

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Record of Proceeding
FSGB No. 2014-035

And

February 20, 2015

Department of State

ORDER: Filing Deadlines

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Cheryl Long

Board Members:

J. Robert Manzanares
William Nance

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Douglas Broome, AFSA

Representative for the Department:

Marianne Perciaccante, USAID
Marc Sacks, USAID

Employee Exclusive Representative:

American Foreign Service Association

ORDER: Filing Deadlines

The purpose of this order is to resolve a dispute between the parties regarding the deadline for the filing of grievant's Supplemental Submission and the deadline for the close of discovery. The issue is whether the actual deadline for the completion of discovery was February 13, 2015 and whether the actual deadline for filing of the Supplemental Submission is February 23, 2015. The parties have expressed their differing interpretations in a series of emails that were made available to the Board. Based upon the following factors, the Board finds that the agency's interpretation is correct and that the grievant is mistaken in assuming that the date of February 13, 2015 was merely a time for commencing his discovery demands and that the date of February 23, 2015 for filing his Supplemental was not a firm date at all.

BACKGROUND

Grievant filed this appeal on September 22, 2014. He invoked the Board's jurisdiction based upon the agency's failure to respond to the grievance after the passage of 90 days, but fewer than 150 days, after he presented his grievance. The context of this dispute is that the parties engaged in settlement negotiations during the fall of 2014. To allow time to pursue the settlement issues, the grievant requested a tolling of the Board's litigation timeline, and the agency concurred in this request. When the negotiations failed, the grievant – on December 2, 2014 – contacted the Board and requested an “extension of 60 days to file the Supplemental Submission with 50 days extension for Discovery.” In that same email, the grievant specified the deadlines that he preferred, *i.e.* expressly requesting “an extension for the Supplemental Submission to February 23, 2015, and an extension for Discovery to February 13, 2015.” The next day, the Board granted this request.

It is apparent from recent emails between the parties that grievant did tender certain discovery requests to the agency, that the agency responded, and that the grievant is not satisfied with the results.

THE DISPUTE

The crux of the dispute is as follows. The agency appears to be frustrated by grievant's piecemeal requests for information. The agency states that the first discovery requests were made on December 3, 2014 and that the agency tendered responses on December 18, 2014. Thereafter, the grievant waited until February 10, 2015 to make another request for discovery. The agency then complained to the grievant that the latest request was tardy because it did not leave the agency with enough response time to comply with the deadline for *closure* of discovery (February 13, 2015).

In short, the grievant now asserts that February 13, 2015 was merely a date on which the Board permitted him to *commence* discovery, that the February 23, 2015 was not a firm deadline, and that the grievant could presume that the Board would allow him 30 days from the close of discovery to file his Supplemental Submission. Grievant bases his theory on the Board's custom and practice of permitting a party 30 days – after completion of discovery -- in which to file its Supplemental (if the party making discovery requests is the grievant) or 30 days in which to file its Response (if the party taking discovery is the agency).

The agency argues that February 13, 2015 was the deadline for *completion* of discovery. The agency also contends that no substantive discovery remains outstanding and that it would be inequitable to allow grievant more time to file the Supplemental Submission.

The Board concludes that the grievant's position has no merit, for several reasons. First, the present situation is not governed by what customarily transpires when an appeal is

proceeding in the normal course of business, with a routine timeline. Rather, the deadlines established by the Board in this case were issued specifically in response to the deadlines proposed by the grievant (assisted by ASFA). For that reason, the grievant was in control of how to articulate the span of time that should be permitted between close of discovery and his own filing deadline. If he had wanted 30 days from the close of discovery in which to file his Supplemental, the deadline he proposed would have been much farther in the future from a discovery *commencement* date of February 13, 2015. Grievant had the freedom to propose whatever timeline would be reasonable for his purposes, and the agency could have objected to such a proposal. In that event, the Board would have prescribed its own, new timeline to break any impasse about how the case should proceed.

Second, grievant attempts to re-write history, effectively urging the Board to regard its own directive as imprecise or elastic. We reject that approach. The Board does not issue deadlines that it does not intend to enforce or deadlines that are ambiguous or only ceremonial. Grievant's position appears to be a *post-hoc* attempt to rationalize why the Board's deadline should not be enforced. The filing deadline clearly is February 23, 2015. Given the amount of time this case has been pending, and given the lengthy hiatus in which the grievant could have but did not tender comprehensive discovery demands, the Board believes that grievant has had enough time to compose and file his Supplemental.

THE INTERVENING MOTION TO COMPEL

In the interim, a new issue has come before the Board, and it is relevant to the timeline for this litigation. On February 13, 2015, grievant filed a Motion to Compel Discovery. As a practical matter, this presents a potential complication to the completeness of grievant's Supplemental. The agency has 30 days in which to file a response to the Motion. That deadline

would overtake the present deadline for the filing of the Supplemental Submission. The Board cannot prejudge whether the Motion to Compel has any merit. Yet, if the motion is granted receipt of more discovery material may trigger a request for an extension of the filing deadline.

The Board endeavors to minimize delay and to maximize the efficiency of the appeal process. Accordingly, the Board finds that efficiency would be served by eliminating the possibility of more requests for extension of time. Thus, the Board will exercise its discretion to stay the filing deadline of February 23, 2015 and to issue a new deadline after the Board has adjudicated the Motion to Compel.

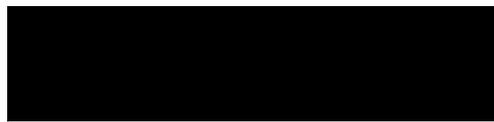
ORDER

Wherefore, the Board hereby orders that the February 23, 2015 filing deadline for grievant's Supplemental Submission is *sua sponte* stayed until further order of the Board, following adjudication of the Motion to Compel.

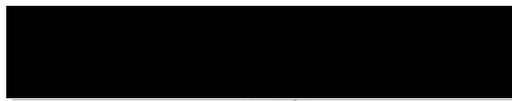
For the Foreign Service Grievance Board:



Cheryl M. Long
Presiding Member



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Member



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