73 FLRA No. 136

SOCIAL SECURITY ADMINISTRATION
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3428
(Union)

0-AR-5861

_____

DECISION

October 20, 2023

_____

Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

Arbitrator William T. S. Butler issued three awards: (1) an award (the merits award) finding the Agency discriminated, and engaged in reprisal, against an employee (the grievant); (2) an award (the compensatory-damages award) that awarded the grievant compensatory damages; and (3) an award (the punitive-damages award) that awarded the grievant punitive damages. The Agency filed exceptions to the compensatory-damages and punitive-damages awards on exceeded-authority, contrary-to-law, and essence grounds. In addition: the Union filed an opposition to the exceptions; the Arbitrator requested permission to file, and filed, two amicus-curiae (amicus) briefs; and both the Agency and the Union filed supplemental briefs addressing the Arbitrator's amicus briefs.

For the following reasons, we: (1) find the Agency's exceptions are timely filed; (2) deny the Arbitrator's request to file amicus briefs, and consider the parties' supplemental briefs only to the extent they address the appropriateness of considering the amicus briefs; (3) partially dismiss and partially deny the exceeded-authority exception; (4) grant the contrary-to-law exception and set aside the punitive-damages award; and (5) deny the essence exception.

II. Background and Arbitrator's Award

The Union filed a grievance alleging the Agency discriminated against the grievant by timing her bathroom usage, despite being aware that she had medical issues, and by retaliating against her for engaging in protected activity. The grievance requested various remedies, including that the grievant be "made whole" and receive "pecuniary and non-pecuniary damages to the maximum [extent] . . . allowed by law."[1]

The grievance went to arbitration, where the Arbitrator framed the issues, in pertinent part, as:

> [Whether] the Agency[] . . . maintained and used "a policy of timing" the [g]rievant when she goes to the bathroom . . . . Concomitant with a finding such policy and practice did exist and was directed at [the g]rievant, such resulted in her suffering discrimination because of her medical conditions, and such that the [A]gency's failure to accommodate her further exercised reprisal in carrying out any such found policy.
>
> [If so], what shall the remedy be?[2]

On December 9, 2021, the Arbitrator issued the merits award. The Arbitrator found that the Agency had a policy of timing the grievant's bathroom usage and that, by establishing that policy and "direct[ing]" it at the grievant, the Agency discriminated against the grievant "because of her medical conditions."[3] The Arbitrator also determined "the [A]gency's failure to accommodate [the grievant] further exercised reprisal in carrying out such . . . [a] policy."[4]

The Arbitrator then directed the parties to take various actions, including the following:

> Consistent with the [f]ederal Back Pay Act [(the BPA)], the [U]nion shall submit to the [Agency] and the Arbitrator such appropriate accounting that may support compensation denied or otherwise not paid [the] grievant . . . ; such submission to be completed within [forty-five] days of the date of this [a]ward. The Arbitrator will consider and decide such [BPA] claims within [fourteen] days of such receipt from the [U]nion. Review and [counterclaim], if

[1] Exceptions, Ex. 4 (Grievance) at 2.
[2] Merits Award at 2.
[3] *Id.*
[4] *Id.*

> any, may be made by the [A]gency within such time frames. Any monies due the grievant shall be processed and paid in accordance with the terms of [the BPA].[5]

The Arbitrator also stated he would "retain jurisdiction for six months from the date of this [a]ward and respond to any questions concerning its implementation raised by either party or both parties jointly."[6]

The Union submitted its claim for monetary damages on April 25, 2022, and the Agency filed an opposition on May 3, 2022. On May 4, 2022, the Arbitrator emailed the parties: "I will advise the parties of the time I require to take last steps to close" the matter.[7]

