

CASE DIGEST: *U.S. Dep’t of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 170 (2019) (Member Abbott dissenting)

On multiple occasions, certain Union officials were unable to locate emails that they had stored within “.pst” files on the Agency’s electronic records system. The Arbitrator did not determine why those officials were unable to locate the files, but he found that the Agency violated the parties’ collective-bargaining agreement because the records system did not permit Union officials to “retain[]” emails for later use. The Arbitrator also concluded, based on hearing testimony unrelated to the .pst files, that the Agency “appear[ed]” to violate the parties’ agreement by utilizing technology that allowed emails to expire.

On exceptions, the Agency alleged that both contractual violations were based on nonfacts. The Authority denied the nonfact exception challenging the first contract violation because, even assuming that the challenged finding was factual, the parties disputed that matter at arbitration. As for the second violation, it was undisputed that the relevant hearing testimony concerned *copies* of emails that were temporarily saved in a backup system. Accordingly, the Arbitrator’s conclusion that “live” emails had expired was based on an erroneous factual finding, and the Authority set aside that portion of the award.

Member Abbott dissented, asserting that it was time to reevaluate the Authority’s nonfact standard. He noted the prohibition on challenging factual findings that were disputed below was an added prong that has been applied with undefined and inconsistent elasticity. Further, he called for revising the standard to put more weight on whether the disputed fact was central to the result and whether it was “but for which” the arbitrator would have reached a different result.

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.