72 FLRA No. 4

BREMERTON METAL TRADES COUNCIL
DISTRICT 160, LOCAL 282
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
PUGET SOUND NAVAL SHIPYARD AND
INTERMEDIATE MAINTENANCE FACILITY
(Agency)

0-AR-5645

DECISION

January 11, 2021

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 exceptions to an award of Arbitrator Dean A. Martin 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 exceptions.

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]

The Union challenges the award on nonfact, essence, and exceeds-authority grounds. The Union argues that the award is deficient because the evidence did not support the Arbitrator's finding that the Agency had just cause to continue a letter of requirement of medical certification issued to the grievant based on his use of sick leave.

Under § 7122(a) of the Statute,[4] 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 any of the grounds raised in the exceptions and set forth in § 7122(a).[5]

Accordingly, we deny the Union's exceptions.

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[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] 5 U.S.C. § 7122.
[5] *U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995) (award not deficient on ground that arbitrator exceeded his or her authority where excepting party does not establish that arbitrator failed to resolve an issue submitted to arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his or her authority, or awarded relief to those not encompassed within the grievance); *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); *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties' collective-bargaining agreement where excepting party fails to establish that the award cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement); *see also 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); *AFGE, Local 522*, 66 FLRA 560, 562 (2012) (award not deficient on exceeds-authority grounds where parties failed to stipulate to an issue, and award fully addressed the issue the arbitrator framed).

Member Abbott, concurring:

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

However, I write separately because I do not agree that this case is appropriate for an abbreviated, expedited decision (EAD). When a case contains a lengthy background that is complex and relevant to the disposition of this case, the parties and the federal Labor-Management Relations community (LMR) deserve and need to understand the context of the case.

Depth cannot exist in an abbreviated description and this case demands it. Without it, we miss an opportunity to both highlight problems that exist within the case and educate the federal LMR community. An example of details that deserved more attention and expansion is the conflict between the parties' contract provision and record-keeping requirements.[1] Simply put, this hollow decision hides that the grievant had a lengthy and ongoing pattern of leave abuse and routinely used sick leave before or after a holiday, on Mondays and Fridays, or as soon as leave accrued.[2] Four months after being counselled concerning this pattern, the Agency issued the grievant a Letter of Requirement for Medical Certification. The purpose of the letter was to warn the grievant that his "excessive use of unscheduled leave and [his] continuing absences from work [had] a disruptive effect" on his workplace and could not continue.[3] Although the parties' contract permitted the granting of leave without supporting documentation, it did not comply with the statutory requirements to maintain records for leave requests and for a certain period of time.[4]

Particularly relevant is the fact that it is the Agency's responsibility to comply with government-wide rules concerning recordkeeping. Therefore, because of this failure, the Agency was unable to document its charges against the grievant. Even despite these failures, the Arbitrator denied the Union's grievance and upheld the Agency's actions. In effect, however, the Arbitrator scolded the Agency because "it [was] unclear what if any changes would have occurred had the records been located."[5]

Failures such as these are far too commonplace not just in the context of
disciplinary actions, but are also too frequently found in all types of cases and often makes it difficult for us to make a final determination. As I have noted before, it is the Authority's responsibility to make our decisions clear and relevant by explaining how what occurred influenced our ultimate decision.

I see no reason not to do so here.

[1] Article 1303(a) of the parties' agreement states, "It is of mutual benefit that Employees may inquire about workload and availability of annual leave for planning purposes. If the Employee informally asks for annual leave, the immediate supervisor will respond informally." Exceptions, Attach. 3 at 58.

[2] Award at 9.

[3] *Id.*

[4] 44 U.S.C. §§ 3101, 3106; *id.* §§ 3301-3314. Much of the dispute and Award surrounds whether the Agency properly maintained the leave slip records. Because this is being issued as an EAD, the LMR community did not benefit from the background of the dispute.

[5] Award at 18.