

71 FLRA No. 168

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
VA CARIBBEAN HEALTHCARE SYSTEM
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2408
(Union)

0-AR-5614

ORDER DISMISSING EXCEPTIONS

July 13, 2020

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

This matter is before the Authority on exceptions to an award of Arbitrator Joseph M. Schneider filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)¹ and part 2425 of the Authority's Regulations.² The Union filed an opposition to the Agency's exceptions.

Pursuant to § 7122(a) of the Statute, the Authority lacks jurisdiction to review exceptions to an arbitration award "relating to a matter described in [§] 7121(f)" of the Statute.³ The matters described in § 7121(f) include adverse actions, such as removals, which are covered under 5 U.S.C. §§ 4303 or 7512.⁴ In determining whether an award resolves – or is inextricably intertwined with – a matter covered under § 7512, the Authority looks not to the outcome of the award, but whether the claim advanced in arbitration is reviewable by the Merit System Protection Board (MSPB), and on appeal, by the United States Court of Appeals for the Federal Circuit (Federal Circuit).⁵

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ 5 U.S.C. § 7122(a).

⁴ *AFGE, Local 933*, 71 FLRA 521, 521 (2020) (*Local 933*); *AFGE, Local 491*, 63 FLRA 307, 308 (2009) (*Local 491*).

⁵ *U.S. Dep't of HUD*, 71 FLRA 720, 721 (2020) (*HUD*) (Member DuBester concurring) (citing *U.S. Dep't of VA, John J. Pershing VA Med. Ctr.*, 71 FLRA 533, 534 (2020)); *U.S. Dep't of the Air Force, 37th Mission Support Group*,

Arbitration awards resolving these matters are reviewable by the Federal Circuit, rather than the Authority.⁶

Consequently, the Authority issued a show-cause order (order) directing the Agency to show cause why its exceptions should not be dismissed because the Authority is without jurisdiction to review exceptions relating to an award pertaining to the removal of the grievant from the Agency.⁷ In its timely response to the order, the Agency argued that the grievance was not arbitrable because the Union failed to meet the requirements of the parties' negotiated grievance procedure.⁸

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.⁹

The Arbitrator framed the issue as "whether or not there was just cause for [the grievant's] termination."¹⁰ Because the issue advanced at arbitration is a removal claim, and the Arbitrator's determination is dispositive of the removal claim, the issue is reviewable on appeal to the Federal Circuit.¹¹

The Agency raises procedural-arbitrability exceptions regarding the parties' negotiated grievance procedure. The Authority has repeatedly held that an arbitrator's interpretation of procedural issues under the parties' agreement is inextricably intertwined with the original removal action.¹² Here, the Agency's procedural claims are inextricably intertwined with a removal and are, therefore, reviewable by the Federal Circuit rather than the Authority.¹³

37th Servs. Div., Lackland Air Force Base, 68 FLRA 392, 393 (2015); *U.S. Dep't of the Interior, Bureau of Indian Affairs, Wapato Irrigation Project*, 65 FLRA 5, 6 (2010) (*DOI*) (Member Beck dissenting); *Local 491*, 63 FLRA at 308.

⁶ *Local 933*, 71 FLRA at 521; *Local 491*, 63 FLRA at 308; see also *Appleberry v. DHS*, 793 F.3d 1291, 1294-95 (Fed. Cir. 2015) (noting that the Federal Circuit had jurisdiction to review an arbitral determination of procedural arbitrability in a removal claim).

⁷ Order to Show Cause at 2.

⁸ Resp. to Order at I-5.

⁹ 5 C.F.R. § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

¹⁰ Award at 2.

¹¹ *Id.* at 8; *HUD*, 71 FLRA at 721-22; *DOI*, 65 FLRA at 7; see also *Appleberry*, 793 F.3d at 1294-95.

¹² See, e.g., *AFGE, Local 922*, 71 FLRA 521, 521 (2020); *AFGE, Local 171*, 49 FLRA 1520, 1521 (1994); *U.S. Dep't of the Army, Military Dist. of Wash.*, 35 FLRA 1272, 1275 (1990); *Veterans Admin., Med. Ctr., Birmingham, Ala.*, 32 FLRA 1003, 1005 (1988).

¹³ *Local 933*, 71 FLRA at 521; *Local 491*, 63 FLRA at 308.

Upon full consideration of the circumstances of this case, including the case's similarity to other fully detailed decisions involving the same or similar issues,¹⁴ we conclude that the Agency's exceptions are not within the Authority's jurisdiction and we dismiss the Agency's exceptions on that ground.

Accordingly, we dismiss the Agency's exceptions.

¹⁴ 5 C.F.R. § 2425.7.