

68 FLRA No. 33

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
LOCAL R12-35
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
NAVY FACILITIES
ENGINEERING COMMAND SOUTHWEST
(Agency)

0-AR-5080

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DECISION

January 15, 2015

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

This matter is before the Authority on exceptions to an award of Arbitrator Walter N. Kaufman filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)¹ and part 2425 of the Authority's Regulations.² The Agency filed an opposition to the Union's exceptions.

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.³

As a preliminary matter, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar consideration of the Union's exception that the award fails to draw its essence from the parties' agreement.⁴ The Union should have known to raise this argument before the Arbitrator, but the record does not reflect that the Union did so. Therefore, we dismiss this exception.⁵

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.")

⁴ *Id.* §§ 2425.4(c), 2429.5.

⁵ *U.S. DHS, U.S. CBP*, 66 FLRA 335, 337-38 (2011) (where a party should have known to make an argument to the arbitrator, but the record does not indicate that the party did so, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the party from raising that argument to the Authority).

Under § 7122(a) of the Statute,⁶ an award is deficient if it is contrary to any law, rule, or regulation, or it is deficient on other grounds similar to those applied by federal courts in private sector labor-management relations. Upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the grounds raised in the exception and set forth in § 7122(a).⁷

Accordingly, we dismiss, in part, and deny, in part, the Union's exceptions.

⁶ 5 U.S.C. § 7122(a).

⁷ *U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995) (award not deficient on ground that arbitrator exceeded his or her authority where excepting party does not establish that 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); *U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient as based on a nonfact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result).