72 FLRA No. 6

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL TRANSFER CENTER
OKLAHOMA CITY, OKLAHOMA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 171
COUNCIL OF PRISON LOCALS #33
(Union)

0-AR-5592

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DECISION

January 19, 2021

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

I. Statement of the Case

With this case, we remind the federal labor relations community that an award of backpay requires a finding that the grievant was subject to an unjustified or unwarranted personnel action.[1] The Agency reassigned the grievant, a correctional officer, to a different position due to security concerns pending an investigation into the grievant's interactions with an inmate. While in the reassigned position, the grievant did not have the opportunity to work overtime. The Union filed a grievance alleging that the Agency inappropriately denied the grievant overtime during the reassignment.

After finding the grievance timely, Arbitrator Donald J. Petersen partially sustained the grievance on the merits. The Agency excepted to the Arbitrator's award on the ground that his procedural-arbitrability finding did not draw its essence from the parties' agreement, and that the award is contrary to the Back Pay Act (BPA).[2] Because the Arbitrator's interpretation of the relevant provision of that agreement is plausible, we find that his procedural-arbitrability determination draws its essence from the parties' agreement. However, we find that the award of backpay is contrary to the BPA because the Arbitrator did not find that the Agency violated an applicable law, rule, regulation, or provision of the parties' agreement.

II. Background and Arbitrator's Award

The grievant is a correctional officer assigned to a position in the most restricted portion of the Agency's prison facility. An inmate raised credible allegations concerning the grievant's interactions with another inmate. On July 19, 2017,[3] the Agency reassigned the grievant to a position outside of the secured portion of the facility, where he would have no direct contact with inmates, pending an investigation of the claims against him. At the time of his reassignment, the Agency did not provide the grievant with the reason for the reassignment; however, it did inform him that he was not eligible to work overtime while in the reassigned position.

On August 10, the grievant met with an Agency investigator, who notified the grievant, for the first time, of the disciplinary investigation and the allegations against him. On August 18, the investigator issued a report to the Warden clearing the grievant of the most serious allegations but finding that he had committed a minor infraction.[4] After the Agency reviewed the report, it returned the grievant to his former position on August 27, restoring his ability to work overtime. The Agency subsequently disciplined the grievant for the infraction with a letter of reprimand. On September 14, the Union filed a grievance alleging that the Agency violated the parties' agreement and a local memorandum of understanding by prohibiting the grievant from "participating in the equitably rotated overtime assignments."[5] In the grievance, the Union listed the dates of the alleged violation as July 19 through August 26.[6]

The grievance was submitted to arbitration, where the Arbitrator framed the issues as (1) whether the

[1] *U.S. Dep't of VA, San Diego Healthcare Sys., San Diego, Cal.*,70 FLRA 641, 642 (2018) (*VA San Diego*) (Member DuBester concurring, in part, and dissenting in part) (finding an award inconsistent with the Back Pay Act without the determination of an unjustified or unwarranted personnel action).

[2] 5 U.S.C. § 5596.

[3] Unless otherwise noted, all subsequent dates in this decision occurred in 2017.

[4] Award at 11. The grievant provided extra food trays to an inmate, and the investigation sustained the allegation of preferential treatment towards that inmate. *Id.* at 6 n.9; *see also* Exceptions, Attach. E, Joint Ex. 8 (Discipline Decision Letter) at 1-2.

[5] Exceptions, Attach. C (Grievance) at 2; *see also id.* (contending that the grievant was "still qualified and legally eligible to work overtime" in his reassigned position).

[6] *Id.* at 1.

grievance was timely filed in accordance with Article 31, and (2) whether the grievant was "denied the opportunity to work overtime after he was reassigned from July 19 . . . through August 26" and, if so, what is the remedy?[7]

On the first issue, the Arbitrator found that the grievable occurrence was the meeting on August 10 where the grievant "first became aware" that his reassignment was connected to a disciplinary investigation.[8] As the Arbitrator found that meeting was the grievable occurrence, and the Union filed the grievance within forty days of that meeting, the Arbitrator concluded that the grievance was timely under Article 31.[9]

