

73 FLRA No. 7

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1441
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
ST. PAUL DISTRICT
(Agency)

0-AR-5748

DECISION

May 26, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I Statement of the Case

Arbitrator James Laumeier denied a grievance alleging that the Agency unlawfully designated the Dredge William L. Goetz floating plant (the dredge) as the grievants' permanent duty station (duty station). The Union filed exceptions to the award on nonfact, contrary-to-law, and contrary-to-public-policy grounds. Because the Union does not demonstrate that the award is deficient on any of these grounds, we deny the exceptions.

II Background and Arbitrator's Award

The dredge travels over 800 miles away from its home port in Fountain City, Wisconsin (Fountain City), maintaining and removing sedimentation and other material from the upper Mississippi, Illinois, and St. Croix Rivers. For over fifteen years, the Agency has designated the dredge, rather than the port, as the grievants' duty station because they perform the vast majority of their duties on the dredge. The grievants commute to the current location of the dredge for their tour of duty (tour). Another vessel accompanies the dredge and provides living quarters for the grievants during their tour.

At the end of their tour, the grievants may commute home, but they may not stay on the accompanying vessel between tours. The Agency does not pay the grievants' travel expenses to and from the dredge, regardless of its location.

The Union filed a grievance alleging, as relevant here, that the Agency violated the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) when it designated the dredge as the grievants' duty station. The parties could not resolve the grievance and proceeded to arbitration.

At arbitration, the Arbitrator framed the issue as whether the Agency "appropriately and legally" designated the dredge as the grievants' duty station.¹

Rejecting the Union's argument to the contrary, the Arbitrator found that the plain language of the regulations and a decision of the United States Comptroller General supported finding that an Agency vessel may be designated as a duty station for civilian employees.² The Arbitrator concluded that the Agency appropriately designated the dredge as the grievants' duty station because, under the regulations, an employee's duty station is the location where the employee regularly performs his or her duties. And the Arbitrator found that the grievants "perform the vast majority" of their duties on the dredge, and not in Fountain City.³

The Arbitrator also found that box 39 for "duty station" in the grievants' Standard Form 50 (SF-50) – which listed Fountain City – was not controlling in determining the duty station because the Agency specified in the SF-50's remarks section, and notified employees at the start of their employment, that their duty station is the dredge.⁴ Lastly, the Arbitrator found that a Memorandum of Understanding between a different union and a different district of the Agency did not require him to find that Fountain City should be the grievants' duty station. Therefore, the Arbitrator denied the grievance.

The Union filed exceptions to the award on August 5, 2021, and the Agency filed an opposition on September 2, 2021.

III Analysis and Conclusions**A. The award is not based on a nonfact.**

The Union argues that the Arbitrator's conclusion that the Agency has appropriately designated the dredge as the grievants' duty station is based on several nonfacts.⁵ To establish that an award is based on a nonfact, the

¹ Award at 1.

² *Id.* at 9-10 (citing *Willie L. Adams, et al. - Claims by Seasonal Emps. for Per Diem*, B-186045, 1976 WL 9514 (Comp. Gen. Nov. 4, 1976)).

³ *Id.* at 9.

⁴ *Id.* at 10 (crediting testimony that the Agency was required to enter a city and state in box 39 because of a "software glitch").

⁵ Exceptions Br. at 16-17.

excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.⁶ But, disagreement with an arbitrator's evaluation of the evidence, including the weight to be accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.⁷

First, the Union argues that the Arbitrator erroneously determined that the Agency noted Fountain City in box 39 of the grievants' SF-50 form due to a software glitch.⁸ However, the Arbitrator based that finding on an Agency witness's testimony.⁹ The Union's argument merely challenges the Arbitrator's evaluation of the evidence, which does not provide a basis for finding the award is based on nonfact.¹⁰

Next, the Union contends that the award is based on a nonfact because the Arbitrator failed to "acknowledge" that the Agency does not permit the grievants to stay on the dredge between tours, and that the grievants "spend up to a month of their personal time traveling to and from the dredge" without compensation.¹¹ But, contrary to the Union's argument, the Arbitrator recognized that the grievants are not "permitted to stay on the dredge in between work weeks" and that they spend hours traveling to and from the dredge.¹² Moreover, the Arbitrator concluded that the Agency properly designated the dredge as the grievants' duty station because they perform the majority of their duties there, not because of any finding regarding where the grievants spend their time between tours. Therefore, the Union has failed to establish that a central fact underlying the award is clearly erroneous.¹³

⁶ *U.S. Dep't of VA, Nashville Reg'l Off., Nashville, Tenn.*, 72 FLRA 371, 374 (2021) (*VA Nashville*) (Member Abbott concurring) (citing *AFGE, Loc. 1594*, 71 FLRA 878, 880 (2020)).

