65 FLRA No. 181

SOCIAL SECURITY ADMINISTRATION
REGION IX
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 220
(Union)

0-AR-4334

_____

DECISION

May 27, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members[1]

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Thomas H. Hemer filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

The Union filed a grievance alleging that the Agency suspended an employee without just cause, in violation of the parties' collective bargaining agreement (Agreement). The Arbitrator sustained the grievance and directed the Agency to compensate the grievant for lost pay and benefits and to remove the suspension from its records. For the reasons that follow, we deny the Agency's exceptions.

II. Background and Arbitrator's Award

The Agency suspended the grievant for misconduct related to her government credit card (Card). Award at 2. In this regard, the Agency alleged that the grievant: (1) used the Card while serving as a delegate to a Union caucus – an activity for which she had not scheduled official time or received Agency travel orders, *id.* at 5; (2) used the Card to purchase an airline ticket for another employee, *id.* at 2; and (3) failed to pay the Card bill in a timely manner, *id.* at 2. The Union filed a grievance contending, as relevant here, that the Agency punished the grievant for authorized uses of the Card. *See id.* at 3. The grievance was unresolved and submitted to arbitration on the stipulated issue of whether there was "just [c]ause for the . . . suspension of the [g]rievant[;]" and, "[i]f not, what shall the [r]emedy be?" *Id.* at 1.

A. Card Terms and Conditions

The Arbitrator examined the grievant's application for the Card (Application),[2] as well as the terms and conditions that appeared on the Application (Application Terms), which stated, in pertinent part, "By signing below, I . . . agree to use the [C]ard for *official travel* and *official travel related expenses* and to be bound by the . . . attached [a]greement governing the use of the [Card] . . . ." *Id.* at 3 (emphases added) (quoting "Government Card Application and Agreement"). In order to determine the meaning of the phrase "official travel[,]" the Arbitrator considered the "Title/Rank" assigned to the grievant on the Application. *Id.* In this regard, he found that the Application listed the grievant as "Claims Rep[resentative]/Union Rep[resentative]," which "establish[ed]" that the Card's authorized uses included travel and travel related expenses for "legitimate government business," including "both [o]fficial Agency and [o]fficial Union duties." *Id.* at 3-6. Consequently, the Arbitrator found that when the grievant traveled in connection with "official [U]nion duties," she engaged in "official travel," and the expenses she incurred because of that "official (Union) travel" constituted "official travel related expenses." *Id.* at 5-6. Although the Arbitrator also reviewed a "set of rules" that the Agency attached to the Application,[3] he concluded that those rules did "not

1. Member Beck's dissenting opinion is set forth at the end of this decision.

2. Although the Card Application and the "Citibank [Card] Program[,] Employee Information Packet" (hereinafter "Citi EIP"), *see* Exceptions, Attach., Agency Ex. 3, are part of "a commercial agreement . . . between the [g]rievant and a [c]redit [c]ard [c]ompany," the federal government "sponsored" that commercial agreement, and the Agency "enforce[s]" the provisions of the Card Application and Citi EIP as "condition[s] of employment." Award at 2.

3. The Arbitrator expressed some "doubt as to the admissibility of the [set of] rules" contained in the Citi EIP. *See* Award at 3-4. The Arbitrator noted that, although the Agency attached the Citi EIP to a copy of the grievant's Card Application and presented the Application and

alter the [Card's] original purpose[,]" as indicated by the Application itself. *Id.* at 3-4. The Arbitrator then proceeded to evaluate the Agency's allegations against the grievant, in accordance with his findings on the Card terms and conditions.

B. Agency's Allegations Against the Grievant

With regard to the grievant's use of the Card while serving as a delegate to a Union caucus, the Arbitrator concluded that the caucus involved internal Union business and occurred when the grievant would not otherwise have been in duty status. *Id.* at 5-6. The Arbitrator explained that, under the Agreement, the grievant could perform Union representational and labor-management functions on "official time" – when she "would otherwise be in duty status" – but the Statute required the grievant to conduct any internal Union business when she was in "non-duty status[.]" *Id.* at 4 (quoting 5 U.S.C. § 7131(b); Agreement, Art. 30, § 6(B)). As such, he found that the grievant could not have scheduled – and, thus, had no obligation to schedule – official time in order to make authorized use of the Card at the caucus. *Id.* at 5-6. Moreover, because the grievant, as a caucus delegate, performed "official [U]nion duties" while "on travel status, under the direction and control of the Union[,]" the Arbitrator found that the grievant had received the necessary "official (Union) travel" orders to "authorize[]" her use of the Card. *Id.* at 5-7. In this regard, the Arbitrator found that the grievant would receive travel orders from the Union in order to perform official duties under the Union's control, and she would receive travel orders from the Agency in order to perform official duties under the Agency's control. *Id.* at 5-6. The Arbitrator found further that, because the grievant did not seek reimbursement from the Agency for her expenses in connection with the Union caucus, charging those expenses to the Card did not "require specific authorization by anyone other than the [U]nion." *Id.* at 7. Thus, he concluded that the grievant used the Card for "official travel related expenses[,]" as she had a "right" to do under the "[c]redit [c]ard [a]greement[,]" including the Application Terms. *Id.* at 6-7.

