CASE DIGEST: *U.S. DHS, U.S. CBP, Del Rio, Tex.*, 72 FLRA 236 (2021)
(Chairman DuBester concurring; Member Abbott concurring;
Member Kiko dissenting)

In this case, the Arbitrator found that the Agency violated the parties' agreement by using "catch-all" phrases to assign job duties to employees that are not regular and recurring to their work unit. The Authority denied the Agency's essence, nonfact, and management-rights exceptions because they did not establish any deficiencies in the award. However, because the Arbitrator awarded attorney fees before the Agency had an opportunity to respond to a petition for attorney fees, the Authority set aside the portion of the award that granted attorney fees and remanded the case to the parties for resubmission to the Arbitrator.

Chairman DuBester concurred in the decision to deny the Agency's exceptions, in part, grant the Agency's exception concerning the award of attorney fees, and to remand to the parties.

Member Abbott concurred in the decision and wrote separately to emphasize that contracts have consequences. Because the Agency did not argue that it agreed to a provision that is beyond the scope of what the Agency can legally agree to, Member Abbott believed he was constrained to conclude that the Agency violated the parties' agreement.

Member Kiko dissented because she found the award failed to draw its essence from the parties' agreement. Because the Agency determined that passenger processing would be a regular and recurring cargo-unit duty, consistent with its contractual discretion to create and design work units, the Agency did not violate the parties' agreement and Member Kiko would set aside the award.

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.