⁷ *Id.* at 374-75 (citing *U.S. Small Bus. Admin., Birmingham, Ala.*, 72 FLRA 106, 106 (2021) (*SBA*)).

⁸ Exceptions Br. at 17.

⁹ Award at 10.

¹⁰ See *VA Nashville*, 72 FLRA at 374-75 (citing *SBA*, 72 FLRA at 106).

¹¹ Exceptions Br. at 16-18.

¹² See Award at 7-9 (noting that the parties "have raised other peripheral issues that . . . are not controlling").

¹³ See *AFGE, Loc. 3369*, 72 FLRA 158, 159 (2021). To the extent that the Union argues that the Arbitrator failed to properly address its argument that "employees are forced" to travel to the dredge without compensation, see Exceptions Br. at 18-19, the Authority has held that "arbitrators are not required to address every argument that is raised by the parties." See *U.S. Dep't of HUD*, 71 FLRA 616, 620 (2020) (then-Member DuBester concurring); see also *Indep. Union of Pension Emps. for Democracy & Just.*, 71 FLRA 822, 823 (2020) (stating that an "[a]rbitrator's failure to cite all of the evidence" upon which the arbitrator relied in making findings "does not demonstrate that

Accordingly, we deny the Union's nonfact exception.¹⁴

B. The award is not contrary to law.

The Union argues that the award is contrary to law because the plain language of the FTR and JTR does not allow a "moving vessel" to be a duty station for civilian employees.¹⁵ When an exception involves an award's consistency with law, rule, or regulation, the Authority reviews any question of law raised by the exception and the award de novo.¹⁶ In applying the standard of de novo review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.¹⁷ In making that assessment, the Authority defers to the arbitrator's underlying factual findings, unless the appealing party establishes they are nonfacts.¹⁸

As relevant here, the FTR defines "official station" as:

An area defined by the agency that includes the location where the employee regularly performs his or her duties The area may be a mileage radius around a particular point, a geographic boundary, or any other definite domain, provided no part of the area is more than 50 miles from where the employee regularly performs his or her duties If the employee's work involves recurring travel or varies on a recurring basis, the location where the work activities of the employee's

the award is deficient") (citing *Army Materials & Mechs. Rsch. Ctr.*, 32 FLRA 1156, 1158 (1988)).

¹⁴ *NATCA*, 71 FLRA 424, 425 (2019) (denying nonfact exception where challenged finding was not the basis for the award).

¹⁵ Exceptions Br. at 6-10. The Union also argues that the Arbitrator: (1) relied on an outdated version of the JTR, *id.* at 7; (2) relied on an inapplicable Comptroller General decision, *id.* at 11-12; (3) failed to cite the entire definition of "official station" in the FTR, *id.* at 14; and (4) failed to consider a Memorandum of Understanding from another Agency facility using the proper legal standard, *id.* at 16. Because the Authority assesses whether an arbitrator's legal conclusions – not an arbitrator's reasoning – are consistent with the applicable standard of law when conducting de novo review, these arguments provide no basis for finding the award deficient. See *AFGE, Loc. 1441*, 70 FLRA 161, 164 (2017) (citing *GSA*, 70 FLRA 14, 15 (2016)); *AFGE, Loc. 1010*, 70 FLRA 8, 9 (2016) (citing *NTEU, Chapter 137*, 60 FLRA 483, 487 n.11 (2004)).

¹⁶ *AFGE, Loc. 2516*, 72 FLRA 567, 569 (2021) (citing *NAGE*, 71 FLRA 775, 775 (2020) (*NAGE*); *AFGE, Loc. 2145*, 70 FLRA 873, 874 (2018)).

¹⁷ *Id.* (citing *NAGE*, 71 FLRA at 775).

¹⁸ *Id.* (citing *NAGE*, 71 FLRA at 775-76).

position of record are based is considered the regular place of work.¹⁹

Similarly, the JTR defines permanent duty station as “a civilian employee[’s] permanent workplace.”²⁰

Here, finding that the grievants “perform the vast majority of [their duties] on the dredge,” the Arbitrator concluded that the Agency could designate the dredge as the grievants’ duty station.²¹ Although the Union asserts that the regulations require a duty station to be a geographic boundary and not a moving vessel, we find that argument unavailing.²² The FTR clearly states that a duty station “may be” a geographic boundary, but does not state that it *must* be defined as such.²³ And both the FTR and JTR are silent as to whether a moving vessel may be designated as a duty station for civilian employees.²⁴ Thus, the Union’s argument fails to demonstrate that the Arbitrator’s conclusion conflicts with the FTR or the JTR. Accordingly, we deny the Union’s contrary-to-law exception.

