

**71 FLRA No. 90**

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
377 AEROSPACE MEDICINE SQUADRON  
KIRTLAND AIR FORCE BASE, NEW MEXICO  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2263  
(Union)

0-AR-5464

—  
DECISION

December 19, 2019

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

**I. Statement of the Case**

The Agency filed untimely exceptions to an award issued by Arbitrator Ed W. Bankston. It now asserts that the Authority should either extend or waive the expired deadline and consider the exceptions. Because the Authority's Regulations provide that the time limit for filing exceptions to an arbitration award may not be extended or waived, we dismiss the Agency's exceptions as untimely.

**II. Background**

On September 11, 2018, the Arbitrator served his award on the parties.<sup>1</sup> In order to be timely, any exception to the award had to be postmarked by the U.S. Postal Service, filed in person with the Authority, deposited with a commercial delivery service, or filed electronically through use of the Federal Labor Relations Authority's eFiling system no later than October 11, 2018.<sup>2</sup> The Agency filed exceptions to the award on February 5, 2019.

**III. Analysis and Conclusion: The exceptions are untimely.**

The Agency concedes that its exceptions are untimely, but it argues that the Authority should, nonetheless, consider the exceptions because "alleged criminal misconduct" prevented it from filing by October 11, 2018.<sup>3</sup> In an affidavit, an Agency attorney asserts that the Agency tasked a paralegal with mailing the exceptions on October 9, 2018.<sup>4</sup> The paralegal, according to the attorney, repeatedly informed the Agency's legal department that he had mailed the exceptions.<sup>5</sup> But as time went on – and the Agency did not receive an acknowledgement notice from the Authority – the attorney states that he began to inquire with the Authority, the Union, and, eventually, the U.S. Postal Service, about the status of the exceptions.<sup>6</sup> According to the attorney, no one reported having received the exceptions.<sup>7</sup> The attorney states that the Agency found the exceptions, discarded, "in a recycle bin behind" an Agency facility, on January 22, 2019.<sup>8</sup> In the attorney's view, the paralegal had "either intentionally or negligently" failed to mail the exceptions.<sup>9</sup>

Section 7122(b) of the Federal Service Labor-Management Relations Statute (the Statute) states that exceptions to an arbitrator's award must be filed "during the [thirty]-day period beginning on the date the award is served on the party,"<sup>10</sup> and § 2429.23(d) of the Authority's Regulations provides that the "[t]ime limit[] established in . . . [§] 7122(b) may not be extended or waived."<sup>11</sup> As we cannot extend or waive the filing date, the Agency's exceptions are untimely, and we do not consider them.<sup>12</sup>

**IV. Decision**

We dismiss the Agency's exceptions as untimely.

<sup>3</sup> Exceptions Br. at 1 (effectively requesting that the Authority either extend or waive the filing deadline).

<sup>4</sup> Exceptions Br., Attach. 1, Aff. at 1.

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

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2.

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

<sup>10</sup> 5 U.S.C. § 7122(b).

<sup>11</sup> 5 C.F.R. § 2429.23(d); *see also id.* § 2425.2(b) (stating that the "time limit for filing an exception to an arbitration award is thirty . . . days after the date of service of the award" and that "time limit may not be extended or waived").

<sup>12</sup> *See U.S. DOD, Def. Contract Mgmt. Agency*, 70 FLRA 370, 371 (2018) (stating that the thirty-day deadline for filing arbitration exceptions provided in § 7122(b) of the Statute "will be strictly enforced").

<sup>1</sup> *See Award at 12; Exceptions Br. at 1-2, 6.*

<sup>2</sup> 5 C.F.R. § 2425.2(b)-(c); *id.* §§ 2429.21(a), 2429.24(a).