Regarding the allegation that the grievant used the Card to purchase an airline ticket for another employee, *see id.* at 2, the Arbitrator determined that the grievant used the Card merely to reserve a ticket at a guaranteed favorable rate for another Union representative, and the airline "erroneously . . . conver[ted] . . . this guarantee into payment for the ticket[.]" *Id.* at 7. The Arbitrator found that the airline's "mistake . . . did not constitute 'misconduct'" by the grievant. *Id.*

As for the allegation that the grievant did not timely pay Card bills, the Arbitrator noted that the Agency had submitted its own reports of the grievant's account payment history, but not the credit card company's "official" account records. *Id.* at 7-8. Unlike "competent evidence" regarding the grievant's Card account, the Arbitrator found that the Agency reports constituted "hearsay" and lacked the details that the Arbitrator required to evaluate the alleged payment delinquencies, such as "[h]ow many late charges were imposed" and whether "punitive interest was applied[.]" *Id.* Therefore, he found that the Agency did not satisfy its burden of proving the allegation of payment delinquency. *Id.*

Based on the evidence and his "examination of . . . the Agreement and the Statute[,]" the Arbitrator concluded that "[j]ust [c]ause for the . . . suspension of the [g]rievant ha[d] not been established[,]" and he directed the Agency to compensate the grievant for lost pay and benefits and to remove the suspension from its records. *Id.* at 8.

III. Positions of the Parties

A. Agency's Exceptions

The Agency contends that the award is contrary to Agency rules, which the Agency states are based on the Federal Travel Regulation (FTR), Exceptions at 9, according to which employees "*must* have official travel orders to use the [C]ard *at all*[,]" *id.* at 7, and must "restrict the use of [the Card] to 'official travel related purposes[,]'" *id.* at 9. *See also id.* at 3-4 (citing Citi EIP, Agency Ex. 3 (Attach.) at 13-14), 8-9 (citing 41 C.F.R. § 301-51.6 (FTR); Admin. Instructions Manual Sys.

Citi EIP together as a single exhibit at arbitration, the "set of rules" contained in the Citi EIP governed accounts with Citibank, whereas the Application signed by the grievant indicated that her Card would be governed by rules for accounts with American Express. *See id.*

(AIMS), Agency Ex. 9 (Attach.) at 2).[4] According to the Agency, the grievant did not have travel orders for the Union caucus, and her attendance at the caucus did not constitute "official travel," within the meaning of Agency rules. *Id.* at 9. The Agency also contends that the award is contrary to management's right to discipline employees for "just cause" because the Arbitrator allegedly determined that "the Agency had no right to control [the grievant's] use of [the Card] when she was performing Union activities in an off-duty status." *Id.* at 7-8 (citing 5 U.S.C. § 7106(a)(2); Agreement, Art. 23, § 1). The Agency adds that the Arbitrator exceeded his authority because the award is contrary to management's right "to discipline its own employee[.]" *Id.* at 8.

In addition, the Agency asserts that the Arbitrator exceeded his authority by deciding an issue not before him – specifically, whether the Agency could "control" the grievant's Card use – rather than the stipulated issue of whether the grievant's actions warranted the discipline imposed. *Id.* at 7-10. As the result of deciding an issue not found in the grievance, the Agency asserts that the Arbitrator incorrectly determined that the Agency could not control the grievant's use of the Card. *Id.* at 7. The Agency further asserts that, although it did not allege that the grievant "should have [been on] official time" when she used the Card, the Arbitrator exceeded his authority by finding that the Agency failed to prove such an allegation. *Id.* at 9-10.

Moreover, the Agency argues that the award is based on nonfacts because the Arbitrator "completely ignored[,]" "inappropriately dismissed . . . as 'hearsay[,]'" or "apparently missed" the Agency's witness testimony and email exhibits allegedly establishing the grievant's delinquency in paying her Card bills. *Id.* at 10-11. The Agency argues that "a different result would have been reached" if the Arbitrator had considered all of the "pertinent, material evidence[.]" *Id.* at 11-12.

B. Union's Opposition

The Union contends that the exceptions mischaracterize the award as exempting Union officers from discipline. Opp'n at 9, 14, 21. Instead, the Union asserts that the award reflects the Arbitrator's findings that: (1) the grievant was authorized to use the Card at the Union caucus; (2) a mistake by an airline company did not constitute misconduct by the grievant; and (3) the Agency's hearsay evidence failed to establish bill payment delinquencies warranting a suspension. *See id.* at 8, 10, 14, 17-19. The Union further asserts that the exceptions inappropriately seek to re-evaluate the

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4. Among others, the Agency cites the following provisions of the Citi EIP to support its contention that the award is contrary to Agency rules:

> *How is the Card to be Used?*
> The [Card] should be used to pay for major expenses connected with official [g]overnment travel (lodgings, meals, automobile rentals, etc.)
>
> . . . .
>
> *What Restrictions Apply to the Use of [the Card]?*
> [The Card] may be used to pay *only* for expenses authorized on your travel order for the purpose of conducting official [g]overnment business . . . .

Exceptions, Attach., Agency Ex. 3 at 13-14 ("Responses to Questions Most Commonly Asked").

As additional support for its contention that the award is contrary to Agency rules, the Agency cites the following provisions from its Administrative Instructions Manual System (AIMS):

> 07.32.02 *Policy*
>
> . . . .
>
> C. The [Card] shall be used only for authorized official travel expenses . . . as indicated on the travel order and approved by the travel authorizing official for employees under their line of authority. Employees are not authorized to use the [C]ard for family members, other persons, or personal expenses.
>
> . . . .
>
> 07.32.07 *Employee Rights and Obligations*
>
> . . . .
>
> C. The [Card] . . . [is] not to be used for . . . personal purposes and may only be used in connection with official [g]overnment travel. The [Card] may only be used for expenses authorized on a travel order . . . .

Exceptions, Attach., Agency Ex. 9 at 2, 4 (AIMS: "Government Contractor-Issued Charge Card Program").

Moreover, the Agency asserts that 41 C.F.R. § 301-51.6 supports its contention that the award is contrary to Agency rules. The pertinent wording of that provision is set forth *infra* Part IV.A.1.

Arbitrator's credibility determinations, factual findings, and determinations regarding the weight of evidence. *Id.* at 9, 11, 13, 15, 17-18, 19.

IV. Analysis and Conclusions

A. The award is not contrary to law, rule, or regulation.

The Agency asserts that the award is contrary to its rules, which are based on the FTR, and that the award is contrary to management's rights under the Statute. 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. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. *See U.S. Dep't of Def., Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998) (*Ala. Nat'l Guard*). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.*

1. The award is not contrary to Agency rules.

As to the Agency's assertions that the award is contrary to its rules, absent circumstances not relevant in this case, an arbitration award that conflicts with a governing agency rule or regulation will be found deficient under § 7122(a)(1) of the Statute. *See U.S. Dep't of the Army, Fort Campbell Dist., Third Region, Fort Campbell, Ky.*, 37 FLRA 186, 191-95 (1990). Because the Union does not dispute the Agency's contention that it may enforce the terms of the credit card agreement as Agency rules, we review the Arbitrator's interpretation of the credit card agreement as we would review an arbitral interpretation of Agency rules.

The Authority has held that arbitrators are empowered to interpret and apply agency rules in the resolution of grievances under the Statute. *See U.S. Dep't of Justice, Immigration & Naturalization Serv., Wash., D.C.*, 48 FLRA 1269, 1275 (1993) (*INS*). When evaluating exceptions asserting that an award is contrary to a governing agency rule or regulation, the Authority will determine whether the award is inconsistent with the plain wording of, or is otherwise impermissible under, the rule or regulation. *See U.S. Dep't of the Treasury, Internal Revenue Serv., Ogden Serv. Ctr., Ogden, Utah*, 42 FLRA 1034, 1056-57 (1991) (*IRS, Ogden*).

The Agency contends that the award is contrary to several of its rules restricting permissible uses of the Card to "'official [government] travel related purposes'" that have been authorized by "official travel orders" for the performance of "official [g]overnment business[.]" Exceptions at 3-4, 7-9; *see also supra* note 4 (text of rules in Citi EIP and AIMS). However, the Arbitrator found that the grievant complied with those Card use restrictions. *See* Award at 5-7. Significantly, the Agency rules do not define the terms "official travel," "official travel related expenses," or "government business," and, as a result, the Arbitrator had to determine the meaning to those terms in order to apply them to the particular circumstances at issue. *See INS*, 48 FLRA at 1275 (arbitrators may interpret agency rules). The Arbitrator first determined that the term "official travel" includes "official (Union) travel[.]" Award at 5-6. Employing that definition of "official travel," the Arbitrator found that the grievant attended the caucus "on travel status, under the direction and control of the Union." *Id.* at 7. The Arbitrator thus concluded that the grievant used the Card for "official travel related expenses" authorized by "official (Union) travel" orders, in the performance of "legitimate government business," *id.* at 4-6, and that the grievant's "official travel related expenses" did not require additional authorization from the Agency because the grievant did not request Agency reimbursement for those expenses, *id.* at 6-7. Because the Agency rules do not define the relevant terms – and, thus, do not provide an interpretation of those terms that differs from the Arbitrator's – the Agency does not demonstrate that the Arbitrator erred in concluding that the grievant complied with the Agency's Card use rules.

Although the Agency further asserts that 41 C.F.R. § 301-51.6 supports finding that the award is contrary to Agency rules, that provision limits Card use to "official travel related expenses" in the same manner as the Agency rules discussed above. In this regard, throughout 2002, 2003, and 2004 – i.e., the years during which events gave rise to the grievance – 41 C.F.R. § 301-51.6 stated: "*May I use the Government contractor-issued travel charge card for purposes other than those associated with official travel?* No, the Government contractor-issued travel charge card may be used only for official travel related expenses." 41 C.F.R. § 301-51.6 (2004) (year in which Agency initiated disciplinary actions related to grievant's Card activity); *id.* (2003) (year in which grievant used Card to reserve guaranteed favorable

rate for another Union representative); *id.* (2002) (year of grievant's Card use at caucus, which was one ground Agency cited for initiating discipline). As discussed previously, the Arbitrator expressly found that the grievant used the Card for "official (Union) travel" in connection with the caucus and that the charges she incurred during that travel constituted "official travel related expenses[,]" for which she was "authorized" to use the Card. Award at 6. In addition, the Agency does not identify any wording in the FTR – as it existed at the time of the events that gave rise to the grievance – precluding a finding that "official (Union) travel" may constitute "official travel" or that "official travel related expenses" may include "official (Union) travel" related expenses. *Id.* Thus, the Agency does not demonstrate that the Arbitrator's finding that the grievant was authorized to charge "official (Union) travel" related expenses to the Card is contrary to 41 C.F.R. § 301-51.6, which limits Card use to "official travel related expenses."

We note that, while the exceptions in this case were pending before the Authority, the General Services Administration (GSA) amended the FTR. *See* 75 Fed. Reg. 24434 (May 5, 2010). In particular, the FTR amendments rephrased 41 C.F.R. § 301-51.6 and, *for the first time*, explicitly limited "official travel" to "[t]ravel under . . . the direction of a Federal agency." *See* 75 Fed. Reg. at 24,435. In amending the FTR, the GSA stated that the newly added definition of "official travel" applied only to "travel performed on and after June 4, 2010[,]" *id.* at 24,434, which would not include the grievant's travel at issue here. The Authority has previously held that, in the absence of any indication that amendments to governing legal provisions were intended to be applied retroactively, the Authority should apply the pre-amended versions of those provisions, as they existed when events gave rise to the grievance, in order to determine whether an award is consistent with the applicable legal standard. *See U.S. Dep't of the Interior, Bureau of Mines, Pittsburgh Research Ctr.*, 53 FLRA 34, 38 n.1 (1997) (*Bureau of Mines*) (applying pre-amended version of statute to evaluate whether award was contrary to law). As the final rule amending the FTR makes clear that retroactive application is not warranted, *see* 75 Fed. Reg. at 24434, and consistent with *Bureau of Mines*, 53 FLRA at 38 n.1, we do not rely upon the amended FTR in our evaluation of the Agency's exceptions. *See U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot.*, 65 FLRA 356, 360 (2010) (in light of explanation of Office of Personnel Management that its regulatory amendments should not have retroactive effect, Authority declined to apply amendments retroactively when determining whether award was contrary to law). As discussed above, under the pre-amended version of the FTR, the Arbitrator's findings satisfy the FTR requirement – as it is incorporated by Agency rules – that the Card be used only for "official travel related expenses."[5]

Insofar as the Agency contends that the award is contrary to Agency rules prohibiting the grievant from using the Card to make purchases for another employee, the Arbitrator found that the grievant did not use the Card to make such a purchase, *see* Award at 7, and, as previously mentioned, the Authority defers to arbitral factual findings when conducting a de novo review. *See Ala. Nat'l Guard*, 55 FLRA at 40. Accordingly, such a contention does not provide a basis for finding the award contrary to Agency rules.

For the foregoing reasons, we deny the Agency's exceptions contending that the award is contrary to Agency rules.

2. The award is not contrary to management's right to discipline.

The Agency asserts that the award is contrary to its right to discipline employees. The Authority recently revised the analysis that it will apply when reviewing management rights exceptions to arbitration awards. *See U.S. EPA*, 65 FLRA 113, 115 (2010) (Member Beck concurring) (*EPA*); *FDIC, Div. of Supervision & Consumer Prot., S.F. Region*, 65 FLRA 102, 106-07 (2010) (Chairman Pope concurring). Under the revised analysis, the Authority will first assess whether the award affects the exercise of the asserted management right. *EPA*, 65 FLRA at 115. If so, then, as relevant here, the Authority examines whether the award enforces a

5. The dissent cites several decisions to support its conclusion that the award is contrary to Agency rules. *See* Dissenting Op. at 13-14 (citations omitted). Those decisions are inapposite. First, the decisions do not involve or interpret the Citi EIP. *Cf. U.S. Dep't of the Treasury, IRS, Small Bus./Self Employed Operating Div.*, 65 FLRA 23, 26 & n.4 (party's reliance on the interpretation of terms in other agencies' regulations failed to establish the definition of similar terms in the party's own regulation, where the party's own regulation did not contain definitions for the terms in dispute). Second, the decisions do not define "official government travel," which is the central disputed term in this case. Third, the decisions involve the agency authorization required to support employees' claims for *official time* when traveling or *reimbursement* for employees' travel expenses; the instant case does not involve either. *See* Award at 6-7.

contract provision negotiated pursuant to § 7106(b) of the Statute.[6] *Id.*

The Union does not dispute that the award affects management's right to discipline. *See* Opp'n at 14, 21. In addition, the Authority has previously held that an arbitrator's enforcement of a "just cause" contractual provision, which results in the rescission of an employee's suspension, affects management's right to discipline. *E.g., U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Detention Ctr., Miami, Fla.*, 57 FLRA 677, 679 (2002) (Member Armendariz concurring) (citing *U.S. Dep't of Veterans Affairs, Med. Ctr., Coatesville, Pa.*, 53 FLRA 1426, 1429-30 (1998)). Thus, we find that the award affects management's right.

As for whether the award enforces a contract provision negotiated under § 7106(b), the Arbitrator concluded that "[j]ust [c]ause for the . . . suspension of the [g]rievant ha[d] not been established" based on his "examination of . . . *the Agreement* and the Statute[.]" Award at 8 (emphasis added). In addition, the Agency cites Article 23, Section 1 of the Agreement to support its claim that it has the right to discipline employees for "just cause."[7] *See* Exceptions at 7. Further, the Union does not dispute the contention that Article 23, Section 1 of the Agreement recognizes the Agency's right to discipline employees for "just cause." Consequently, as this point is uncontested by the parties, we find that the award enforces Article 23, Section 1 of the Agreement.

The Authority has held that contract provisions requiring just cause for discipline constitute appropriate arrangements within the meaning of § 7106(b)(3) of the Statute. *E.g., Soc. Sec. Admin., Balt., Md.*, 53 FLRA 1751, 1754 (1998). As Article 23, Section 1 of the Agreement requires just cause for discipline, we find that the award enforces a contract provision negotiated pursuant to § 7106(b)(3) of the Statute and, thus, is not contrary to management's right to discipline employees. Accordingly, we deny the Agency's exception that the award is contrary to law.

B. The Arbitrator did not exceed his authority.[8]

The Agency contends that the Arbitrator decided issues not before him and failed to decide a stipulated issue. As relevant here, arbitrators exceed their authority when they resolve an issue not submitted to arbitration or fail to resolve an issue submitted to arbitration. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996). However, arbitrators do not exceed their authority by addressing any issue that is necessary to decide a stipulated issue, *see Nat'l Air Traffic Controllers Ass'n, MEBA/NMU*, 51 FLRA 993, 996 (1996) (*NATCA*), or by addressing any issue that necessarily arises from issues specifically included in a stipulation, *see Air Force Space Div., L.A. Air Force Station, Cal.*, 24 FLRA 516, 519 (1986) (*Air Force*). Moreover, the Authority accords an arbitrator's interpretation of a stipulation of issues the same substantial deference accorded to an arbitrator's interpretation and application of a collective bargaining agreement. *See U.S. Info. Agency, Voice of Am.*, 55 FLRA 197, 198 (1999); *Air Force*, 24 FLRA at 518.

The Agency contends that the Arbitrator improperly resolved the issue of whether the Agency could "control" the grievant's use of the Card. Exceptions at 7. The Arbitrator made findings regarding the "control" that each party exercised over the grievant's official duties in order to determine whether the Agency or the Union would have been responsible for issuing any official travel orders for the grievant's trip to the Union caucus. *See* Award at 6. In this regard, the Arbitrator found that the grievant would receive travel orders from the Agency in order to perform official duties under the Agency's "control[,]" and she would receive travel orders from the Union in order to perform official duties under the Union's "control[.]" *Id.* at 5-6. The issue of which party could issue official travel orders for the grievant necessarily arose from the Agency's allegation that the grievant used the Card without official travel orders. Thus, it was necessary for the Arbitrator to assess the merits of that allegation in order to decide the stipulated issue of whether there

6. When an award affects a management right under § 7106(a)(2) of the Statute, the Authority may also examine whether the award enforces an applicable law. *EPA*, 65 FLRA at 115 n.7.

7. Article 23, Section 1 of the Agreement states, in pertinent part, "Bargaining unit employees will be subject to disciplinary or adverse action only for just cause." Exceptions, Attach., Joint Ex. 1 at 154.

8. The Agency contends that the Arbitrator exceeded his authority because the award is contrary to management's rights. As we deny the Agency's contention that the award is contrary to management's rights, *see supra* Part IV.A.2., we also deny this exceeded-authority exception. *See U.S. Dep't of Veterans Affairs, Montgomery Reg'l Office, Montgomery, Ala.*, 65 FLRA 487, 490 n.7 (2011) (as exceeded-authority exception merely restated management rights exception, exceptions were not addressed separately).

was "just [c]ause for the . . . suspension of the [g]rievant[.]" *Id.* at 1; *see NATCA*, 51 FLRA at 996; *Air Force*, 24 FLRA at 519. Consequently, we find that the Arbitrator did not exceed his authority by addressing the issue of which party controlled the grievant's official duties during her attendance at the Union caucus.

The Agency also contends that the Arbitrator found that it failed to prove an allegation that the grievant used the Card when she was not on official time, even though the Agency did not make that allegation. Exceptions at 9-10. This contention ignores that the Agency's rationale for imposing discipline addressed whether the grievant attended the caucus on official time; the decision to suspend the grievant quoted a provision regarding official time from Article 30 of Agreement. Exceptions, Attach., Joint Ex. 4 ("Decision to Suspend") at 3 (quoting Agreement, Article 30, App. F, pt. G ("Official Time and Labor Relations in Field Offices")). In these circumstances, we conclude that the issue of whether the grievant was obligated to schedule official time in order to use the Card necessarily arose from the stipulated "just cause" issue, and we find that the Arbitrator did not exceed his authority in this regard. *See NATCA*, 51 FLRA at 996.

Finally, the Agency asserts that the Arbitrator failed to resolve the issue of whether the grievant's actions merited discipline. Exceptions at 8. The Arbitrator expressly addressed that issue and found that the grievant's action did not warrant discipline because: (1) the grievant's use of the Card at the caucus was "authorized[;]" (2) the airline mistakenly charged another employee's ticket to the grievant's Card; and (3) the Agency failed to prove the grievant's delinquency in paying the Card bills. Award at 6-8. Therefore, we find that the Arbitrator did not fail to address a stipulated issue.

For the foregoing reasons, we deny the Agency's exceeded-authority exceptions.

C. The award is not based on nonfacts.

The Agency argues that the award is based on nonfacts because the Arbitrator "completely ignored[,]" "inappropriately dismissed . . . as 'hearsay[,]'" or "apparently missed" the Agency's witness testimony and email exhibits allegedly establishing the grievant's delinquency in paying her Card bills, and, but for those errors, the Arbitrator would have reached a different result. Exceptions at 10-12. To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. *See NFFE, Local 1984*, 56 FLRA 38, 41 (2000). However, the Authority will not find an award deficient on the basis of an arbitrator's determination of any factual matter that the parties disputed at arbitration. *See id.* In addition, "disagreement with an arbitrator's evaluation of evidence and testimony, including the determination of the weight to be accorded such evidence, provides no basis for finding" that an award is based on a nonfact. *AFGE, Local 1102*, 65 FLRA 40, 43 (2010) (citing *U.S. Dep't of Veterans Affairs, Med. Ctr., Richmond, Va.*, 63 FLRA 553, 556 (2009); *AFGE, Local 3295*, 51 FLRA 27, 32 (1995)).

The Arbitrator directly addressed the evidence offered by the Agency to establish the grievant's payment delinquencies, and he found that the evidence was not "competent" to substantiate the charge against the grievant. Award at 7-8. The Agency's exceptions "disagree[] with [the A]rbitrator's evaluation of evidence and testimony, including the determination of the weight to be accorded such evidence, [which] provides no basis for finding the award deficient." *AFGE, Local 1102*, 65 FLRA at 43. Accordingly, we deny the Agency's nonfact exceptions.

V. Decision

The Agency's exceptions are denied.

Member Beck, Dissenting:

I disagree with my colleagues that the central premise of the Arbitrator's award – that travel to attend an internal Union caucus constitutes "official travel" – is consistent with Agency rules and government regulations. Maj. Op. at 6-8. The Arbitrator's finding on this point is contrary to both the Agency's travel credit card (travel card) policies and the General Service Administration's Federal Travel Regulation (GSA travel regulation). Concomitantly, his conclusion that rests on this finding – that is, that the Agency did not have just cause to suspend the grievant – is erroneous.