Addressing the merits issue, the Arbitrator found the delay between the Agency receiving the investigator's report and returning the grievant to his former duty station was a "violation" that "adversely affected" the grievant.[10] As to the underlying personnel action by the Agency, its reassignment of the grievant, the Arbitrator found that "particularly in the circumstances . . . in this case" the Agency acted in accordance with Article 30, Section g of the parties' agreement (Article 30).[11] Based on his finding of a "violation" due to the delayed reinstatement after the Agency completed its investigation of the allegations against the grievant, the Arbitrator awarded the grievant backpay for the overtime he would have worked during those days.[12]

The Agency filed exceptions to the award on February 7, 2020, and the Union filed an opposition to the exceptions on March 18, 2020.

[7] Award at 2.
[8] *Id.* at 10.
[9] Article 31, Section d of the parties' agreement states that "grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence" or "within forty (40) calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence." Exceptions Br. at 13 (quoting Exceptions, Attach. D, Collective-Bargaining Agreement (CBA) Art. 31, § d).
[10] Award at 12.
[11] *Id.* Article 30 § g provides that:

> The Employer retains the right to respond to an alleged offense by an employee which may adversely affect the Employer's confidence in the employee or the security or orderly operation of the institution. The Employer may elect to reassign the employee to another job within the institution or remove the employee from the institution pending investigation and resolution of the matter, in accordance with applicable laws, rules, and regulations.

Id. at 10-11 (quoting CBA Art. 30, § g).
[12] The Arbitrator also found that "reasonable attorney fees should be paid." *Id.* at 13.

III. Analysis and Conclusions

A. The Agency's essence exception does not provide a basis for finding the award deficient.

The Agency argues that the Arbitrator's procedural-arbitrability determination – that the Union timely filed the grievance – fails to draw its essence from the parties' agreement.[13] Specifically, the Agency contends that because the allegations in the grievance concerned the loss of overtime, the grievable event occurred on July 19 when the Agency notified, and the grievant became aware, that he could no longer work overtime.[14] The Agency contends that the grievance was untimely under Article 31's forty-day filing deadline because the Union filed the grievance fifty-seven days from July 19.[15]

The Authority will find that an award fails to draw its essence from a collective-bargaining agreement where the excepting party establishes that the award does not represent a plausible interpretation of the agreement.[16]

As noted above, Article 31 unambiguously requires a grievance to be filed within forty calendar days of either an "*alleged grievable occurrence*" or "*from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence*."[17] The Arbitrator found it was not reasonable for the grievant, at the time of his July 19 reassignment, to believe a grievable event had transpired because nothing indicated to the grievant that the reassignment, and loss of overtime, could be based on a potentially grievable occurrence.[18] Therefore, the Arbitrator found that the grievable occurrence was the August 10 meeting,[19] when

[13] The Authority will find that an arbitration award is deficient as failing to draw its essence from a collective-bargaining agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *Bremerton Metal Trades Council*, 68 FLRA 154, 155 (2014).
[14] Exceptions Br. at 11.
[15] *Id.* at 13.
[16] *U.S. Dep't of the Navy, Puget Sound Naval Shipyard & Intermediate Maint. Facility, Bremerton, Wash.*, 70 FLRA 754, 755 (2018) (Member DuBester dissenting).
[17] Exceptions Br. at 13 (emphasis added) (quoting CBA Art. 31, § d); *see also* Award at 8.
[18] Award at 10.
[19] The Agency does not except to the August 10 determination by the Arbitrator as a nonfact; therefore, we defer to the Arbitrator's finding that the August 10 meeting, where the

the grievant "first became aware" that the reassignment was based on the disciplinary investigation into the allegations against him, giving rise to a potentially grievable occurrence.[20] The Agency's argument merely disagrees with the Arbitrator's factual finding of when the grievable occurrence occurred.[21] Therefore, the Agency has failed to show how the Arbitrator's application of Article 31 to his factual findings was implausible, irrational, or a manifest disregard to the parties' agreement.[22]

Because the Agency fails to demonstrate that the Arbitrator's procedural-arbitrability determination is an implausible interpretation of the parties' agreement, we deny the Agency's essence exception.

