68 FLRA No. 49

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1858
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
REDSTONE TEST CENTER
REDSTONE ARSENAL, ALABAMA
(Agency)

0-AR-5088

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ORDER DISMISSING EXCEPTIONS

February 18, 2015

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

This matter is before the Authority on exceptions to an award of Arbitrator Harry G. Mason filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute[1] and part 2425 of the Authority's Regulations.[2]

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.[3]

The exceptions do not raise a recognized ground for review[4] listed in § 2425.6(a)-(c) of the Authority's Regulations[5] and do not otherwise demonstrate a legally recognized basis for setting aside the award. Therefore, we dismiss the exceptions under § 2425.6(e)(1) of the Authority's Regulations.[6]

[1] 5 U.S.C. § 7122(a).
[2] 5 C.F.R. pt. 2425.
[3] *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

[4] Member Pizzella does not agree that the Union does not raise a recognized ground for review. The Union argues that "there was *no nexus* with respect to the [g]rievant's . . . misconduct . . . [and] [t]he Agency did not meet the *threshold of preponderance of the evidence[]* and *the efficiency of the service*." Exceptions at 1 (emphases added). Member Pizzella would conclude that the Union properly presents a contrary-to-law exception, but would deny the exception as failing to demonstrate that the award is deficient on that basis. *AFGE, Local 1815*, 68 FLRA 26, 27 n.18 (2014) (quoting *AFGE, Local 1897*, 67 FLRA 239, 243 (2014) (*Local 1897*) (Concurring Opinion of Member Pizzella) (citation and internal quotation marks omitted)); *see also NTEU v. FLRA*, 754 F.3d 1031, 1040 (D.C. Cir. 2014) ("A party is not required to invoke 'magic words' in order to adequately raise an argument before the Authority. Instead, an argument is preserved if the party has 'fairly brought' the argument 'to the Authority's attention.'" (citations omitted)); *GSA, E. Distrib. Ctr., Burlington, N.J.*, 68 FLRA 70, 77 (2014) (Authority *denies* contrary-to-law exception that alleges award is not supported by a preponderance of the evidence); *NTEU, Chapter 128*, 62 FLRA 382, 384 (2008) (Authority *denies* exception that alleges arbitrator's finding of nexus is contrary to law); *AFGE, Local 2*, 48 FLRA 1394, 1399 (1994) (Authority *denies* exception concerning an arbitrator's use of any standard of proof in the absence of evidence that the parties agreed to a preponderance of evidence standard).
[5] 5 C.F.R. § 2425.6(a)-(c).
[6] *Id.* § 2425.6(e)(1); *see also AFGE, Local 2272*, 67 FLRA 335, 335 n.2 (2014) (exceptions are subject to dismissal under § 2425.6(e)(1) of the Authority's Regulations if they fail to raise a recognized ground for review or, in the case of exceptions based on private-sector grounds not currently recognized by the Authority, if they provide insufficient citation to legal authority establishing the grounds upon which the party filed its exceptions) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011)).

Accordingly, we dismiss the Union's exceptions.[7]

[7] Member DuBester notes the following: I agree that the Union's exceptions are properly dismissed under 5 C.F.R. § 2425.6(e). In so doing, I note, as I have previously, that following the implementation of the Authority's Arbitration Initiative, which included revision of the Authority's Regulations concerning review of arbitration awards, we counseled the parties that we would no longer construe parties' exceptions as raising recognized grounds for review when the parties have failed to state such grounds. *E.g.*, *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part). But I have also indicated that in my view, where parties articulate a well-established standard supporting a recognized ground, that action is sufficient to raise a recognized ground under § 2425.6. *E.g.*, *Local 1897*, 67 FLRA at 240 n.19 (2014) (citations omitted). Because, in my view, the Union has not done so here, I join the outcome in this case.