72 FLRA No. 129

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3707
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
WESTOVER AIR RESERVE BASE
(Agency)

0-AR-5726

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DECISION

February 10, 2022

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

Decision by Member Abbott for the Authority

I. Statement of the Case

The grievance alleged that the Agency violated the parties' collective-bargaining agreement (CBA) when it denied, in part, the grievants' official time requests to attend a Union training. Arbitrator Shari B. Broder denied the grievance finding it untimely and non-arbitrable. The Union, on behalf of the grievants, filed an exception alleging that the award failed to draw its essence from the parties' CBA. Because the Union fails to demonstrate that the Arbitrator's procedural-arbitrability determination is an irrational, unfounded, or implausible interpretation of the parties' CBA, we deny its essence exception.

II. Background and Award

On April 16, 2019,[1] two Union representatives (the grievants) informed the fire chief that they would be attending an AFGE Law Enforcement and Firefighter Education Session in Washington, D.C. from May 13 to May 16. One grievant requested eighty hours of official time and the other requested forty-eight hours. The fire chief sought advice from the chief of workforce relations (CWR)[2] on how to respond to the request. The grievants provided additional information about the training to the CWR.

On May 6, a week before the training, the grievants asked the CWR for an "official response" to their request for official time so they could "evaluate [their] options."[3] Later that day, the CWR advised the grievants that sixteen hours of official time could be approved for one and twenty-four hours of official time for the other because only some of the training met the requirements of the parties' agreement for approval of official time. As a result, the fire chief told the grievants to record their time in the Agency's timekeeping system before they left for training.[4] However, the grievants did not enter their time until they returned from the training on May 21, and entered forty-eight and eighty hours of official time.[5] On May 22, the fire chief denied the submitted official-time entries and asked the grievants to resubmit their time with only those hours of official time approved by the CWR on May 6. The grievants corrected their official-time entries and used annual leave to cover the remaining training hours.

On June 4, the grievants filed a grievance objecting to the denial of their official time requests. The Agency denied the grievance asserting it was untimely. The parties were unable to resolve the issue and the Union invoked arbitration. The Arbitrator framed the issues to be resolved as: "Is the grievance timely and arbitrable? If so, did the Agency violate the law, regulations, the collective[-]bargaining agreement or any other policies when it denied [thirty-two] hours of official time to [one grievant] and [fifty-six] hours of official

[1] Unless otherwise indicated, all dates hereafter occurred in 2019.
[2] The CWR is responsible for interpreting the CBA with respect to official time requests for trainings and either approving or denying the requests.
[3] Award at 3.
[4] The fire chief could not remember the exact date he told the grievants to enter their time, but knew it was no later than May 12.
[5] The grievants entered the total amount of hours they previously requested.

time to [the other grievant]? If so, what shall the remedy be?"[6]

During arbitration, the parties presented very different interpretations of Article 19, Section 7(a)[7] and what constituted timely filing. The Union argued that the grievance was timely because the grievable event did not occur until May 22 when the Agency denied the grievants' official-time entries in the timekeeping system. The Agency argued that the grievance was untimely because the grievants were aware on May 6 that the Agency would approve only those official-time hours approved by the CWR, as evidenced by the instruction to enter their time before leaving for the training.

The Arbitrator found that on May 6, the grievants were aware that any request for official time over those approved by the CWR would be denied. Therefore, the Arbitrator rejected the Union's argument that the grievable event did not occur until May 22 when their timesheets were rejected. According to the Arbitrator, "[i]t was very clear that the [g]rievants needed *advance approval* of their official leave request"[8] and became aware that official time would not be approved beyond those hours identified by the CWR when the fire chief instructed them to enter their time "*before they left*, consistent with [the CWR's] May 6 determination."[9] Accordingly, the Arbitrator determined that the grievance was not filed timely.

The Union filed an exception to the award on April 14, 2021, and the Agency filed an opposition on April 26, 2021.

III. Analysis and Conclusion: The award draws its essence from the parties' agreement.

The Union argues that the award fails to draw its essence[10] from the parties' agreement because "the Union's grievance challenging the Agency's actions on May 22, 2019 was timely filed under Section 7."[11] We disagree.

Based on the parties' agreement, the Arbitrator determined that the grievants had fourteen days from the time they "became aware of the act or occurrence that caused the problem" to file a grievance.[12] The Arbitrator found that the grievants became aware on May 6 that their requests for official time in the amounts they requested would be denied when they asked the CWR for an "official response" and the CWR informed them that only sixteen and twenty-four hours met the requirements of the agreement.[13] The Union does not dispute the Arbitrator's interpretation of Article 19, Section 7(a), but instead challenges the Arbitrator's finding that the Union became aware of the Agency's decision on May 6. The Arbitrator's determination of the date on which the grievants became aware constitutes a factual finding and the Union simply disagrees with that finding. We have long held that mere disagreement with an Arbitrator's factual findings does not provide a basis for finding that an award fails to draw its essence from the parties' agreement.[14] Because the Union fails to demonstrate that the Arbitrator's procedural-arbitrability determination is an irrational, unfounded, or implausible interpretation of the parties' agreement, we deny the Union's essence exception.

IV. Decision

We deny the Union's exception.

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[6] Award at 1.

[7] "Grievances must be presented within [fourteen] calendar days from the date the employee(s) first became aware of the act or occurrence that caused the problem." Exceptions, Attach. B, CBA at 14.

[8] Award at 13.

[9] *Id.*

[10] An award fails to draw its essence from a CBA when the excepting 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. *U.S. Dep't of Educ., Fed. Student Aid*, 71 FLRA 1166, 1167 n.11 (2020) (then-Member DuBester concurring) (citing *U.S. Dep't of State, Passport Servs.*, 71 FLRA 12, 13 n.18 (2019)).

[11] Exceptions Br. at 6.

[12] Award at 12 (quoting Art. 19, § 7(a)).

[13] "On May 6, [one grievant] emailed [the CWR] asking for her 'official response' to the request, adding that with the training being the following week, he wanted an opportunity to evaluate his and [the other grievant's] options. [The CWR] looked at the training outline, and there appeared to be a few issues with it that she wanted to discuss with [the Union president]. [The CWR] sent an email to [the Union president] later that day explaining in detail why '[eight] hours of official time is approved for their respective regular duty hours' . . . . [One grievant] consequently was allowed [sixteen] hours of official time, and [the other grievant] was allowed [twenty-four] hours." *Id.* at 3-4.

[14] *SSA*, 70 FLRA 227, 230 (2017) ("[T]he [a]gency's attempt to relitigate its interpretation of the agreement and the evidentiary weight that should be accorded to its witnesses fails to demonstrate that the [a]rbitrator's interpretation is unfounded in reason, and so, is unpersuasive. Because a disagreement with the weight an arbitrator gives evidence does not provide a basis for finding that an award fails to draw its essence from the parties' agreement.").

Chairman DuBester, concurring:

I agree with the Decision to deny the Union's exception.