

71 FLRA No. 53

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2198
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER
MARTINSBURG, WEST VIRGINIA
(Agency)

0-AR-5398

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DECISION

August 14, 2019

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Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

This matter is before the Authority on exception to an award of Arbitrator Kathleen Jones Spilker 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 exception.

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

The Union challenges the Arbitrator's procedural-arbitrability determination – that the Union failed to timely file its grievance – on essence grounds.

Under § 7122(a) of the Statute,⁴ 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 ground raised in the exception and set forth in § 7122(a).⁵

Accordingly, we deny the Union's exception.

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 5 U.S.C. § 7122(a).

⁵ *NAIL, Local 5*, 70 FLRA 550, 551 (2018) (Member DuBester concurring) (arbitrator’s procedural-arbitrability determination not deficient as failing to draw its essence from parties’ agreement); *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties’ agreement where excepting party fails to establish that the award cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement).