

CASE DIGEST: *U.S. Dep't of HUD, 72 FLRA 450 (2021) (Chairman DuBester dissenting)*

An unambiguous contract provision does not become ambiguous simply because an Arbitrator finds that it is. Although the parties' agreement required a party to provide written notice in order to invoke arbitration, the Arbitrator relied on past practice and found that the Union properly invoked arbitration even though it bypassed the step requiring that it give notice to the Agency and instead submitted a form to the Federal Mediation and Conciliation Service. The Authority found that the Arbitrator ignored the plain wording of the provision when he found that the provision was ambiguous. Therefore, the Arbitrator could not rely on past practice to conclude that the Union properly invoked arbitration. Accordingly, the Authority granted the Agency's essence exception and set aside the award.

Chairman DuBester dissented, finding that the Arbitrator's determination that the provision at issue was ambiguous was supported by the record and unchallenged factual findings. Therefore, Chairman DuBester would have denied the Agency's essence exception.

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.