

64 FLRA No. 195

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
NATIONAL JOINT COUNCIL
OF FOOD INSPECTION LOCALS
(Union)

and

UNITED STATES
DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
ALAMEDA, CALIFORNIA
(Agency)

0-AR-4495

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DECISION

July 26, 2010

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Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Catherine Harris filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Agency filed an opposition to the Union's exceptions.

The Arbitrator denied a grievance concerning the reduction of an employee's travel advance money to pay outstanding child support obligations. For the reasons set forth below, we dismiss one of the Union's exceptions and deny the Union's remaining exceptions.

II. Background and Arbitrator's Award**A. Background**

The Agency, a Department of Agriculture component, ensures that domestically produced meat, poultry, and eggs are wholesome and properly labeled. The grievant was employed as a Consumer Safety Inspector in the Agency's Alameda, California District Office.

In 2004, the grievant requested a travel advance in the amount of \$480.00. The Agency approved the grievant's request. However, the Department of the Treasury (Treasury) notified the grievant that it was going to offset \$475.20 of the \$480.00 to pay child support debts that the grievant owed to the Bureau of Family/Child Support Operations. Award at 6.

In 2005, the grievant requested a travel advance in the amount of \$2800.00. The Agency approved the grievant's request. However, once again, Treasury notified the grievant that his travel advance would be offset, this time in the amount of \$2772.00, to satisfy his unpaid child support debts. *Id.* at 6-7.

In both cases, the grievant's travel advances were offset by Treasury's Financial Management Service (FMS). *Id.* at 7. The FMS's Debt Management Service collects delinquent debts owed to federal agencies and states, including past-due child support. *Id.* The FMS offset the grievant's travel advances under a program called the Treasury Offset Program. *Id.* at 6-7 & n.10.

In the grievance, the Union alleged that the Agency was "participating in unlawful wage garnishments by garnishing employee travel advances." *Id.* at 7. According to the Union, travel advances are not "wages earned under prevailing wage garnishment laws." *Id.* The Union requested that the reductions end and that the grievant be made whole. *Id.* at 8. The Agency denied the grievance and the matter was submitted to arbitration.

As relevant here, the issues formulated by the Arbitrator were: (1) whether the grievant's travel advances were garnished or offset; (2) whether such garnishments and/or offsets violated Article 5 and/or Article 29 of the parties' collective bargaining agreement (CBA); and (3) if so, what the appropriate remedy should be. *Id.* at 3.¹

At arbitration, the Union argued that the Agency violated law and the CBA when it improperly garnished the grievant's travel advances. *Id.* at 10. The Union also claimed that it was an error to characterize the reductions as offsets under the Treasury Offset Program. *Id.* Finally, the Union contended that the grievant should have received "proper notification" and been given the opportunity

1. The Arbitrator also dealt with a threshold issue of procedural arbitrability, which he resolved in the Union's favor. Award at 3, 11-13. That ruling is not at issue in this proceeding, and will not be discussed further.

to respond to the offsets before his travel advance money was reduced. *Id.*

The Agency argued that it did not violate the CBA because it was Treasury, not the Agency, that offset the grievant's travel advances to satisfy unpaid child support debts. *Id.* at 11. The Agency also claimed that it had no control over Treasury's administration of the Treasury Offset Program. *Id.* Finally, the Agency contended that requiring it to reimburse the grievant for the amount of the travel advance offsets would effectively be requiring the Agency to pay the grievant's child support obligations. *Id.*

B. Arbitrator's Award

The Arbitrator denied the grievance. The Arbitrator determined that the reduction in the grievant's travel advance money was a lawful offset made pursuant to Treasury's Treasury Offset Program and not an unlawful garnishment as argued by the Union. *Id.* at 13. The Arbitrator further found that Treasury, not the Agency, was responsible for the offset. The Arbitrator found in this connection that "there is no evidence that the offsets . . . were directed, accomplished or approved by the Agency[,] or that the Agency had . . . any control over the administration of the Treasury Offset Program." *Id.* Finally, in the Arbitrator's view, ordering the Agency to reimburse the grievant for the offset travel advance money would be tantamount to requiring the Agency to pay the grievant's child support obligations, something the Agency was not contractually obligated to do. *Id.* Accordingly, the Arbitrator concluded that the Agency did not violate the CBA.

III. Positions of the Parties

A. Union

The Union claims that the award: (1) does not draw its essence from the CBA; (2) violates public policy; and (3) is contrary to law. Exceptions at 1. The Union argues that the Arbitrator erred when he determined that the offsets were solely Treasury's responsibility, and not the Agency's. According to the Union, the Agency has budgeted funds for travel and the fact that Treasury disburses those funds does not relieve the Agency from "proper accounting responsibilities in proper disbursements of those monies." *Id.* The Union further contends that Title 5 of the United States Code provides that travel money is not considered wages and therefore is not subject to garnishment. *Id.* at 2.