On December 16, 2022, the Arbitrator issued the compensatory-damages award. In that award, the Arbitrator rejected an Agency claim that the merits award limited the scope of monetary relief to relief available under the BPA. Instead, the Arbitrator found: the grievance concerned "discrimination claims[,] . . . not solely or exclusively those that may be brought under the" BPA; he "did not proscribe any pecuniary or non[-]pecuniary awards in this case to those strictly authorized under the BPA";[8] after the merits award's issuance, he had advised both parties that he "would draw on all appropriate authority, not just that covered by the [BPA]"[9]; and the merits award's use of the phrase "[c]onsistent with" the BPA[10] did not restrict his authority to grant monetary claims based on non-BPA authorities. In the latter regard, he stated that "[a]wards of damages outside the [BPA] are not *inconsistent* with that act – simply supported by other federal law."[11]

The Arbitrator found compensatory damages appropriate "by virtue of the Civil Rights Act of 1991, available in discrimination cases alleging a violation of Title VII [of the Civil Rights Act of 1964] or the Rehabilitation Act, such as this one does."[12] Based on the physical, mental, and emotional suffering the grievant experienced as a result of the Agency's actions, the Arbitrator awarded her $50,000 in "non-pecuniary, compensatory damages."[13] He also stated that the issue of punitive damages would be "decided in a subsequent [d]ecision."[14]

On December 30, 2022, the Arbitrator issued the punitive-damages award. Again citing the Civil Rights Act of 1991, the Arbitrator directed the Agency to pay the grievant $50,000 in punitive damages.

On February 3, 2023, the Agency filed exceptions to the compensatory-damages and punitive-damages awards. The Union filed an opposition to the exceptions on March 5, 2023. Then, on June 6, 2023, the Arbitrator requested permission to file, and filed, an amicus brief, and he filed a supplemental amicus brief on July 31, 2023. On August 15, 2023, the Agency filed a supplemental brief opposing the Arbitrator's request to file amicus briefs, and on September 6, 2023, the Union filed a supplemental brief supporting the Arbitrator's request.

III. Preliminary Matters

A. The exceptions are timely.

In its exceptions brief, the Agency argues that its exceptions are timely.[15] According to the Agency, although the punitive-damages award states the Arbitrator served that award by U.S. mail, the award "does not specify *when* it was mailed," the Agency never received it by mail, and "there is no evidence" it was actually mailed.[16] Nevertheless, "presum[ing]" the Arbitrator mailed a copy on December 30, 2022, the Agency asserts its exceptions are timely relative to that date.[17] In addition, the Agency contends the Arbitrator did not email the award until January 10, 2023.[18]

In its opposition, the Union argues the Agency's exceptions are untimely relative to the date of service of the *compensatory*-damages award.[19] However, there is no basis for assessing the exceptions' timeliness relative to that award. In that award, the Arbitrator clearly stated that the issue of punitive damages would be "decided in a subsequent [d]ecision."[20] As the compensatory-damages award left open an issue for resolution, that award was not final for purposes of filing exceptions.[21]

On March 9, 2023, the Authority issued an order directing the Agency to show cause why its exceptions should not be dismissed as untimely relative to the *punitive*-damages award.[22] On March 21, 2023, the Agency filed a response. In that response, the Agency

[5] *Id.* at 16.
[6] *Id.*
[7] Exceptions, Ex. 5 at 1.
[8] Compensatory-Damages Award at 2.
[9] *Id.*
[10] Merits Award at 16.
[11] Compensatory-Damages Award at 3 (emphasis added).
[12] *Id.* at 3-4.
[13] *Id.* at 5.
[14] *Id.* at 4.
[15] Exceptions Br. at 5-6.
[16] *Id.* at 5 (emphasis added).
[17] *Id.*
[18] *Id.*
[19] Opp'n at 3.
[20] Compensatory-Damages Award at 4.
[21] *AFGE, Loc. 3954*, 73 FLRA 39, 40-41 (2022) (*Local 3954*) ("[A]n award is considered final for purposes of filing exceptions when it fully resolves all issues submitted to arbitration.").
[22] Order to Show Cause (Order) at 1.

