

67 FLRA No. 100

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER
MARTINSBURG, WEST VIRGINIA
(Agency)

and

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
LOCAL R4-78
(Union)

0-AR-5017

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DECISION

April 30, 2014
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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 Floyd D. Weatherspoon filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under 5 C.F.R. § 2425.7.¹

As a preliminary matter, the Union argues that we should dismiss the Agency's exceptions because the Agency failed to serve a copy of its exceptions on the Union president.² But, because the Union president is not the Union's representative of record in this case, the Agency is not required to serve her.³ Therefore, we reject the Union's argument.

Under § 7122(a) of the Statute, an award is deficient if it is contrary to any law, rule, or regulation, or

it is deficient on other grounds similar to those applied by federal courts in private sector labor-management relations. One of the Agency's exceptions – that the Arbitrator's award of 38.25 hours of overtime is arbitrary and capricious – does not raise a recognized ground for review listed in 5 C.F.R. § 2425.6(a)-(c) and does not otherwise demonstrate a legally recognized basis for setting aside the award.⁴ Therefore, we dismiss that exception under § 2425.6(e)(1) of the Authority's Regulations.⁵ As for the Agency's remaining exception, upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the ground raised in the exception and set forth in § 7122(a).⁶

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

⁴ Member Pizzella notes his concurring opinion in *AFGE, Local 1897*, 67 FLRA 239, 243 (2014) (Concurring Opinion of Member Pizzella), wherein he reaffirmed that the “[Authority’s] [R]egulations do not require a party ‘to invoke any particular magical incantation[.]’ to perfect an exception so long as the party provides ‘sufficient citation to legal authority’ or ‘explain[s] how’ the award is deficient.” *Id.* (quoting *AFGE, Local 33, Council of Prison Locals 33*, 65 FLRA 887, 891 (2011) (Concurring Opinion of Member Beck); *AFGE, Local 1738*, 65 FLRA 975, 977 (2011) (Concurring Opinion of Member Beck)). Member Pizzella agrees that the Agency's argument that the award is “arbitrary and capricious” fails to provide “sufficient citation to legal authority” and “explain how” the award is deficient sufficiently to meet the requirements of § 2425.6. That argument is similarly deficient as the exceptions in *AFGE, Local 1858*, 67 FLRA 327, 328 (2014) (Member Pizzella concurring).

⁵ *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)).

⁶ *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties' collective-bargaining agreement where excepting party fails to establish that the award cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purpose of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement).

¹ See 5 C.F.R. § 2425.7 (“Even absent a [party’s] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.”).

² Opp'n at 1, 12.

³ 5 C.F.R. § 2429.27 (requiring the filing party to serve a complete copy of any filing submitted to the Authority on “all counsel of record or other designated representative(s) of parties”) (emphasis added).