

70 FLRA No. 59

TIDEWATER VIRGINIA FEDERAL EMPLOYEES
METAL TRADES COUNCIL
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
(NAVFAC MIDLANT)
(Agency)

0-AR-5276

DECISION

July 6, 2017

Before the Authority: Patrick Pizzella, Acting Chairman,
and Ernest DuBester, Member

This matter is before the Authority on exceptions to an award of Arbitrator Kathleen Jones Spilker filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute¹ and part 2425 of the Authority's Regulations.² The Agency did not file an opposition to the Union's exceptions.

The Union requests an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.³ As the Agency did not file an opposition to the Union's exceptions, it does not oppose the Union's request. Upon full consideration of the circumstances of this case – including the case's complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues, as well as the absence of any allegation of an unfair labor practice – we grant the Union's request.

The Union argues that the award is deficient because the Arbitrator made a mathematical error when calculating the backpay to which she found that the grievant is entitled.⁴ The Arbitrator stated that she would determine the amount of backpay by applying a two-step formula that used the overtime hours worked by the

grievant and an apprentice as of the end of April 2014.⁵ However, clear, undisputed record evidence shows that, when making one of the calculations in her formula, the Arbitrator used the number of hours that the apprentice had worked at the *beginning*, rather than at the *end*, of April.⁶ If the Arbitrator had used the correct number in that calculation, then she would have found that the grievant is entitled to 39.5 hours of backpay, rather than the 26.5 hours that she awarded. Because the Arbitrator's calculation is clearly erroneous, but for which she would have reached a different result, the award is based on a nonfact.⁷

The Union also argues that the award is contrary to the Back Pay Act (the Act)⁸ because the Arbitrator failed to award interest on the backpay.⁹ Under the Act, "interest must be paid on backpay awards."¹⁰ Therefore, the Arbitrator's failure to include interest is contrary to law.

Accordingly, we grant the Union's exceptions and modify the award to provide for 39.5 hours of backpay at the overtime rate, plus interest.

⁵ Award at 17.

⁶ *Id.*; see Exceptions, Attach. 1, Union's Post-Hr'g Br. at 12.

⁷ *E.g.*, *U.S. Dep't of Interior, Bureau of Reclamation, Great Plains Region, Colo./Wyo. Area Office*, 68 FLRA 992, 995-96 (2015) (then-Member Pizzella dissenting on other grounds) (reviewing the allegation that an arbitrator made a mathematical error under the nonfact ground and modifying the award to correct the mathematical error); see *U.S. DOD, Def. Commissary Agency, Randolph Air Force Base, Tex.*, 65 FLRA 310, 311 (2010) (citation omitted) (finding award based on a nonfact when a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result).

⁸ 5 U.S.C. § 5596.

⁹ Exceptions at 9.

¹⁰ *AFGE, Local 3134*, 56 FLRA 983, 984 (2000) (internal quotation marks omitted) (citing 5 U.S.C. § 5596(b); *U.S. Dep't of the Navy, Naval Training Ctr., Orlando, Fla.*, 53 FLRA 103, 109 (1997)); see *Tidewater Va. Fed. Emps., Metal Trades Council*, 53 FLRA 218, 220-21 (1997) (citation omitted) (modifying backpay award to include interest).

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7.

⁴ Exceptions at 9.