B. Agency

The Agency presents several arguments in its opposition. First, the Agency claims that the Union does not support its allegation that the award fails to draw its essence from the CBA. Opp'n at 4. The Agency notes in this regard that the Arbitrator found that the Agency did not violate the CBA because it was Treasury, and not the Agency, that offset the travel advances. Moreover, the Agency argues, the Arbitrator found that the Union presented no evidence showing that offsetting travel advance money violates the CBA. *Id.* Second, the Agency argues that the Union's contention that the award violates public policy is unsupported. *Id.* at 4-5. Third, the Agency claims that the Union's contrary to law exception must be dismissed because the Union fails to identify any law the award violates or explain how the award otherwise violates the law. *Id.* at 5. Finally, the Agency contends that the Union's argument that the Agency is responsible for the offsets should be dismissed under § 2425.2 of the Authority's Regulations. The Agency claims that the Union's exception fails to specifically reference pertinent documents or include citations of authority in support of its argument as required by this regulation. *Id.*

IV. Analysis and Conclusions

- A. The Union's exceptions that the award fails to draw its essence from the parties' agreement and violates public policy are bare assertions.

The first two bases upon which the Union challenges the award are unsupported. When a party fails to provide any arguments or authority to support its exceptions, the Authority will deny the exceptions as bare assertions. *See, e.g., U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., Port of Seattle, Seattle, Wash.*, 60 FLRA 490, 492 n.7 (2004). The Union's exceptions fail to explain how the award: (1) fails to draw its essence from the parties' agreement and (2) violates public policy. Accordingly, we deny these exceptions as bare assertions.

- B. The award is not contrary to law.

The Union claims that the award is contrary to law for two reasons. First, the Union claims that the Arbitrator erroneously concluded that the Agency bears no responsibility for offsetting the grievant's travel advances. Exceptions at 1. Second, the Union argues that the award is contrary to law because Title

5 provides that “travel money is not considered wages” and is thus exempted from garnishment. *Id.* at 2.

The Union’s argument that the Agency, and not Treasury, was responsible for offsetting the grievant’s travel advances is not properly before the Authority. Section 2429.5 of the Authority’s Regulations provides in pertinent part that “[t]he Authority will not consider . . . any issue, which was not presented in the proceedings before the . . . arbitrator.” 5 C.F.R. § 2429.5. Authority precedent makes clear that § 2429.5’s provisions will be applied to bar consideration of a party’s exceptions where an issue could have been, but was not, presented to an arbitrator. *See, e.g., U.S. Dep’t of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Oakdale, La.*, 63 FLRA 178, 179-80 (2009) (dismissing exceptions where evidence presented at hearing established that agency was aware that resolution of dispute entailed enforcement of a management right limitation but did not raise management right issue before arbitrator); *U.S. Dep’t of the Air Force, Air Force Materiel Command, Robins Air Force Base, Ga.*, 59 FLRA 542, 544 (2003) (refusing to consider issue raised in agency’s exception that union violated a provision of the Statute where the award found agency had alleged union violated only the parties’ collective bargaining agreement).

Under § 2429.5, the Authority will not consider the Union’s first argument in support of its contrary to law exception. Although the Union made several arguments before the Arbitrator, it never raised the argument that it is now bringing before the Authority -- that the offsets were the Agency’s responsibility. At the hearing, the Agency claimed that it bore no responsibility for the reduction of the travel advances because the reduction was an offset made by the FMS, which administers Treasury’s Offset Program. *See Award* at 9-11. The Union could have, but did not, respond to the Agency’s claim that Treasury -- and not the Agency -- was responsible for offsetting the grievant’s travel advances. Absent any evidence that the Union argued that issue before the Arbitrator, it may not do so now. We therefore dismiss the Union’s exception.²

Further, the Union’s argument in support of its second contrary to law exception is without merit. The Union’s claim that the award is contrary to law

because travel money is exempted from garnishment reflects a misunderstanding of the award. The award holds that the reductions in the grievant’s travel advances were not garnishments but the result of *offsets* made by Treasury to satisfy the grievant’s child support debts owed to the Bureau of Family/Child Support Operations. *Id.* at 13. Accordingly, the Union’s argument regarding the limitations on garnishments does not address the award’s basis and, consequently, does not provide a basis for setting aside the award. Accordingly, we deny the Union’s exception.

V. Decision

The Union’s exception that the Agency is legally responsible for the offset is dismissed, and its remaining exceptions are denied.

2. Because we dismiss this exception as not properly before the Authority, we need not address the Agency’s claim that the Union does not adequately support the exception under § 2425.2 of the Authority’s Regulations.