The Agency interpreted its rules and the GSA regulation as being limited to official government travel and business. Because the grievant attended an internal Union meeting while on non-duty status, the Agency concluded that she could not be on "official travel," and, therefore, impermissibly used her travel card. The Arbitrator reached a contrary conclusion. This conclusion, however, is inconsistent with the plain wording of the Agency's rule. As a result, under Authority precedent, the Arbitrator's conclusion is impermissible. *See, e.g., AFGE, Local 916*, 47 FLRA 735, 740 (1993) (*AFGE*) (analyzing whether award conflicted with "plain wording" of agency rule); *U.S. Dep't of the Interior, Bureau of Land Mgmt., Eugene Dist. Office*, 43 FLRA 761, 764 (1991) (same); *U.S. Dep't of the Treasury, IRS, Ogden Serv. Ctr., Ogden, Utah*, 42 FLRA 1034, 1056-57 (1991) (*Ogden*) (same).

The pertinent rules and regulations establish, in unmistakably clear language, that a travel card may be used only in connection with "official Government travel":

- The Agency's Citibank [Card] Program[,] Employee Information Packet (information packet) restricts the use of Government contractor-issued travel cards to "official Government travel." Exceptions, Attach., Agency Ex. 3 at 1.

- The information packet states that the travel card is "not to be used for personal purposes and may only be used in connection with official Government travel." *Id.* at 2, ¶ 5.

- The Agency's Administrative Instructions Manual System (instructions manual) states that the travel card "shall be used only for authorized official travel expenses and for making authorized ATM withdrawals as indicated on the travel order and approved by the travel authorizing official . . . ." Exceptions, Attach., Agency Ex. 9 at 2.

- The instructions manual also states that "[t]he [g]overnment contractor-issued charge card and ATM are not to be used for other persons or personal purposes and may only be used in connection with official Government travel." *Id.* at 4.

- The GSA travel regulation – upon which the instruction manual was based – explicitly notes that a government contractor-issued travel card "may be used only for travel related expenses." 41 C.F.R. § 301-51.6.[*]

The material facts also are not in dispute:

- The grievant was designated by the Union to attend a Union caucus as its delegate. Award at 6.

- The caucus was an internal "[U]nion affair" that did not qualify for "official time." *Id.* at 4; 5 U.S.C. § 7131(b). It took place on a Saturday and grievant attended in a non-duty status. Award at 5-6.

- The grievant used her travel card to charge expenses associated with her attendance at the caucus. *Id.* at 5, 7.

- The Agency concluded that the grievant had misused the travel card and

[*] Additionally, the Agency and Union entered into a memorandum of understanding (MOU) in which the Union acknowledged that travel cards "may only be used in connection with official Government travel" and that an employee (who is issued a travel card) must agree to use the card only "for official travel" and "in accordance with Agency/Organization policy." Exceptions, Attach., Union Ex. 10 at 1 (internal quotations omitted). Moreover, the MOU states that employees cannot use travel cards for "personal . . . purposes." *Id.* Although the MOU is not an agency rule, it nevertheless bolsters a conclusion that the Union had knowledge that the Agency limited the use of travel cards to "official Government travel."

imposed a five-day suspension. *Id.* at 2, 5.

Despite the clear restriction against using a travel card for other than "official Government travel," the Arbitrator concluded that the expenses incurred by the grievant while she was on "official (Union) travel" at the caucus became an "official Government expense . . . for which the use of the Government travel credit card is authorized." *Id.* at 5-6. This conclusion is inconsistent with governing legal principles.

Travel by a Union representative may be "regarded" as "official government business" under specific and limited circumstances – such as when a representative is engaged in collective bargaining or other representational activity that qualifies for "official time" pursuant to § 7131(a), (c), or (d). *Dep't of the Treasury, U.S. Customs Serv. v. FLRA*, 836 F.2d 1381, 1385 (D.C. Cir. 1988). Even then, travel is considered to be official government business only when the agency determines that the activity "serves the convenience of the agency or is otherwise in the primary interest of the government." *Id.*; *see also ACT, P.R. Army Chapter*, 62 FLRA 144, 145-46 (2007) (authorization for union representatives to travel are authorized only when the expenses are determined to be in the primary interest of the government). Such circumstances were not present here.