C. The award is not contrary to public policy.

The Union argues that the award is contrary to public policy because “employees are forced to spend up

to a month a year of their own time traveling to and from the [d]redge in their personally owned vehicles.”²⁵ The Authority construes public-policy exceptions extremely narrowly.²⁶ For an award to be found deficient as contrary to public policy, the asserted public policy must be “explicit, well defined, and dominant,” and the appealing party must show a clear violation of the policy.²⁷ Moreover, the policy must be identified “by reference to the laws and legal precedents and not from general considerations of supposed public interests.”²⁸

Citing various legal authorities for the proposition that employees should be treated “fairly” and compensated for all hours of work, the Union asserts that employees should be compensated for the time spent traveling to and from the dredge between their tours.²⁹ It further asserts that the Arbitrator’s finding that the Agency can legally designate the dredge as the employees’ duty station renders these legal principles “essentially meaningless for the employees in this case.”³⁰ However, because the Union’s exception is premised on its contrary-to-law exception, which we denied above, we also deny this exception.³¹

IV. Decision

We deny the Union’s exceptions.

¹⁹ 41 C.F.R. § 300-3.1.

²⁰ Joint Travel Regulations, Ch. 5, at A-16 (Jan. 1, 2022) (JTR), <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>;

see also Exceptions Br. at 7.

²¹ Award at 9.

²² See Exceptions Br. at 7 (arguing that the JTR expressly states that a ship may be a duty station for Service members, but it is silent on whether a ship may be a duty station for civilian employees); *id.* at 14 (arguing that the FTR defines an official station as a “mileage radius around a particular point, a geographic boundary, or any other definite domain” and “[a] boat is not a geographic boundary”).

²³ 41 C.F.R. § 300-3.1; see, e.g., *Bailey v. United States*, 59 Fed. Cl. 743, 751 (2004) (stating that a duty station is the location where employees perform most of their work and designation of moving vessel in that case was improper because employees spent more than half their time working in specific port); *Naval Surface Weapons Ctr - Per Diem Entitlement While Aboard Activity-Owned Boats*, B-193542, 1979 WL 12407 (June 19, 1979) (holding that based on nature of duties performed, both boat and boat’s port were properly designated as employees’ duty station).

²⁴ 41 C.F.R. § 300-3.1; JTR at A-16; see also *NLRB v. UFCW, Loc. 23*, 484 U.S. 112, 121-28 (1987) (indicating that an agency may interpret a law or regulation that is silent on an issue); *Transitional Hosps. Corp. of La. v. Shalala*, 222 F.3d 1019, 1024 (D.C. Cir. 2000) (indicating that when a regulation is silent or ambiguous with respect to a specific issue, deferring to an agency’s interpretation is warranted “as long as it is ‘based on a permissible construction’” of the regulation) (citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).

²⁵ Exceptions Br. at 19.

²⁶ *U.S. Dep’t of Educ., Off. of Fed. Student Aid*, 71 FLRA 1105, 1109 n.58 (2020) (*Student Aid*) (Chairman Kiko dissenting on other grounds) (citing *U.S. Dep’t of HUD*, 66 FLRA 106, 108 (2011)).

²⁷ *U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Guaynabo, P.R.*, 72 FLRA 636, 638 (2022) (Member Abbott dissenting on other grounds) (quoting *NTEU, Chapter 299*, 68 FLRA 835, 840 (2015)).

²⁸ *Id.*; see also *U.S. DHS, U.S. CBP, U.S. Border Patrol, El Paso Sector, El Paso, Tex.*, 72 FLRA 253, 258 (2021) (Member Abbott dissenting in part on other grounds) (quoting *Def. Sec. Assistance Dev. Ctr.*, 60 FLRA 292, 293-94 (2004)).

²⁹ Exceptions Br. at 19-21 (citing the JTR; the FTR; the Fair Labor Standards Act of 1938 § 202; 29 C.F.R. Part 785; 5 C.F.R. Parts 550 & 551; www.worker.gov).

³⁰ *Id.* at 21.

³¹ *U.S. Dep’t of Educ.*, 72 FLRA 203, 205 n.30 (2021) (Chairman DuBester concurring) (denying public-policy exception that was based on same arguments denied in contrary-to-law exception); *Student Aid*, 71 FLRA at 1109 n.58 (citing *AFGE, Loc. 1698*, 70 FLRA 96, 99 (2016) (*Local 1698*)); *U.S. Dep’t of VA, Nashville Reg’l Off., Nashville, Tenn.*, 71 FLRA 1042, 1044 (2020) (Member Abbott concurring) (citing *Local 1698*, 70 FLRA at 99) (same).