reiterates that it never received a mailed copy of the punitive-damages award[23] and that it did not receive the emailed copy of that award until January 10, 2023.[24] The Agency provided a copy of a January 10 email from the Arbitrator, transmitting that award.[25]

Section 7122(b) of the Federal Service Labor-Management Relations Statute and § 2425.2(b) of the Authority's Regulations require parties to file exceptions within thirty days after the date of service of an arbitrator's award.[26] When the award is served by email, the date of service is the date the email is transmitted to the parties.[27] When the award is served by regular mail, the date of service is the postmark date or, if there is no legible postmark, then the date of the award.[28]

The punitive-damages award is dated December 30, 2022, and pertinently says: "Copies delivered by electronic mail and by the United States Postal Service," without specifying *when* they were delivered.[29] The Agency has provided sufficient evidence that the punitive-damages award was not emailed until January 10, 2023.[30] Assuming the January 10 email was the first method of service, then, applying the Authority's Regulations, the exceptions would have been due on or before February 9, 2023.[31] Alternatively, assuming the Arbitrator actually mailed the punitive-damages award on December 30, 2022, and that was the first method of service, then – applying the Authority's Regulations – the exceptions were due on or before February 6, 2023.[32]

The Agency filed its exceptions on February 3, 2023. Thus, regardless of whether the punitive-damages award was first served by email on January 10, 2023, or by U.S. mail on December 30, 2022, the exceptions were timely. Accordingly, we consider them.

B. We deny the Arbitrator's request to file amicus briefs.

The Arbitrator states that he is requesting permission to file amicus briefs because he wants to address "factual issues excluded from the [e]xcepting party's filings as well as reinforcement of communications formally provided to the [p]arties."[33] The Agency opposes the request, arguing that: the Arbitrator is not an "interested person" under § 2429.9 of the Authority's Regulations;[34] and the parties' collective-bargaining agreement, and the Federal Mediation and Conciliation Service's "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes," bar the briefs.[35] According to the Agency, the Arbitrator "has forsaken his assigned role as an impartial adjudicator and improperly inserted himself into this action as a litigant."[36] By contrast, the Union supports the Arbitrator's request, stating that the Authority should consider the amicus briefs because they demonstrate that the Agency "omitted key information and emails" in its exceptions.[37]

Section 2429.9 of the Authority's Regulations pertinently provides that, "[u]pon petition of an interested person, . . . *and as the Authority deems appropriate*, the Authority *may* grant permission for the presentation of written and/or oral argument . . . by an amicus."[38] As § 2429.9's plain wording indicates, grants or denials of amicus status are at the Authority's discretion. Exercising that discretion, the Authority has, in appropriate cases,

---

[23] Agency Resp. to Order (Agency Resp.) at 4.
[24] *Id.* at 6.
[25] Agency Resp., Ex. 9 at 1.
[26] 5 U.S.C. § 7122(b); 5 C.F.R. § 2425.2(b).
[27] 5 C.F.R. § 2425.2(c).
[28] *Id.* § 2425.2(c)(1).
[29] Punitive-Damages Award at 5.
[30] *See, e.g.*, *AFGE, Loc. 2959*, 70 FLRA 309, 310 (2017) (relying on party's submission of email transmission of arbitration award to find exceptions timely).
[31] *See* 5 C.F.R. § 2429.21(a)(1)(i)-(v) (explaining how to calculate the thirty-day filing period).
[32] *Id.* § 2429.21(a)(1)(iii) ("[T]he first day of the filing period . . . is the day after, not the day of, the triggering event, and constitutes the first day of the filing period even if it is a Saturday, Sunday, or federal legal holiday."); *id.* § 2429.21(a)(1)(v) (If the last day of the filing period "fall[s] on a Saturday, Sunday, or federal legal holiday . . . then find the next day on the calendar that is not a Saturday, Sunday, or federal legal holiday[, and y]our filing is due on that day (unless you are entitled to an additional [five] days under § 2429.22)."); *id.* § 2429.22(a) ("[I]f you are filing a document with the FLRA in response to a document that has been served on you by first-class mail . . . [f]irst, look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine what normally would be your due date. Second, starting with the next calendar day, which will be day one, count forward on the calendar, including Saturdays, Sundays, and federal legal holidays . . . . If day five is a Saturday, Sunday, or federal legal holiday, then find the next calendar day that is not a Saturday, Sunday, or federal legal holiday; your filing is due with the FLRA on that day.").
[33] June 6, 2023 Pet. to File Amicus Br. at 1.
[34] Agency's Opp'n to Amicus Br. at 2.
[35] *Id.* at 3-4.
[36] *Id.* at 1.
[37] Union's Resp. to Amicus Br. at 1-2.
[38] 5 C.F.R. § 2429.9 (emphasis added).

