

CASE DIGEST: *U.S. Dep't of Transp., FAA*, 71 FLRA 694 (2020) (Member Abbott concurring in part and dissenting in part)

In this case, the Arbitrator interpreted a provision of the parties' agreement as requiring the Agency to notify the Union whenever a substance tester is on-site, even when the employee to be tested is a patient under a management-referred treatment plan. The Agency filed exceptions arguing that the award was contrary to 42 C.F.R. Part 2, the Rehabilitation Act, and the Privacy Act, and that the Arbitrator exceeded his authority by directing notice for substance testing conducted under self-referred treatment plans.

Because the notice provision involved a generalized statement that did not identify any employee, the Authority found that the Arbitrator's enforcement of that provision was not contrary to laws and regulations that protect the privacy of employee substance-abuse and medical records. However, the Authority found that the Arbitrator exceeded his authority to the extent that his award concerned self-referred treatment, which is covered by a different provision of the parties' agreement. Accordingly, the Authority modified the remedy to clarify that it did not pertain to substance testing under self-referred treatment plans.

Member Abbott concurred with the denial of the Agency's exceptions but wrote separately to assert that the Privacy Act issues are not conditions of employment which may be grievable and subsequently appealable to the Authority.

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.