

[redacted], a security officer with the Department of State, filed a grievance appeal with the Board in a submission of October 16, 1991 It is uncontested that grievant received the agency's decision in his case on July 26, 1991 and therefore that his appeal submission failed to comply with the 60-day filing deadline set forth in section 903.1(b) of the Board's regulations. Under that provision, grievant should have filed by September 24, 1991; his actual submission was 22 days late. However, that section also provides:

> The Board may extend or waive for good cause shown the time limits stated in this section, and may permit or request the views of the parties with respect to whether good cause has been shown for such an extension.

The Department maintains that we should find [redacted] grievance not to be timely filed and therefore should deny jurisdiction. [redacted] responded to the Department's position in a telegram of November 4, 1991 from his post at Embassy [redacted]. The Department submitted additional comments on November 6, 1991.

[redacted] says that he received the Department's decision on July 26, 1991, the same day that the Secretary of State arrived in [redacted] on an official visit. The President arrived in [redacted] on an official visit on August 1. Grievant's supervisor, the Regional Security Officer (RSO), departed [redacted] on August 3, leaving grievant responsible for all [redacted] security matters until August 17, when the new RSO arrived. Two days later, the attempted coup against the [redacted] government began, collapsing on August 21. A new U.S. ambassador to the [redacted] arrived the same day and grievant was responsible for his personal security.

[redacted] claims that, in the aftermath of the coup attempt, it was not until the September 2 to 6 period that he was able to consider his response to the Department's decision on his grievance. During this period, however, he also was involved in preparations for another official visit by the Secretary of State, which occurred September 10 to 14. Grievant states that he was away from post on official temporary duty from September 8 to 12 and again from September 18 to 22, and that, when he again was able to focus on the grievance in the September 23 to 27 period, he did not realize that the 60-day period had expired. After being away from post on TDY September 28 to October 6, Hoover prepared his submission to the Board from October 7 to 15 and sent it the next day.

The Department argues that in providing this chronology, grievant is vague about the nature of his duties during this time and that he has failed to explain with any specificity how his duties precluded a timely filing, or to provide evidence that his workload was so burdensome as to prevent even an initial notification of his intent to file. We disagree.

Although grievant has not detailed all his activities, it is apparent that he was either the second ranking or the acting senior security officer in Embassy [redacted] during the 60-day filing period. We take into consideration the fact that operating and security conditions in Embassy [redacted] are unusually difficult and complex. Even under normal circumstances, senior security officers in the Embassy would have been fully occupied, but the security situation during

this period was far from normal. There were two official visits by the Secretary of State, a presidential visit to [redacted], an attempted coup against the government and the arrival of a new ambassador, any one of which would have placed tremendous additional burdens on security personnel. During part of this time grievant was in charge of security. After that, he was required to help his new supervisor (RSO) get settled not only during the coup but also during the post-coup circumstances (which included the Secretary of State's second visit). We conclude that [redacted] was more than fully occupied during these hectic times. Moreover, grievant's responsibilities during this time were of such a nature that he could not have chosen to neglect them in order to prepare a grievance submission.

Grievant states that he was away from post on official business three separate times, covering about 18 days of the 60 day period. Although he has not provided details of his activities during this period, we believe it is reasonable to assume, again given the security environment, that he was fully occupied, and that he would not have had access to Embassy copies of grievance and security regulations necessary to his submission to the Board.

The Department suggests in its response to grievant's telegram that he could and should have taken the time to send a telegram to the Board stating his intention to file. Although we agree that this would have been desirable, we can also take official notice that under the unusual circumstances which

prevailed during most of the 60-day filing period, it may have been difficult to prepare and send routine administrative telegrams from the Embassy.

The 60-day filing deadline in the Board's regulations was established to promote timely and efficient consideration and processing of grievances. It also was intended to give grievants adequate time in which to prepare their submissions. Under the circumstances discussed above, we find that 60 days was not an adequate amount of time for [redacted] to prepare his submission to the Board. Therefore, we conclude that, under section 903.1(b) of the Board's regulations, good cause has been shown for us to waive the time limits in this case and take jurisdiction of grievant's submission of October 16, 1991. Furthermore, there is no showing by the Department that it was in any way prejudiced by the late filing.

DECISION

The Board accepts jurisdiction of the subject grievance. The ROP closing date is hereby established to be January 23, 1992, which is 90 days from receipt of grievant's appeal to the Board.

For the Foreign Service Grievance Board:

[redacted]

Howard W. Solomon
Presiding Member

[redacted]

James S. Landberg
Member

[redacted]

Paul A. Modic
Member