

71 FLRA No. 209

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1367
(Union)

and

UNITED STATES DEPARTMENT
OF THE AIR FORCE
502D FORCE SUPPORT SQUADRON
JOINT BASE SAN ANTONIO
LACKLAND, TEXAS
(Agency)

0-AR-5625

DECISION

November 9, 2020

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

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

Upon full consideration of the circumstances of this case – including the case's complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues, as well as the absence of any allegation of an unfair labor practice, we have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.³

As a preliminary matter, the Agency alleges that the Union did not properly serve it with the exceptions.⁴ Even if the Union's service was defective, the Agency does not seek dismissal of the exceptions or assert that it suffered any harm as a result of the allegedly defective

service. Therefore, we find the Union's exceptions to be valid and consider them.⁵

The Union challenges the award on nonfact grounds, arguing that the evidence contradicts the Arbitrator's finding that the Agency had just cause to discipline the grievant with a letter of reprimand.

Under § 7122(a) of the Statute,⁶ an award is deficient if it is contrary to any law, rule, or regulation, or it is deficient on other grounds similar to those applied by federal courts in private sector labor-management relations. Upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the nonfact ground raised in the exception and set forth in § 7122(a).⁷

Accordingly, we deny the Union's exception.

⁵ *AFGE*, 70 FLRA 208, 208 (2017) (citing *NAGE, Local RI-109*, 61 FLRA 593, 595 (2006) (denying motion to dismiss where the opposing party suffered no harm from the improper service)); *U.S. Dep't of Transp., FAA*, 68 FLRA 402, 403 (2015) (rejecting opposing party's argument that it was prejudiced by improper service and declining to dismiss exceptions).

⁶ 5 U.S.C. § 7122.

⁷ *U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient as based on a nonfact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result); *NFFE, Local 1968*, 67 FLRA 384, 385-86 (2014) (disagreement with arbitrator's evaluation of evidence, including determination of the weight to be given such evidence, provides no basis for finding the award deficient).

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

⁴ Opp'n at 1.

Member Abbott, concurring:

I agree that the Union's exceptions should be denied.

Some cases are appropriate for an abbreviated, expedited decision, but this case is not one of those. Whenever the facts of a case demonstrate, as here, pursuit of a futile and baseless claim for which the taxpayer is left to foot the bill, those facts should be highlighted, not hidden, under the guise of an abbreviated description of the case.

The grievant is an experienced graphic designer for the Agency. On two occasions, in less than one month, the grievant ignored his supervisor's orders and submitted two products to a customer without first submitting the products to his supervisor by a specific date for review and approval. That the grievant ignored his supervisor's orders is egregious in and of itself. To make matters worse, however, the first project was delivered to the customer with the wrong date and prices for the advertised event it was designed for and the second was delivered to the customer with spelling errors.

The Agency issued the grievant a letter of reprimand. Even though the grievant admitted he did not submit a copy to his supervisor for review as directed and that the copies were submitted to the customers with errors, the Union nonetheless grieved the letter of reprimand and took the matter to arbitration incurring significant use of official time in preparing for a futile hearing and incurring half the costs of arbitration. But it does not end there. The Agency also incurred significant costs of the time of its representatives and arbitration costs. All of these costs are paid with taxpayer funding.

As I noted above, the American taxpayer deserves to be made aware of facts such as these. And it raises a practical question – if the Union were left to foot the costs of a baseless grievance, without taxpayer subsidy, would it do so?