

67 FLRA No. 102

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1367
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
LACKLAND AIR FORCE BASE, TEXAS
(Agency)

0-AR-4926

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DECISION

April 30, 2014

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

Arbitrator William C. Serda addressed a grievance that, as relevant here, concerned two issues: (1) whether the Agency had just cause to suspend the grievant for seven days (suspension); and (2) whether the Arbitrator had jurisdiction to review a decision made by the U.S. Air Force (military command) to demote the grievant in military rank (demotion). The Arbitrator resolved the first issue by determining that the Agency had just cause to suspend the grievant, and resolved the second issue by concluding that he lacked jurisdiction to review the demotion.

Before the Authority, the Union argues that the Arbitrator exceeded his authority in his resolution of both issues. But the Union fails to support its assertion that the Arbitrator exceeded his authority when he upheld the suspension. And because the Arbitrator found that the demotion issue was not arbitrable – a finding that the Union does not claim is contrary to law – the demotion issue was not properly before the Arbitrator for resolution. Therefore, we find that neither of the Union’s arguments demonstrates that the Arbitrator exceeded his authority.

II. Background and Arbitrator’s Award

The grievant is an air-reserve technician, which means that he is required to hold a dual status as a civilian employee and a military reservist. He performs the same duties for the Agency as a civilian that he performs for the military command as a reservist. In his capacity as a reservist, however, the grievant is subject to the jurisdiction of the Uniform Code of Military Justice (UCMJ). The grievant was injured when he was involved in a physical altercation with another individual while he was on an overseas assignment for the Agency. As a result, the grievant was unable to complete his assignment and was “unable or partially unable to work and fulfill or completely fulfill his basic responsibilities for the next eight months.”¹ The Agency suspended the grievant for seven days, and the military command later demoted him in rank in an administrative disciplinary action under the UCMJ.

The Union filed a grievance in which it argued that the Agency lacked just cause to suspend the grievant. In its grievance, the Union also argued that the demotion was both an unfair labor practice (ULP) in violation of § 7116(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute), and a prohibited personnel practice in violation of 5 U.S.C. § 2302. The parties proceeded to arbitration, where the Arbitrator framed the relevant issues as: (1) whether the Agency had just cause to suspend the grievant; and (2) whether the Arbitrator had jurisdiction to review the Union’s challenge to the military command’s demotion of the grievant.

Regarding the first issue, the Arbitrator concluded that the Agency had just cause to discipline the grievant. As to the second issue, the Arbitrator concluded that he lacked jurisdiction over the demotion because it was a UCMJ matter and did not fall within the “four corners” of the parties’ agreement.² Therefore, the Arbitrator denied the grievance.

The Union filed exceptions to the Arbitrator’s award, and the Agency filed an opposition to the Union’s exceptions.

III. Preliminary Matter: The Union’s exceptions are not deficient under § 2425.4(a)(2) of the Authority’s Regulations.

In its opposition, the Agency argues that the Authority should dismiss the Union’s exceptions because the Union failed to include “a single citation or reference to the record or any other authority, [or] . . . any

¹ Award at 3.

² *Id.* at 28.

supporting documentation.”³ Section 2425.4(a)(2) of the Authority’s Regulations requires a party filing exceptions to include “specific references to the record, citations of authorities, and any other relevant documentation.”⁴ Contrary to the Agency’s claims, the Union’s exceptions contain citations to the record,⁵ adequate citations of authority,⁶ and numerous documents.⁷ Thus, we find that the Union’s exceptions are not deficient under § 2425.4(a)(2), and we address them below.

IV. Analysis and Conclusions: The Arbitrator did not exceed his authority.

In its exceptions, the Union challenges the Arbitrator’s determinations concerning both the suspension and the demotion,⁸ and the only ground for review that the Union raises is that the Arbitrator exceeded his authority.⁹ In its opposition, the Agency argues that the Union’s exceptions are deficient under § 2425.6 of the Authority’s Regulations,¹⁰ and that the Union has not established that the Arbitrator exceeded his authority.¹¹

Section 2425.6(e)(1) of the Authority’s Regulations states that an exception “may be subject to dismissal or denial if: [t]he excepting party fails to raise and support” a ground listed in 5 C.F.R. § 2425.6(a)-(c).¹² And one of these grounds is that an arbitrator exceeded his or her authority.¹³ Under § 2425.6(e)(1), an exception that does not raise a recognized ground is subject to dismissal; an exception that fails to support a properly raised ground is subject to denial.¹⁴