granted amicus status to organizations and individuals.[39] In other cases, the Authority has denied such status.[40]

However, the Authority has not previously addressed a *decisionmaker's* request for amicus status in a case involving an appeal of the decisionmaker's *own decision*. The Authority did grant an arbitrator amicus status in one case – *U.S. Department of the Air Force, Seymour Johnson Air Force Base, North Carolina* (*Johnson AFB*)[41] – but that case did not involve exceptions to the requesting arbitrator's award. The grievance in *Johnson AFB* concerned an agency's refusal to pay an arbitrator's (the first arbitrator's) bill of costs.[42] A *different* arbitrator (the second arbitrator) resolved that grievance and issued the award at issue on exceptions. In those circumstances – and noting that neither party objected to the first arbitrator filing an amicus brief – the Authority exercised its discretion to accept the first arbitrator's brief.[43]

In the current case, the Arbitrator is requesting to file amicus briefs to supplement the record and bolster his *own* award. However, an arbitrator's role is that of an impartial decisionmaker,[44] not an appellate advocate for their own award.[45] In our view, even if the Arbitrator has a personal interest in seeing his award upheld, that does not provide a sufficient basis for allowing him to participate in appellate proceedings before us.[46] Further, even if a party's arbitration exceptions are inaccurate or incomplete, there already is a remedy for that: The opposing party – an actual "*party*" before us[47] – may file an opposition calling attention to those deficiencies.

For these reasons, we find that granting the Arbitrator's request to file amicus briefs would not be "appropriate" within the meaning of § 2429.9 of the Authority's Regulations.[48] Accordingly, we reject that request and do not consider his briefs. Further, we consider the parties' supplemental briefs only to the extent

---

[39] *See, e.g.*, *U.S. DHS, Transp. Sec. Admin.*, 65 FLRA 242, 242 (2010) (Member Beck dissenting on other grounds) (in representation case, granting National Right to Work Legal Defense Foundation's request for permission to file an amicus brief); *NAGE, Loc. R3-77*, 60 FLRA 258, 258 n.1 (2004) (in motion for reconsideration of arbitration case, granting an individual permission to file an amicus brief); *POPA*, 59 FLRA 331, 331 n.2 (2003) (Member Pope concurring in part and dissenting in part on other grounds) (in negotiability case, granting the Office of Government Ethics permission to file amicus brief); *AFGE, Loc. 12*, 38 FLRA 1573, 1573 (1991) (in arbitration case, granting the Disabled Veterans of America's motion to file amicus brief); *U.S. DOL, Off. of the Solic., Arlington Field Off.*, 37 FLRA 1371, 1372 (1990) (in representation case, granting the Department of Justice's request for permission to file an amicus brief); *U.S. DOD, Def. Logistics Agency, Def. Gen. Supply Ctr., Richmond, Va.*, 37 FLRA 895, 902 (1990) (in unfair-labor-practice (ULP) case, granting the Office of Personnel Management's (OPM's) request for permission to file amicus brief); *SSA*, 33 FLRA 743, 752 (1988) (in arbitration case, granting the National Treasury Employees Union's and an individual's requests to file amici briefs); *Ass'n of Civilian Technicians, Mont. Air Chapter*, 20 FLRA 717, 727 n.17 (1985) (in negotiability case, granting the National Federation of Federal Employees permission to file amicus brief); *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 19 FLRA 586, 586 n.1 (1985) (in ULP case, granting the American Federation of Government Employees and the International Association of Machinists and Aerospace Workers, AFL-CIO permission to file amici briefs); *IRS*, 17 FLRA 731, 731 n.1 (1985) (in ULP case, granting OPM, the Department of Agriculture, the Department of Health and Human Services, the Department of Interior, and the Department of Energy permission to participate as amici); *Long Beach Veterans Admin. Med. Ctr., Long Beach, Cal.*, 7 FLRA 434, 434 n.1 (1981) (in representation case, granting the American Hospital Association and Association of American Medical Colleges permission to participate as amici).

