

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceedings
Case No. 2003-035

And

Date: January 13, 2005

International Broadcasting Bureau

ORDER - EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Warren R. King

Board Members:

Garber Davidson
Edward A. Dragon

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Self

Representative for IBB:

Michele E. Gonsalves

Employee Exclusive Representative:

American Foreign Service Association

ORDER: Motion To Compel

I. INTRODUCTION

{Grievant}, a Technical Foreign Service Officer with the International Broadcasting Bureau, Broadcasting Board of Governors (IBB) at the time of the filing of this grievance, seeks the reversal of an IBB decision which upheld the validity of a settlement agreement of a prior grievance (FSGB Case No. 2000-077, filed on November 10, 2000), and which denied that the agency materially breached the settlement agreement so as to render the agreement unenforceable.

In the present posture of the case, *i.e.*, in the fact-finding, discovery phase, grievant has filed a motion to compel answers to interrogatories, which the agency opposes and declines to answer. The interrogatories posed by grievant all relate to matters underlying the previously settled grievance. The agency avers that the records and information requested are neither relevant nor material in the present appeal since the prior grievance was settled. This order responds to the motion to compel discovery.

II. BACKGROUND

In the previously settled grievance, by a memorandum of July 4, 2000, grievant complained that the IBB had violated MOA (Manual of Operations) requirements concerning a transfer of grievant to a post at {blank} from his then post at {blank}. The agency did not render a decision within 90 days of the filing of the grievance and grievant filed an appeal with this Board on November 10, 2000. The Board acknowledged receipt of the appeal by a memorandum of November 21, 2000 in which the case number FSGB No. 2000-077 was assigned to the appeal.

Thereafter, on January 21, 2001, grievant's representative, the American Foreign Service Association, filed a facsimile message advising of a settlement of the grievance in the following terms:

Re: FSGB No. 2000-077, Request for Withdrawal

The parties have reached a settlement in the above grievance. Grievant hereby requests that the appeal be withdrawn and the case closed. Thank you for your consideration.

By a memorandum of January 31, 2001, the Board dismissed the appeal in the following terms:

Mr. Sweetland has notified the Board, via a fax message with AFSA, that the parties have reached a settlement, and thereby, he is withdrawing his appeal to the Board. The Board, therefore, dismisses this appeal with prejudice.

The settlement agreement was not filed with the Board at the time.

In the present case, grievant (1) challenges the validity of the settlement agreement on grounds of coercion, and (2) claims otherwise that the IBB breached the settlement agreement by refusing to grant him a period of home leave, thereby voiding the agreement.

A copy of the settlement agreement, as presented in the record of the present grievance, shows grievant's signature along with the signature of AFSA legal representative, Ms. Zlatana Badrich.

III. THE DISCOVERY REQUEST

Grievant's discovery request is as follows:

Discovery Request 1: A copy of all the notes, minutes, files and any other information that pertains to the grievance that I filed July 4, 2000, including:

- a. A list of the names of the people who were on the Open Assignment Panel this year (2000).
- b. A copy of the minutes of the Open Assignment Panel where I was selected for the position in {blank}; and all supporting documents that relate to this assignment.
- c. A copy of the minutes of the Open Assignments Panel where Mr. {name} was selected for the position of facilities Plant Supervisor in {blank}, and all supporting documents that relate to this assignment.
- d. A copy of the minutes of the Open Assignment Panel where Mr. {name} was selected for the position of Facilities Plant Supervisor in {blank}, and all supporting documents that relate to this assignment.
- e. A copy of Mr. {name}'s request for a Limited Foreign Service Non-career appointment. And, all of the documents that talk about how and why he was given this appointment.
- f. A copy of all of requests for assignments for the position of Transmitter Plant Supervisor in {post} and the position of Facilities Plant Supervisor in {Post} and the position of Facilities Supervisor in {Post}.
- g. Ask the Director of Personnel if a committee on Tour of Duty Exceptions was convened for any or all of the assignments that were made this year. If Yes [sic], we would like to see a copy of the request for exceptions that should have been presented to the Career Counselor and the minutes of the meeting of the Committee on Tour of Duty Exceptions that considered these request [sic].

IV. POSITIONS OF THE PARTIES

The Grievant

As stated above, grievant (1) challenges the validity of the settlement agreement on grounds of coercion, and (2) claims otherwise that the IBB breached the settlement agreement by refusing to grant him a period of home leave, thereby voiding the agreement. Through his discovery request, he seeks facts that he believes will help him to establish that the settlement agreement is invalid because he was coerced into signing the agreement.

Grievant variously states:

“As I explained above I believe that I was assigned to {Post} because certain people in the Agency wanted to force me to resign.”

“I asked for a list of the names of ALL [sic] of the people who helped prepare the agreement that would force me to resign. Mr.[sic] Gonsalves gave us a list of the people who signed the agreement. He did NOT [sic] give us a list of all of the people who helped prepare the statement.”

“It is not in the best interests of the Government that I be forced to resign.”

“The agreement was not voluntarily agreed to.”

“I believe that if the Agency gives us the information that we asked for, I can prove that the purpose of assigning me to {Post} was to force me to resign. And I believe that they know this and that this is the reason why they will not give us this information.”

The Agency

The IBB responds to grievant’s discovery request and motion to compel that the records concerning the earlier grievance are not relevant and material to the instant grievance. The Agency advances two principal arguments in support of its position.

First, the settlement agreement provides specifically that grievant freely and voluntarily agreed to the conditions of the agreement and that he had ample time to consider the conditions and to seek advice from an attorney.

Second, the settlement agreement was “prepared and effected” more than two years before the filing of the present grievance and is therefore forever barred from the grievance procedures under the provisions of 3 FAM 4427a. The grievant’s complaint of the invalidity of the settlement agreement is barred from consideration by the statutory and regulatory limitations period of two years. (22 U.S.C. 4134). Grievant signed the agreement in January 2001. His grievance that he was coerced into signing the agreement was filed in July 2003 and is untimely under the grievance procedure. Grievant presents no evidence that would toll the limitations period.

V. DECISION

We accept the Agency's argument that the two-year limitations period began with the date of the signing of the settlement agreement, *i. e.*, January 12, 2001, thereby making a July 21, 2003 filing of the grievance to be beyond the limitations period.

We hold that the grievant's interrogatory requests seek data that is not relevant or material in the present appeal because:

(1) He is barred from challenging the validity of the agreement by reason of the statutory two year limitations period, and,

(2) As a result, he is bound by the terms of the settlement agreement.

Since the grievant is barred from challenging the validity of the agreement, we hold that he is bound by the terms of the agreement. These terms include the obligation to retire on August 31, 2003, and the obligation to desist from filing any appeal or review rights of the settled grievance.

Our holding above, that the two-year limitations period bars a consideration of grievant's coercion claim, leaves for our determination grievant's second claim that the settlement agreement was breached by the Agency's denial of home leave so as to render the agreement unenforceable. We set out below, a timetable for the submission of final arguments on the claim of breach of settlement agreement.

ORDER:

1. The motion to compel interrogatory answers is denied.
2. The claim of the invalidity of the settlement agreement of January 12, 2001, is dismissed as an issue from this case.

3. Grievant may file a Supplemental Submission within 30 days of receipt of this order. The Agency will have 30 days within which to respond to a Supplemental Submission. The grievant has 15 days for filing a rebuttal to the Agency response. The Supplemental Submission, and any response thereto, is limited to grievant's claim of breach of the settlement agreement of January 12, 2001.