Under § 2425.6(b) of the Authority’s Regulations, a party arguing that an arbitrator exceeded his or her authority has an express duty to “explain how, under standards set forth in the decisional law of the Authority or [f]ederal courts,” the award is deficient.¹⁵ In this regard, the standards set forth in the Authority’s decisional law require an excepting party to establish that the arbitrator failed to resolve an issue submitted to

arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his or her authority, or awarded relief to those not encompassed within the grievance.¹⁶

The Union raises two exceeded-authority exceptions. First, the Union argues that the Arbitrator exceeded his authority by upholding the suspension.¹⁷ Specifically, the Union “does not agree with the Arbitrator’s characterization of the seriousness of the incident” that resulted in the suspension, and argues that the Arbitrator inappropriately speculated about the incident when he decided to uphold the suspension.¹⁸ However, in making this argument, the Union does not assert 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 those not encompassed within the grievance. Thus, the Union’s argument fails to explain how the Arbitrator exceeded his authority under the standards set forth above. Accordingly, the Union fails to support its assertion that the Arbitrator exceeded his authority when he upheld the suspension, and we deny this exception under § 2425.6(e)(1).¹⁹

Second, the Union argues that the Arbitrator exceeded his authority because he failed to resolve an issue before him, specifically, the Union’s arguments concerning the demotion.²⁰ According to the Agency, the Union has not supported this argument as required by § 2425.6 for two reasons. First, the Agency argues that the Arbitrator *did* resolve the demotion issue as it was framed. Second, even if the framed issue included the question of whether the demotion was a ULP or a prohibited personnel practice, the Agency asserts that “that issue was never appropriately arbitrated.”²¹ The Agency’s contentions, however, concern the merits of the Union’s exception and not whether the Union has adequately supported its argument. Because the Union argues that the Arbitrator exceeded his authority by failing to resolve an issue before him, we find that, as an initial matter, the Union has adequately supported its exceeded-authority exception concerning the demotion.

Regarding the merits of that exception, the Union asserts that the Arbitrator exceeded his authority by failing to resolve the Union’s arguments that the demotion was: (1) a ULP under § 7116(a) of the Statute; and (2) a prohibited personnel practice under 5 U.S.C.

³ Opp’n at 4.

⁴ 5 C.F.R. § 2425.4(a)(2).

⁵ See, e.g., Exceptions at 3 (quoting Award at 26).

⁶ *Id.* (citing 5 U.S.C. § 7116(a)).

⁷ *Id.*, Attachs.

⁸ *Id.* at 1-2.

⁹ *Id.* at 1.

¹⁰ Opp’n at 4.

¹¹ *Id.* at 4-5.

¹² 5 C.F.R. § 2425.6(e)(1).

¹³ *Id.* § 2425.6(b)(1)(i).

¹⁴ *U.S. Dep’t of VA, Central Tex. Veterans Health Care Sys., Temple, Tex.*, 66 FLRA 71, 73 (2011) (*VA Tex.*) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011)).

¹⁵ 5 C.F.R. § 2425.6(b); see also *AFGE, Local 1938*, 66 FLRA 741, 744 (2012) (*Local 1938*); *VA Tex.*, 66 FLRA at 73.

¹⁶ *Local 1938*, 66 FLRA at 744; *VA Tex.*, 66 FLRA at 73.

¹⁷ See Exceptions at 2.

¹⁸ *Id.*

¹⁹ See, e.g., *Local 1938*, 66 FLRA at 744; *VA Tex.*, 66 FLRA at 73.

²⁰ See Exceptions at 1-4.

²¹ Opp’n at 4.

§ 2302.²² However, the Arbitrator framed the issue, in pertinent part, as whether he had the authority to assess the propriety of the demotion.²³ And he resolved this arbitrability issue by finding that he did not have jurisdiction over the military command's decision to demote the grievant in an administrative disciplinary action under the UCMJ.²⁴ The Union has not excepted on contrary-to-law grounds to the Arbitrator's finding that the demotion issue was not arbitrable. Further, the Authority has held that an arbitrator does not exceed his or her authority by declining to resolve an issue that was not properly before the arbitrator.²⁵ Accordingly, the Union has not shown that the Arbitrator exceeded his authority by failing to resolve the demotion issue on the merits.²⁶

V. Decision

We deny the Union's exceptions.

²² See Exceptions at 1-2.

²³ See Award at 5.

²⁴ *Id.* at 28.

²⁵ See, e.g., *AFGE, Local 1815*, 65 FLRA 430, 431-32 (2011) (arbitrator did not exceed authority by failing to resolve grievance where he found grievance not arbitrable).

²⁶ See, e.g., *id.*