[40] *NTEU*, 60 FLRA 782, 782 n.2 (2005) (Authority denied OPM's request for amicus status because "Authority precedent supports OPM's claim" and "granting OPM's request would delay the processing of this case"); *Fed. Grain Inspection Serv.*, 26 FLRA 582, 582 n.* (1987) (Authority denied OPM's request for amicus status, stating: "As our decision resolving the exceptions indicates, we have fully considered the issues about which OPM wishes to express its view. In view of our disposition of this case, we deny the request.").

[41] 57 FLRA 847 (2002) (Member Pope dissenting on other grounds).

[42] *Id.* at 847-48.

[43] *Id.* at 847 n.2.

[44] *See, e.g.*, *NFFE, Loc. 1804*, 66 FLRA 700, 702 (2012) ("[F]ederal courts have held that arbitrators are required only to grant parties a fundamentally fair hearing which provides adequate notice, a hearing on the evidence, and an *impartial* decision by the arbitrator." (emphasis added)); *USDA, Animal & Plant Health Inspection Serv., Plant Prot. & Quarantine*, 57 FLRA 4, 5 (2001) ("[A]rbitrators are required to exercise . . . impartial judgment on issues before them.").

[45] *See* Fed. Mediation and Conciliation Serv., Arbitrator Code of Professional Responsibility ¶ 6.F.1 (2007), https://www.fmcs.gov/services/arbitration/arbitrator-code-professional-responsibility/ ("The arbitrator's responsibility does not extend to the enforcement of an award."); *id.* ¶ 6.F.2 ("In view of the professional and confidential nature of the arbitration relationship, an arbitrator should not voluntarily participate in legal enforcement proceedings.").

[46] *Cf. AFGE, Loc. 2206*, 71 FLRA 938, 938 (2020) (Even a grievant, who arguably has at least as much interest in the resolution of arbitration exceptions as an arbitrator does, "cannot file exceptions to an arbitration award unless authorized by [their] union to do so.").

[47] 5 C.F.R. § 2425.3(a) ("A party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an opposition to an exception that has been filed under § 2425.2 of this part."); *id.* § 2421.11(b)(3)(ii) (defining "party" to include any person who "participated as a party" in a matter where an arbitration award was issued).

[48] *Id.* § 2429.9

they address the appropriateness of granting the Arbitrator's request – not to the extent they address the merits of this case.[49]

C. Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar one of the Agency's exceeded-authority arguments.

