

**71 FLRA No. 80**

NATIONAL AIR  
TRAFFIC CONTROLLERS ASSOCIATION  
(Union)

and

UNITED STATES  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
(Agency)

0-AR-5471

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DECISION

November 26, 2019

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Before the Authority: Collen Duffy Kiko, Chairman, and  
Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

Arbitrator David P. Twomey found that the Agency did not violate the parties' collective-bargaining agreement when it failed to pay Traffic Management Coordinators (coordinators) premium pay, and he denied the grievance. The Union alleges that the award is based on a nonfact. Because the Union has not established that the award is based on a clearly erroneous factual finding but for which the Arbitrator would have reached a different result, we deny the Union's exception.

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

Boston Terminal Radar Approach Control (Boston TRACON) is one of the Agency's air traffic control facilities. As relevant here, its air traffic control functions are organized into separate "areas" which are further divided into airspace sectors. Each area is staffed by Air Traffic Controllers who are supervised by Frontline Managers (FLMs).<sup>1</sup>

Coordinators work in the Boston TRACON facility's Traffic Management Unit (the unit). They are responsible for monitoring and adjusting the flow of air traffic into and out of the airspace sectors within each

area that is covered by Boston TRACON. The particular area to which coordinators are assigned can change based on how Boston TRACON is configured at any given time.

The Agency requires that a manager, supervisor, or controller-in-charge (CIC) provide watch supervision over an "area" at all times.<sup>2</sup> Typically, a FLM provides watch supervision of each area. When a FLM is not available, a qualified Air Traffic Controller is designated as the CIC to provide watch supervision. Under Article 18 of the parties' agreement, an employee designated as a CIC is entitled to premium pay for providing watch supervision of an area when a supervisor is not available.

The Union filed a grievance alleging that coordinators perform the duties of a watch supervisor when they work alone and a supervisor is unavailable and are therefore entitled to premium pay. The parties could not resolve the grievance and invoked arbitration.

The Arbitrator concluded that the Union did not prove that the Agency violated the parties' agreement or any applicable laws, rules, regulations, or past practices by refusing to provide premium pay to coordinators when they work alone in the unit. Specifically, the Arbitrator found that the unit is not an "area" within the meaning of the parties' agreement and that watch supervision of the unit is properly provided by operations supervisors/FLMs or CICs in the area encompassing the unit.<sup>3</sup> On this basis, he rejected the Union's argument that coordinators "provide watch supervision over themselves" when they work alone.<sup>4</sup> Finding that "operations supervisors" received training required for traffic management, the Arbitrator concluded that the Agency did not violate Article 18 of the parties' agreement.<sup>5</sup> Accordingly, the Arbitrator determined that coordinators do not have a contractual right to receive CIC premium pay when they work alone in the unit, and he denied the Union's grievance.

On February 8, 2019, the Union filed exceptions to the award. The Agency filed an opposition on March 8, 2019.

**III. Analysis and Conclusion: The award is not based on a nonfact.**

To establish that an award is based on a nonfact, the excepting party must show that a central fact

<sup>1</sup> The Agency appeared to use the terms FLM and Operations Supervisor interchangeably. See Exceptions, Attach. 7, Agency's Post-Hr'g Br. at 18.

<sup>2</sup> Award at 7 (quoting Art. 18, § 1 (providing for watch supervision of "a facility or area")).

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.<sup>6</sup>

The Union claims that the award is based on a nonfact because it is “based on an assumption that the CICs receive traffic management training similar to the training that the FLMs receive.”<sup>7</sup> The Arbitrator found that “operations supervisors” received training, but he made no finding regarding CICs.<sup>8</sup> The Union argues that because the Arbitrator did not make a finding regarding the CICs’ traffic management training, he erroneously concluded that they perform watch supervision of the unit.<sup>9</sup> However, the Union’s argument does not establish that the Arbitrator’s assumption is clearly erroneous. Contrary to the Union’s position, the record reflects that CICs may perform watch supervision,<sup>10</sup> and the Union cites to no evidence that CICs are required to have traffic management training to be able to do so.

Moreover, the Union’s argument does not challenge a central fact underlying the award. The Arbitrator denied the Union’s grievance on the basis of his finding that watch supervision is performed over an “area,” not a unit.<sup>11</sup> The Union does not challenge that factual finding. Based on that finding, the Arbitrator concluded that the coordinators do not perform watch supervision over themselves when working alone.<sup>12</sup> Accordingly, even if the Arbitrator erred by not making a finding whether CICs receive training on traffic management, such a finding would not have caused the Arbitrator to reach a different conclusion. Therefore, the Union has not established that the award is based on a nonfact, and we deny the exception.<sup>13</sup>

#### **IV. Decision**

We deny the Union’s exception.

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<sup>6</sup> SSA, *Office of Hearing Operations*, 71 FLRA 177, 178 (2019).

<sup>7</sup> Exceptions at 6.

<sup>8</sup> Award at 9.

<sup>9</sup> Exceptions at 5-6.

<sup>10</sup> See Exceptions, Attach. 9, Agency Order A90 TRACON 7210.7G at 2 (“Watch supervision may be performed by a FLM or CIC at any time.”); Exceptions, Attach. 6, Union’s Post-Hr’g Br. at 8 (arguing that “A90 Order 7210.7G” defines watch supervision and states who may perform that duty).

<sup>11</sup> Award at 9 (noting that Art. 18, § 1 requires watch supervision of an “area,” and finding that the unit is not an “area”).

<sup>12</sup> *Id.*

<sup>13</sup> The Union requested that the Authority remand the award should we decline to set it aside. However, because the Union had not demonstrated that a central fact underlying the award is clearly erroneous, but for which the Arbitrator would have reached a different result, we find no reason to remand the award.