

**69 FLRA No. 73**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3781  
(Union)

and

UNITED STATES  
DEPARTMENT OF AGRICULTURE  
FEDERAL GRAIN INSPECTION SERVICE  
(Agency)

0-AR-5160

—  
DECISION

August 10, 2016

—  
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 Kathryn T. Whalen filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>1</sup> and part 2425 of the Authority's Regulations.<sup>2</sup> The Union excepts to the award on a variety of bases, including that the award conflicts with the Back Pay Act (BPA).<sup>3</sup> Before the Arbitrator, the Union requested backpay and overtime for the allegedly wrongly-suspended grievant, but the Arbitrator awarded only backpay.

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.<sup>4</sup>

Under § 7122(a) of the Statute,<sup>5</sup> 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 Union's exceptions<sup>6</sup> and set forth in § 7122(a).<sup>7</sup>

Accordingly, we deny the Union's exceptions.

<sup>1</sup> 5 U.S.C. § 7122(a).

<sup>2</sup> 5 C.F.R. pt. 2425.

<sup>3</sup> 5 U.S.C. § 5596.

<sup>4</sup> 5 C.F.R. § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

<sup>5</sup> 5 U.S.C. § 7122(a).

<sup>6</sup> Chairman Pope would find that §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the Union's exception that the Arbitrator's denial of an overtime remedy conflicts with the BPA. The Union should have known to argue before the Arbitrator that the BPA gave the grievant a legal entitlement to such a remedy, but Chairman Pope finds no evidence in the record that the Union did so. Therefore, Chairman Pope would dismiss this exception.

<sup>7</sup> *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); *Prof'l Airways Sys. Specialists, Dist. No. 1, MEBA/NMU (AFL-CIO)*, 48 FLRA 764, 768-69 (1993) (award not deficient as contrary to law, rule, or regulation where excepting party fails to establish that the award is contrary to the law, rule, or regulation on which the party relies); *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).