

67 FLRA No. 51

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1395
(Union)

and

SOCIAL SECURITY ADMINISTRATION
REGION V
(Agency)

0-AR-4898

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DECISION

January 28, 2014

Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

This case concerns an Agency policy that permits employees to earn overtime on the same day that they take paid leave, unless there is a pattern of exchanging leave for overtime pay. Arbitrator James A. Murphy framed the issue as whether the Agency violated the parties' agreement when it denied employees the opportunity to earn overtime pay on days on which they took leave. He sustained the grievance, in part, as to one employee, but denied the grievance as to two other employees. The Arbitrator also denied the Union's request to award a lump-sum payment of \$50,000 because the amount was "arbitrarily selected" and was supported by "no evidence" to establish why a lump-sum payment would be an appropriate remedy.¹

The central issues in this case are whether certain claims of the Union related to the Fair Labor Standards Act (FLSA)² are barred by § 2425.4(c) and § 2429.5 of the Authority's Regulations³ and whether the Arbitrator's findings are contrary to the Back Pay Act (BPA)⁴ and Agency policy. We find that the Union's FLSA claims are barred and that the award is not contrary to the BPA or Agency policy.

As a preliminary matter, the Union requests an expedited, abbreviated decision under § 2425.7 of the

Authority's Regulations.⁵ The Agency does not oppose the Union's request.⁶ Under § 2425.7, the Authority may issue a decision that "resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments."⁷ Upon consideration of the Union's request and all of the circumstances of the case – including the absence of an opposition, the case's complexity, potential for precedential value, and similarity to other fully detailed decisions involving the same or similar issues – we grant the Union's request.⁸

The Union argues that the award is contrary to a court decision interpreting the FLSA⁹ and the FLSA's implementing regulations.¹⁰ The Authority will not consider any arguments that could have been, but were not, presented before the arbitrator.¹¹ There is no evidence in the record that shows the Union raised any arguments concerning the regulations or court decision during proceedings before the Arbitrator even though it could have done so. Because the Union could have raised these arguments before the Arbitrator, but failed to do so, we dismiss these arguments as barred by 5 C.F.R. §§ 2425.4(c) and 2429.5.

The Union's remaining claims – that the award is contrary to the BPA and Agency policy – disagree with the Arbitrator's factual findings and evaluation of the evidence. An award is deficient if it is contrary to any law, rule, or regulation.¹² But, in reviewing contrary-to-law exceptions, the Authority defers to an arbitrator's factual findings unless the excepting party establishes that they were based on nonfacts.¹³ Also, disagreement with an arbitrator's evaluation of the evidence and his determination of the weight to accord such evidence provides no basis for finding an award deficient as contrary to law.¹⁴ Therefore, the Union's remaining claims provide no basis for finding the award contrary to law, and we deny them.

Accordingly, we dismiss the Union's exceptions in part and deny them in part.

⁵ Exceptions at 10 (citing 5 C.F.R. § 2425.7).

⁶ Opp'n at 2 n.2.

⁷ 5 C.F.R. § 2425.7.

⁸ See *AFGE, Council 215*, 67 FLRA 61, 61 n.4 (2012) (citing *AFGE, Local 1815*, 66 FLRA 452, 452 n.1 (2012)) (granting request for expedited, abbreviated decision under 5 C.F.R. § 2425.7).

⁹ *Lanehart v. Horner*, 818 F.2d 1574 (Fed. Cir. 1987).

¹⁰ 5 C.F.R. §§ 551.411, 551.501.

¹¹ *Id.* §§ 2425.4(c), 2429.5.

¹² 5 U.S.C. § 7122(a).

¹³ *E.g., U.S. DHS, U.S. CBP, Laredo, Tex.*, 66 FLRA 567, 567-68 (2012).

¹⁴ *E.g., AFGE, Local 4044*, 65 FLRA 264, 266 (2010).

¹ Award at 9.

² 29 U.S.C. §§ 201-219.

³ 5 C.F.R. §§ 2425.4(c), 2429.5.

⁴ 5 U.S.C. § 5596.