

72 FLRA No. 88

Accordingly, we deny the Union’s exceptions.

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3184  
(Union)

and

SOCIAL SECURITY ADMINISTRATION  
(Agency)

0-AR-5705

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DECISION

September 2, 2021

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

This matter is before the Authority on exceptions to an award of Arbitrator Charles Feigenbaum filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>1</sup> and part 2425 of the Authority’s Regulations.<sup>2</sup>

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority’s Regulations.<sup>3</sup>

Under § 7122(a) of the Statute,<sup>4</sup> 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 grounds raised in the exception and set forth in § 7122(a).<sup>5</sup>

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grievance); *AFGE, Loc. 1802*, 50 FLRA 396, 398 (1995) (award not deficient as based on a nonfact where excepting party challenges a conclusion based on the arbitrator’s interpretation of the parties’ collective-bargaining agreement); *U.S. Dep’t of the Navy, Long Beach Naval Shipyard, Long Beach, Cal.*, 48 FLRA 612, 618-19 (1993) (award not deficient as contrary to public policy where excepting party fails to establish that the award violates an explicit public policy based on well-defined and dominant laws and legal precedents); *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).

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<sup>1</sup> 5 U.S.C. § 7122(a).

<sup>2</sup> 5 C.F.R. pt. 2425.

<sup>3</sup> *Id.* § 2425.7 (“Even absent a [party’s] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.”).

<sup>4</sup> 5 U.S.C. § 7122(a).

<sup>5</sup> *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

**Member Abbott, concurring:**

I agree with denying the Union's exceptions. However, I write separately to express my objection to an expedited, abbreviated decision (EAD) in this case.

The majority ultimately found that the Arbitrator's dismissal of the Union's grievance pursuant to Article 25 was permissible. Though I agree with this finding, I disagree with the method of conveyance. The denial of the Union's essence and exceeds authority exceptions warranted a thorough analysis. When a case provides an opportunity to clarify complex Authority precedent, we should do so, especially because doing so benefits the entire federal labor-management relations community, and the public in general. This case presents one of those issues.

In the instant case, the Arbitrator dismissed the Union's grievance for failure to adhere to the requirements within Article 25<sup>1</sup> of the parties' agreement. The Union argued in its exceptions that the dismissal failed to draw its essence from the agreement because the agreement did not contain language that required dismissal.<sup>2</sup> The EAD fails to expand upon the underlying facts and details that gave rise to the ultimate holding. Without such information, it is difficult to piece together and understand the Authority's rationale.

While the contract language does not explicitly require dismissal, the Arbitrator's interpretation of Article 25 is reasonable and plausible and therefore, draws its essence from the agreement. In addition, dismissing the grievance does not exceed the Arbitrator's authority. The Authority has previously found that an award fails to draw its essence from a parties' agreement "where the award conflicts with the agreement's plain wording."<sup>3</sup> In the instant case, the Arbitrator's interpretation of the agreement which led to the dismissal cannot conflict with the agreement because the agreement contains no language regarding consequences for failure to adhere to the requirements within Article 25. Furthermore, the fact that the agreement does not contain

<sup>1</sup> Article 25, Section 2(D) states, "The parties will meet (usually by phone) within [thirty] calendar days of receipt of the [Federal Mediation and Conciliation Service (FMCS)] panel to attempt to agree upon the selection of an arbitrator from the panel. If the parties do not mutually agree upon selection of one arbitrator, the parties shall alternately strike names from the panel until one name remains who shall be the arbitrator. The invoking party will have the first strike. The invoking party will notify FMCS of the selection of the arbitrator and will simultaneously serve a copy of the notification on the other party." Exceptions, Attach. 1, 2019 National Agreement at 150.

<sup>2</sup> Exceptions Br. at 5.

<sup>3</sup> *NLRB*, 72 FLRA 226, 229 (2021) (Member Abbott concurring; Chairman DuBester dissenting in part).

a cancellation provision does not demonstrate the award's failure to draw its essence from the agreement. To the contrary, it would be illogical to conclude that the parties would negotiate procedural steps into their agreement but there would be no consequence for failing to comply with them. Consequently, the Arbitrator did not exceed his authority by dismissing the grievance when the Union failed to adhere to the Article 25 requirements.<sup>4</sup>

An arbitrator's interpretation and decision based on contracts that are silent is an area that has garnered much attention and ongoing development from the Authority.<sup>5</sup> But the majority misses the opportunity to provide further clarification on this important precedent by avoiding, almost entirely, any discussion of the facts, circumstances, and provisions that support its conclusions.

Thus, I do so here.

<sup>4</sup> Both exceptions are based in the same arguments and facts. Because the essence exception is denied, the exceeds authority exceptions will also be denied. *Indep. Union of Pension Emps. for Democracy & Just.*, 71 FLRA 965, 967 n.36 (2020) (denying exceeded-authority exception that reiterated essence exception).

<sup>5</sup> "[W]e acknowledge that the Authority has previously stated that an agreement's silence on a matter addressed by an arbitrator does not, by itself, demonstrate that the arbitrator's award fails to draw its essence from the agreement. However, to the extent that such precedent is inconsistent with this decision, we reverse that precedent." *U.S. Dep't of the Navy, Puget Sound Naval Shipyard & Intermediate Maint. Facility, Bremerton, Wash.*, 70 FLRA 754, 756 (2018) (then-Member DuBester dissenting) (citing *U.S. Dep't of the Treasury, IRS, Ogden Serv. Ctr.*, 69 FLRA 599, 602 (2016) (Member Pizzella dissenting); *U.S. Dep't of Com., Nat'l Oceanic & Atmospheric Admin., Off. of Marine & Aviation Operations, Marine Operations Ctr.*, 67 FLRA 244, 246 (2014) ("where an arbitrator interprets an agreement as imposing a particular requirement, the agreement's silence with respect to that requirement does not, by itself, demonstrate that the arbitrator's award fails to draw its essence from the agreement").