B. The Arbitrator's award is contrary to the Back Pay Act.

The Agency argues that the award is contrary to law[23] because the Arbitrator did not identify an unjustified or unwarranted personnel action to justify the award of backpay as required under the BPA.[24] Specifically, the Agency contends that the Arbitrator did not find a violation of applicable law, rule, regulation, or provision of the parties' agreement.[25]

A grievant may be entitled to compensation, under the BPA, "when an arbitrator finds that: (1) the aggrieved employee was affected by an unjustified or unwarranted personnel action; and (2) the personnel action resulted in the withdrawal or reduction of the grievant's pay, allowances, or differentials."[26] A violation of an applicable law, rule, regulation, or provision of a collective-bargaining agreement constitutes an "unjustified or unwarranted personnel action."[27]

Here, the Arbitrator found the Agency's conduct under the circumstances, its reassignment of the grievant, comported with Article 30.[28] Although the Arbitrator quotes Article 30 in his award, he does not discuss what, if any, language in Article 30 – or any other provision of the agreement – that concerns the prompt reinstatement of an employee subject to a disciplinary investigation and related reassignment.[29] The Arbitrator reasoned only that "[he] found no compelling reason" for the Agency's dilatory reinstatement of the grievant which "adversely affected" the grievant, but he did not find a violation of law, rule, regulation, or provision of the parties' agreement in connection with the Agency's personnel action and resolution of the matter.[30] Thus, the award of backpay was based solely on the Arbitrator's belief that the delay between when the Agency concluded its investigation of the grievant and when the Agency returned him to his former position was unreasonable.[31] As such, the award does not include a finding that the Agency committed an unjustified or unwarranted personnel action as required by the BPA.[32] Therefore, the Arbitrator did not have any basis under the BPA to

grievant first became aware of the pending investigation, was the grievable occurrence for timeliness purposes.

[20] Award at 10.

[21] Exceptions Br. at 13-14.

[22] *See U.S. Dep't of VA, Denver Reg'l Office*, 70 FLRA 870, 871 (2018) (Member DuBester concurring) (denying the agency's essence exception for failure to demonstrate that the arbitrator's interpretation was not a plausible interpretation of the parties' agreement); *IFPTE, Ass'n Admin. Law Judges*, 70 FLRA 316, 317 (2017) (denying essence exceptions for failure to establish that the arbitrator's interpretation of the plain meaning of the contract provisions was irrational, unfounded, implausible or in manifest disregard of the parties' agreement).

[23] When an exception involves an award's consistency with law, rule, or regulation, the Authority reviews any questions of law raised by the exception and the award de novo; in doing so, it determines whether the arbitrator's legal conclusions are consistent with the applicable standard of law. But the Authority defers to the arbitrator's underlying factual findings, unless the excepting party establishes that they are nonfacts. *U.S. DOD, Educ. Activity*, 71 FLRA 373, 375 (2019) (Member DuBester concurring, in part, and dissenting in part) (citing *U.S. Dep't of State, Bureau of Consular Affairs, Passport Serv. Directorate*, 70 FLRA 918, 919 (2018)).

[24] Exceptions Br. at 20.

[25] *Id.* at 19-20.

[26] *VA San Diego*, 70 FLRA at 642 (citations omitted).

[27] *U.S. DHS, U.S. CBP*, 69 FLRA 19, 20 (2015).

[28] Award at 11. The Arbitrator approvingly discussed the Agency's personnel action, specifically with respect to Article 30, as the sort of Agency conduct covered by Article 30 and, as relevant here, did not find it a violation of the parties' agreement such that it was an "unwarranted or unjustified personnel action." *See id.*; *see also* 5 U.S.C. § 5596.

[29] We note that the Arbitrator's discussion and application of Article 30 neither identified nor referred to any language in the parties' agreement from which a violation due to a "delay" and its "adverse affect," as claimed by the grievant, could be found.

[30] Award at 12. The Arbitrator indicated that the delay "[which] adversely affected" the grievant constituted a "violation," but he made no finding as to what portion of law, rule, regulation, or provision of the parties' agreement the Agency violated, which is necessary to sustain a claim under the BPA. *See id.*; 5 U.S.C. § 5596; *see also VA San Diego*, 70 FLRA at 642 (setting aside backpay award where there was no connection between the arbitrator's factual findings and any violation of contract or law).