There is no dispute that the caucus was an internal "[U]nion affair," Award at 6; that the grievant attended at the "direction and control" of the Union, *id.* at 6; and that the grievant was required to attend in a non-duty status. 5 U.S.C. § 7131(b); *see also Dep't of Health & Human Servs., Soc. Sec. Admin.*, 46 FLRA 1118, 1123 (1993) (activities associated with internal union business are excluded from official time by § 7131(b)); *Dep't of Health & Human Servs., Soc. Sec. Admin.*, 27 FLRA 391, 396 (1987) (award of official time and travel related expenses is deficient when the predominant purpose of a meeting is for the benefit of a private organization and not the agency). Therefore, when the grievant attended the Union caucus she was not engaged in official business of the United States Government. She was engaged in Union business that served only Union interests.

The Arbitrator ignored this obvious conclusion and went on to assert that the Union possessed authority – comparable to that of the employing Agency – to authorize the grievant to use her travel card. According to the Arbitrator, the Agency may authorize travel in circumstances when the grievant performs her regular job duties, but the Union assumes the power to authorize travel – and consequently, use of the travel card – when the grievant performs duties at the direction and control of the Union. Award at 5-6.

Without a doubt, the Union had the prerogative to designate the grievant as its delegate to the Union caucus. However, the Arbitrator confuses that prerogative with the Agency's authority and responsibility to approve "official travel." It is well-established that only a Federal agency may authorize travel for its employees. *In re Anson*, 02-1 BCA ¶ 31,819, GSBCA No. 15708-TRAV, 2002 WL 243613 (G.S.B.C.A.) (department policy and Federal Travel Regulation establish authorization for government travel); *In re Raja*, 97-1 BCA ¶ 28,944, GSBCA No. 14029-TRAV, 1997 WL 166202 (G.S.B.C.A.) (reimbursement for official business travel requires agency approval); *Dep't of Navy, Supervisor of Shipbuilding Conversion & Repair, Boston, Mass.*, 33 FLRA 187, 189 (1988) (authority to direct when and how travel will occur is encompassed within management's right to assign work). Furthermore, the travel card agreement presupposes that the travel card will be used to make ATM cash withdrawals and for other travel expenses "in connection with official travel" once a valid "travel order and / or authorization" has been received from the Agency. Exceptions, Agency Ex. 3 at 2, Employees' Rights and Obligations, ¶¶ 1-5.

The fact remains that the grievant was not in a duty status when she attended the caucus and the Agency could not issue travel orders or authorization under these circumstances. As discussed above, she was required to attend the caucus in a non-duty status because it was an internal "[U]nion affair," Award at 6; 5 U.S.C. § 7131(b), and she did not qualify for "official time" because the caucus took place on a Saturday, a day when the grievant "otherwise would not be in a duty status." 5 U.S.C. § 7131(a), (c), and (d); *see U.S. Dep't of Transp., FAA, Sw. Region, Fort Worth, Tex.*, 59 FLRA 530, 532 (2003) (official time includes only representational duties that are performed during regularly scheduled duty hours). It is illogical to conclude that the Union could create an entitlement for the grievant to use the travel card when the Agency itself could not do so.

The Majority rejects the Agency's position because the rule and GSA travel regulation do not define certain terms, including "official travel." The Majority offers no other analysis or legal support for upholding the Arbitrator's enormously

counterintuitive conclusion that the "official" use of a government credit card includes expenses associated with internal union business.

As stated previously, the Authority has held that an arbitrator's award must be consistent with the "plain wording" of the agency rule that is in dispute. *E.g., AFGE*, 47 FLRA at 740; *Ogden*, 42 FLRA at 1056-57. The definitions offered by the Arbitrator – and tacitly approved by the Majority – do not withstand scrutiny. As explained above, under established law, an employee on off-duty status attending an internal Union affair is not on "official travel." Equally apparent (I would think) is the notion that a non-government entity, i.e., the Union, does not enjoy the discretion to authorize expenditures on a travel card that was issued by the government. Simply stated, the Arbitrator's conclusion that an off-duty employee could use a government travel card solely for an internal union matter not only defies common sense, but is also inconsistent with the plain language of the relevant rules and regulation.

Moreover, the Arbitrator's analysis of the plain wording of the agency rule relies upon the addition of an entirely new word. Specifically, the Arbitrator found that the grievant's use of the travel card was permissible because the term "official travel" includes "official (Union) travel." Award at 5-6. It is difficult to square the Arbitrator's fabrication of a new word with the Authority's repeated admonition that an arbitrator should limit him or herself to the "plain wording" of an agency rule. *See, e.g., AFGE*, 47 FLRA at 740; *Ogden*, 42 FLRA at 1056-57. Not surprisingly then, the Majority offers not a single citation to any decisions where such a scenario occurred.

Accordingly, I would grant the Agency's contrary to law exception and find that the Agency had just cause to suspend the grievant. Based on this conclusion, I would find it unnecessary to address the Agency's remaining exceptions.