

**CASE DIGEST:** *U.S. Small Bus. Admin.*, 71 FLRA 655 (2020) (Member DuBester dissenting)

In this case, the Arbitrator reduced the grievant's fourteen-day suspension for disrespectful behavior in the workplace to a five-day suspension because she found that the Agency unfairly relied on prior misconduct that, in her view, involved procedural errors and was unproven. The Agency excepted to the Arbitrator's award, arguing nonfact and that she exceeded her authority by resolving an issue not submitted to arbitration. The Authority found clear error but for which the fourteen-day suspension would have been upheld. In addition, the Authority found that because the Arbitrator decided the merits of the prior misconduct, which was an issue not before her, she exceeded her authority. The Authority set aside the award.

Member DuBester dissented. He found that the Arbitrator did not exceed her authority by considering the grievant's prior discipline under the factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305 (1981). He also found that, because the Arbitrator relied on other factors in mitigating the penalty, her findings regarding the prior discipline were not a central fact underlying the award.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.