

**CASE DIGEST:**     *U.S. DOD Educ. Activity, Alexandria, Va.*, 71 FLRA 765 (2020)  
(Member DuBester dissenting).

The Agency notified the Union that it planned to implement a new performance appraisal system in one year. The Union grieved the anticipatory breach of the parties' agreement. The Arbitrator found that the grievance was timely as it related to the Agency's notification. The Agency excepted to the award as failing to draw its essence from the parties' agreement because the premature grievance was untimely. The Authority vacated the award because the award did not draw its essence from the parties' agreement. The agreement's plain terms required the triggering event to have occurred already.

Member DuBester dissented, finding that the Arbitrator reasonably construed the grievance as challenging the Agency's notice of its decision to implement the new performance appraisal system. Because the Arbitrator applied the filing deadlines in the parties' agreement to that triggering event, Member DuBester would deny the Agency's essence exception.

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.