

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Miami, FL*, 71 FLRA 1247 (2020) (Member DuBester dissenting)

The Arbitrator found that the Agency violated the parties' agreement by partially denying an official-time request. On exceptions, the Agency argued that the award was contrary to the right to assign work under 5 U.S.C. § 7106(a), and it requested that the Authority reexamine the carve-out doctrine – a statutory interpretation that carves out § 7131(d) official time as an exception to management rights under § 7106. The Authority found that the carve-out doctrine was inconsistent with the plain wording of the Statute and overturned its precedent stating otherwise. The Authority held that, where an award concerning official time under § 7131(d) affects a management right in § 7106, it would consider whether the award excessively interferes with that right. Applying the framework in *U.S. DOJ, Federal BOP*, 70 FLRA 398 (2018) (Member DuBester dissenting), the Authority found that the award did not excessively interfere with management's right to assign work because it was consistent with Authority precedent on the importance of information sharing when requesting official time.

Member DuBester dissented from the decision to overturn the carve-out doctrine, and would have upheld the Arbitrator's finding that the Agency violated the parties' agreement by denying an official time request. In Member DuBester's view, subjecting official time arrangements negotiated under § 7131(d) to collateral attack through a management-rights analysis contradicts both the language and purpose of this fundamentally important statutory provision.

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.