The Agency argues that, in the merits award, the Arbitrator retained jurisdiction for only six months.[50] According to the Agency, when those six months expired, the Arbitrator was "functus officio" – and, thus, exceeded his authority by issuing the compensatory-damages and punitive-damages awards.[51]

Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any arguments that could have been, but were not, presented to the arbitrator.[52] This includes arguments that an arbitrator is "functus officio."[53]

As discussed above, in the merits award – issued on December 9, 2021 – the Arbitrator stated he was retaining jurisdiction for six months. On May 4, 2022 – almost five months into that retention of jurisdiction – the Arbitrator emailed the parties that he would "advise the[m] . . . of the time [he would] require to take last steps to close" the matter.[54] On December 16, 2022 – more than a year after the merits award – the Arbitrator issued the compensatory-damages award and stated that the issue of punitive damages would be "decided in a subsequent [d]ecision."[55] Then, on December 30, 2022, the Arbitrator issued the punitive-damages award. In its opposition, the Union claims, without dispute or conflicting record evidence, that: "[t]he hearing was held during the COVID-19 pandemic"; "[t]he [A]rbitrator informed the parties on at least three occasions that either his assistant suffered a serious health condition or that he himself was ill"; and "[t]his delayed his issuance of a decision."[56]

The Agency does not claim or provide any evidence that, at any time throughout the entire process discussed above, it argued to the Arbitrator that he was improperly extending his original, six-month retention of jurisdiction. The Agency could have done so. Therefore, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the Agency's functus-officio argument, and we partially dismiss the exceeded-authority exception.

IV. Analysis and Conclusions

A. The punitive-damages award is contrary to law.

The Agency argues the punitive-damages award is contrary to law because punitive damages are not authorized against the federal government.[57] The Authority has stated that punitive damages are not available in discriminatory-conduct cases brought against federal agencies.[58] In this regard, the Civil Rights Act of 1991 states that "[a] complaining party may recover punitive damages under this section against a respondent (*other than* a government, government agency or political subdivision)."[59] As the Arbitrator relied on the Civil Rights Act of 1991 to award punitive damages,[60] the punitive-damages award is contrary to law. Therefore, we set aside that award.[61]

B. The Arbitrator did not exceed his authority by awarding compensatory damages.

The Agency argues the Arbitrator exceeded his authority by not limiting his remedies to those available under the BPA.[62] According to the Agency, the merits award "suggests that the Arbitrator intended it to contain the final determination of the merits and the scope of the remedy,"[63] because it "unequivocally set forth two issues that he considered and resolved": whether the Agency maintained a policy and what the remedy should be.[64] The Agency cites the Arbitrator's "[c]onsistent with" paragraph, which was about backpay, and claims that "[a]t no point in [the merits award] did the Arbitrator express an intention to award compensatory damages or request arguments or submissions from the parties on this issue."[65]

---

[49] *Cf. AFGE, Loc. 900*, 46 FLRA 1494, 1497 (1993) (considering party's additional submissions only to the extent they addressed deficiencies identified in an Authority order).
[50] Exceptions Br. at 12.
[51] *Id.* at 12-13.
[52] 5 C.F.R. §§ 2425.4(c), 2429.5.
[53] *See U.S. DHS, U.S. CBP*, 68 FLRA 253, 256 (2015) (dismissing functus-officio argument that could have been, but was not, presented to the arbitrator); *U.S. Dep't of the Army, Womack Army Med. Ctr., Fort Bragg, N.C.*, 65 FLRA 632, 633-34 (2011) (same).
[54] Exceptions, Ex. 5 at 1.
[55] Compensatory-Damages Award at 4.
[56] Opp'n at 5.
[57] Exceptions Br. at 9-10.
[58] *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div., Austin, Tex.*, 64 FLRA 39, 57 (2009).
[59] 42 U.S.C. § 1981a(b)(1).
[60] Punitive-Damages Award at 4.
[61] As such, we find it unnecessary to resolve the Agency's remaining exceptions to the extent they challenge that award. *See U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 72 FLRA 200, 201 n.14 (2021) (Member Abbott concurring) (finding it unnecessary to resolve remaining exceptions after setting aside award).
[62] Exceptions Br. at 10-11.
[63] *Id.* at 10.
[64] *Id.*
[65] *Id.* at 11.

Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to persons who are not encompassed by the grievance.[66] However, arbitrators have broad discretion to fashion remedies they consider appropriate.[67]

As stated above, the grievance requested various remedies, including not only that the grievant be "made whole," but also that she receive "pecuniary and non-pecuniary damages to the maximum [extent] . . . allowed by law."[68] In the merits award, absent a stipulation by the parties, the Arbitrator framed the issues as including what would be an appropriate remedy for the Agency's violations. Also in that award, the Arbitrator sustained the grievance but did not actually issue any monetary remedies. Instead, he directed the parties to take certain actions "[c]onsistent with" the BPA, and retained jurisdiction so he could "respond to any questions concerning its implementation raised by either party or both parties jointly."[69] Thus, the merits award did not completely resolve the issue of appropriate remedies. Although that award directed the grievant to submit claims "consistent with" the BPA,[70] it did not contain any language indicating that other types of monetary remedies were foreclosed.

The Agency does not demonstrate that the Arbitrator failed to resolve an issue submitted to arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his authority, or awarded relief to persons who are not encompassed by the grievance. Again, the Arbitrator had broad discretion to grant remedies for the violations he found.[71] Accordingly, we reject this exceeded-authority argument.

C. The compensatory-damages award draws its essence from the parties' agreement.

The Agency argues the compensatory-damages award fails to draw its essence from the parties' agreement.[72] The Agency asserts that Article 25, Section 5(G) of the agreement requires the Arbitrator to issue a "final and binding" decision "as soon as possible."[73] The Agency also asserts Article 25, Section 5(H) provides, "If the arbitration award is unclear to either party, the award shall be returned to the arbitrator for clarification."[74] According to the Agency, the Arbitrator did not limit his compensatory-damages award to "clarification" of the merits award,[75] but "awarded [an] entirely new form of monetary relief."[76] By doing so, the Agency claims, the Arbitrator "modified" the agreement, in violation of Article 25, Section 7's prohibition against "modify[ing] any terms of" the agreement.[77]

The Authority will find an arbitration award fails to draw its essence from a collective-bargaining agreement when the appealing party establishes 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.[78] Under Authority precedent, arguments based on a misunderstanding of an award do not demonstrate that an award fails to draw its essence from an agreement.[79]

The Agency does not explain how the award fails to comply with the requirement that the Arbitrator issue a "final and binding" decision "as soon as possible."[80] Therefore, we reject that argument as unsupported.[81]

With respect to the Agency's remaining essence arguments, as discussed above, the merits award neither completely resolved the issue of appropriate remedies nor clearly indicated that the Arbitrator intended to limit any remedies to those available under the BPA. Thus, the Agency provides no basis for finding the Arbitrator was limited to "clarifying" the merits award or to awarding only remedies under the BPA. As such, we also reject these essence arguments.

For the above reasons, we deny the essence exception.

---

[66] *Local 3954*, 73 FLRA at 42.
[67] *NTEU*, 73 FLRA 431, 433 (2023) (*NTEU*).
[68] Grievance at 2.
[69] Merits Award at 16.
[70] *Id.*
[71] *NTEU*, 73 FLRA at 433.
[72] Exceptions Br. at 13.
[73] *Id.* at 14.
[74] *Id.* at 14 n.3.
[75] *Id.* at 14.
[76] *Id.*
[77] *Id.*
[78] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 624, 625-26 (2023).
[79] *AFGE, Loc. 3601*, 73 FLRA 515, 518 (2023).
[80] Exceptions Br. at 14.
[81] 5 C.F.R. § 2425.6(e)(1) ("An exception may be subject to . . . denial if . . . [t]he excepting party fails to . . . support" an argument that an award is deficient under a recognized ground for review.); *see also U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 73 FLRA 620, 622-23 (2023) (denying exceptions as unsupported under 5 C.F.R. § 2425.6(e)(1)).

V. Decision

We grant the Agency's contrary-to-law exception, set aside the punitive-damages award, and partially dismiss and partially deny the Agency's remaining exceptions.