[31] Award at 11.

[32] *See, e.g., U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Pollock, La.*, 68 FLRA 151, 152 (2014) (Member DuBester dissenting) (finding that where an arbitrator "did not find that the [a]gency violated any applicable law, rule, regulation, or provision of the parties' collective-bargaining agreement . . . the award does not include a finding that the [a]gency committed an unjustified or unwarranted personnel action as required by the BPA").

award the grievant backpay.[33] Accordingly, we find the award contrary to law.[34]

IV. Decision

We vacate the award.

[33] Member Abbott notes that it is important for the Authority to avoid confusion and be clear in its decisions for the federal labor-relations community. *See AFGE Local 2228*, 71 FLRA 586, 588 (2020) (Concurring Opinion of Member Abbott) (citation omitted). Member DuBester is correct in stating that "an arbitrator's implicit finding of a contractual violation is sufficient to satisfy the [BPA's] requirement that an agency committed an unjustified or unwarranted personnel action." Dissent at 9. However, there must be an *actual* provision in the parties' agreement that could be violated. Simply stating that a personnel action was made in "delay" and "not understandable," or that the grievant was adversely affected, does not render it a violation of the parties' agreement. Because there is no provision that requires reinstatement in less than nine days, there was no provision for the Agency to violate when it reinstated the grievant. *See* Award at 2-3. Either a provision is in the parties' agreement or it is not. In this case, clearly there is no provision in the parties' agreement. The dissent relies on an implicitly found violation of a provision that was inferred, not a provision in the parties' agreement.

[34] Because we vacate the award, including awarded backpay, we also set aside the Arbitrator's finding of attorney fees. *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Phx., Ariz.*, 70 FLRA 1028, 1030 n.22 (2018) (Member DuBester dissenting) (citing *AFGE, Council of Prison Locals, Local 1010*, 70 FLRA 8, 9 (2016) (without an award of backpay, attorney fees cannot be awarded under the BPA)).

Chairman Kiko, dissenting in part:

To avoid an impasse between the Members,[1] I agree that the award should be set aside as contrary to the Back Pay Act because I agree that the Agency's contrary-to-law exception should be granted. However, I disagree with my colleagues on the issue of the timeliness of the grievance, and I would also set aside the award as failing to draw its essence from the parties' agreement.

Under long-standing precedent, the Authority will set aside an award that fails to draw its essence from a collective-bargaining agreement where the excepting party establishes that the award does not represent a plausible interpretation of that agreement.[2] As pertinent here, an award fails to draw its essence from an agreement where it conflicts with the agreement's plain wording.[3] The Authority has repeatedly emphasized that when parties agree to a procedural deadline, with no mention of any applicable excuse, they intend to be bound by that deadline.[4]

Article 31 of the parties' agreement unambiguously requires a grievance to be filed within forty days of either the "alleged grievable occurrence" or the "date the party filing the grievance can reasonably be expected to have become aware of the occurrence."[5] Here, the Arbitrator found that the occurrence triggering the grievance-filing deadline was the meeting on August 10, 2017, when the Agency first notified the grievant that his reassignment was due to a disciplinary investigation into allegations against him.[6] However, the occurrence *actually grieved* by the Union was the grievant's inability to work overtime in his reassigned position.[7] There is no dispute that when the Agency reassigned the grievant on July 19, 2017, it informed him that he would not be eligible to work overtime in the reassigned position. Even the Union acknowledges that the grievant was aware of his inability to "participat[e] in the equitably rotated overtime assignments" beginning on July 19, 2017.[8] Similarly, the Arbitrator – in framing the issue – understood that the grievance concerned whether the grievant was "denied the opportunity to work overtime after he was reassigned [*on*] *July 19*."[9] Based on this evidence, I would find that the grievable occurrence – the Agency notifying the grievant he would be unable to work overtime in the reassigned position – occurred on July 19, 2017. Because the Union filed the overtime grievance more than forty days after this event,[10] the Arbitrator's finding that the grievance was timely does not represent a plausible interpretation of Article 31.[11]

The majority does not explain how the August 10 meeting – where the grievant first became aware that his reassignment was *based on a disciplinary investigation* – prompted the Union to file a grievance alleging *loss of overtime*. That meeting concerned a subject that was neither grieved nor subject to arbitration. In addition, the grievant did not become "aware" of any information related to his loss of overtime on August 10 that had not already been presented to him a month earlier, in July.[12] Accordingly, the August 10 meeting could not have given rise to the grievance for purposes of Article 31.

