

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

And

Department of State
Agency

Record of Proceeding

FSGB 2007-049

October 29, 2008

ORDER: MOTION TO COMPEL

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Roger C. Hartley

Board Members:

Garber A. Davidson

Alfred O. Haynes

Special Assistant:

Linda B. Lee

Representative for the Grievant:

Edward J. Reidy, Esq.

Representative for Department:

Joanne Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

ORDER: MOTION TO COMPEL

Grievant asserts that on September 22, 2008, she served the Department with a timely discovery request in this case by email. The Department asserts that its first actual notice of that discovery request was October 7, 2008, when it received a copy of the discovery request by mail. The Department further asserts that it has made a diligent search of its electronic records and has found no evidence that the September 22 email was ever received. Neither party alleges any lack of candor by the other. The preponderance of the evidence supports the conclusion, and we find, that grievant attempted service of a discovery request through an email that was never received and the Department's first actual notice of grievant's discovery request was October 7, 2008.

The Board's "Grievance Time Guidelines" provide that "[r]esponses to discovery requests are to be delivered to the requesting party within 20 days after receipt of the request, if possible. (emphasis added). See Grievance Time Guidelines, at 6 (April 14, 1999). The Board's "Policies and Procedures Regarding Discovery" provide that "[g]enerally, grievants have 20 days from the filing date of their grievance to submit discovery requests, and agencies have 20 days to respond or object. See "Policies and Procedures Regarding Discovery," at 2 (August 12, 1997). Read together, the clear intent of the Board's discovery rules is to provide "20 days to respond" following "[actual] receipt" of the discovery request. Here, actual receipt of the discovery request was October 7, 2008. Accordingly, the Department's response would have been due on October 27, 2008. The record shows that the Department did respond on that date. Accordingly, the Motion to Compel is DENIED and grievant has 10 days from receipt of

this Order to respond to the Department's October 27, 2008 response to grievant's discovery request.

For the Foreign Service Grievance Board:



for Roger C. Hartley
Presiding Member



Garber A. Davidson
Member



Alfred O. Haynes
Member