For the above reasons, in addition to finding the award contrary to law for the reasons stated in the decision, I would also set aside the award as failing to draw its essence from the parties' agreement.

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[1] *See, e.g.*, *U.S. Dep't of VA, Veterans Benefits Admin.*, 71 FLRA 1113, 1117 n.50 (2020) (Chairman Kiko dissenting on unrelated grounds) (Member DuBester joining in rationale "to avoid an impasse" because applying preferred rationale would achieve same result); *U.S. Dep't of HHS, Office of Medicare Hearings & Appeals*, 71 FLRA 677, 680 (2020) (Member Abbott concurring; Chairman Kiko dissenting on unrelated grounds) (Concurring Opinion of Member Abbott) (agreeing, in order to avoid an impasse, that an award was not contrary to law for the reasons stated in the decision, but providing additional reasons for finding that the award was not contrary to law).

[2] *See U.S. Dep't of the Navy, Puget Sound Naval Shipyard & Intermediate Maint. Facility, Bremerton, Wash.*, 70 FLRA 754, 755 (2018) (Member DuBester dissenting).

[3] *U.S. Small Bus. Admin.*, 70 FLRA 525, 527 (2018) (Member DuBester concurring, in part, and dissenting in part) (citing *U.S. Dep't of the Air Force, Okla. City Air Logistics Command, Tinker Air Force Base, Okla.*, 48 FLRA 342, 348 (1993)).

[4] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 71 FLRA 790, 791 (2020) (*BOP, Coleman*) (Member DuBester dissenting).

[5] Exceptions, Attach. D, Collective-Bargaining Agreement (CBA) Art. 31, § d.

[6] Award at 10.

[7] Exceptions, Attach. C (Grievance) at 2.

[8] *Id.* at 1, 2.

[9] Award at 2 (emphasis added).

[10] *See* Grievance at 1 (noting July 19 as the date the alleged violations began and September 14 as the date the grievance was filed).

[11] *See* CBA Art. 31, § d (grievances "must be filed within forty . . . calendar days of the date of the alleged grievable occurrence"); *see also BOP, Coleman*, 71 FLRA at 791 (finding that an arbitrability determination based on the same provision was not a plausible interpretation of the parties' agreement where the grievance was filed more than forty days after the acknowledged "grievable occurrence").

[12] *See* CBA Art. 31, § d (for a previously unknown occurrence, grievance timely if filed within forty days of when a grievant "bec[a]me aware" of the grieved occurrence).

Member DuBester, dissenting in part:

I agree that the Arbitrator's procedural-arbitrability determination draws its essence from the parties' collective-bargaining agreement. But I do not agree that the award is contrary to the Back Pay Act (the Act).

The majority concludes that the award violates the Act because the Arbitrator "did not find a violation of . . . [a] provision of the parties' agreement in connection with the Agency's personnel action and resolution of the matter."[1] However, the Authority has consistently held that awards must be read in context.[2] As such, an arbitrator's implicit finding of a contractual violation is sufficient to satisfy the Act's requirement that an agency committed an unjustified or unwarranted personnel action.[3]

Applying these principles, it is readily apparent that the Arbitrator based his award of backpay upon a finding that the Agency violated the parties' agreement. The Union argued before the Arbitrator that the Agency violated Article 6, Section b.2. of the agreement, which requires the Agency to treat all bargaining unit members "fairly and equitably in all aspect[s] of personnel management,"[4] when it "failed to properly assign overtime to the grievant."[5] And, citing Article 18 of the parties' agreement, which entitles bargaining unit employees to "first consideration for . . . overtime assignments, which will be distributed and rotated equitably among bargaining unit employees,"[6] the Union argued that even if the Arbitrator found that the grievant's initial reassignment was warranted, the Agency's delay in returning him to his normal duties after the investigation was resolved resulted in inequitable treatment and the loss of "opportunity to work overtime for [nine] shifts."[7]

Addressing these arguments, the Arbitrator noted that Article 30, Section g of the parties' agreement provides that the Agency "may elect to reassign the employee to another job within the institution or remove the employee from the institution *pending investigation and resolution of the matter.*"[8] He then found that, although the initial reassignment was within management's discretion, "[w]hat was not understandable in this case was the delay of nine days in reinstating [the grievant] to his former position with the overtime ban dropped."[9]

On this basis, the Arbitrator found that the grievant "was adversely affected by a personnel action on the part of the Agency" when it delayed reinstating the grievant "following an investigation report clearing him of all charges, save the extra food trays" because there was "no compelling reason [for the Agency] to have denied his prompt reinstatement."[10] And he concluded that the grievant was entitled under the Act "to receive the money that he would have earned had he been able to work overtime and for which he was qualified during the [nine-]day period in question."[11]

In my view, the award, considered as a whole, demonstrates that the Arbitrator awarded the grievant overtime because he found that the Agency's delay in reinstating the grievant once the investigation was resolved violated both Article 6.b. and Article 30.g. of the

[1] Majority at 5.

[2] *E.g.*, *U.S. Dep't of HHS, Ctrs. For Medicare & Medicaid Servs.*, 67 FLRA 665, 667 (2014) (Member Pizzella concurring) (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Terre Haute, Ind.*, 65 FLRA 460, 463 (2011) ("When evaluating exceptions to an arbitration award, the Authority considers the award and the record as a whole.")); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Dublin, Cal.*, 65 FLRA 892, 892-93 (2011) (finding that arbitrator had relied on contract provision referenced in "[r]elevant [c]ontract [l]anguage" section of award and relied on union arguments pertaining to that provision); *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Terre Haute, Ind.*, 65 FLRA 460, 463 (2011) ("When evaluating exceptions to an arbitration award, the Authority considers the award and record as a whole. That is, the Authority interprets the language of an award in context.").

[3] *U.S. DOD, Def. Logistics Agency, Def. Distrib. Depot, Red River, Texarkana, Tex.*, 67 FLRA 609, 611 (2014) (Member Pizzella dissenting); *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Atwater, Cal.*, 66 FLRA 737, 739-40 (2012) (finding award not contrary to the Act where the arbitrator "implicitly" found a direct causal connection between a contract violation and employees' loss of pay, based on a consideration of the arbitral record); *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 65 FLRA 1040, 1045 (2011) (finding award not contrary to the Act where the arbitrator "implicitly rejected" the agency's argument that the union failed to establish grievant's availability to work overtime on specific dates); *see also U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Pollock, La.*, 68 FLRA 151, 153 (2014) (Dissenting Opinion of Member DuBester) (citations omitted). The primary case on which the majority relies for its contrary conclusion – *U.S. Department of VA, San Diego Healthcare System, San Diego, California*, 70 FLRA 641 (2018) (Member DuBester concurring, in part, and dissenting in part) – is distinguishable from the case before us. As I noted in my separate opinion, the arbitrator in that case "[did] not identify any statute, regulation, or collective-bargaining agreement provision that the [a]gency violated in making these improper assignments, and *none* [*was*] *clearly apparent*." *Id.* at 643 (emphasis added).

[4] Award at 2 (quoting Art. 6, § b.2 of the parties' agreement).

[5] *Id.* at 6.

[6] *Id.* at 2 (quoting Art. 18, § p.1 of the parties' agreement).

[7] *Id.* at 7-8.

[8] *Id.* at 10-11 (emphasis added).

[9] *Id.* at 12.

[10] *Id.*

[11] *Id.* at 13.

parties' agreement. Moreover, Article 30.g, which allows the Agency to reassign employees only while its "investigation and resolution" of a matter is "pending," can be reasonably interpreted to require the Agency to have reinstated the grievant once his matter was resolved. On this basis, I would find that the requirements of the Act are satisfied, and I would deny the Agency's contrary-to-law exception.