

64 FLRA No. 173

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION
(Union)

and

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
FORT WORTH, TEXAS
(Agency)

0-AR-4420

—
DECISION

June 23, 2010

Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

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

The Arbitrator sustained the Union's grievance and awarded the grievant backpay. The Arbitrator, however, declined to award interest. For the reasons that follow, we grant the Union's exceptions and modify the award to include interest consistent with the requirements of the Back Pay Act.

II. Background and Arbitrator's Award

The grievant, an aeronautical engineer, was assigned to travel to and investigate an airplane crash in a rural area of Texas. *See Award* at 1. The grievant requested hazardous duty pay for this assignment. *See id.* at 2-3. His supervisor, not believing that the grievant had been exposed to a dangerous or hazardous area, denied the request. *See id.* at 3. The Union filed a grievance, which, after proceeding through the grievance procedure, was submitted to arbitration. *See id.* The sole issue, as

framed by the Arbitrator, was whether "the Agency violate[d] the Collective Bargaining Agreement when it refused hazardous duty pay to the [g]rievant . . . and if so what shall the remedy be?" *Id.*

The Arbitrator determined that the grievant was entitled to hazardous duty pay. *See id.* at 8-9. The Arbitrator, however, declined to award interest. *See id.* at 9. The Arbitrator noted, in this regard, that

the evidence . . . shows that th[e] . . . matter has lingered, without any action on the part of the Union to move it to hearing, for almost five years, without being brought to arbitration. There was no explanation of the reason for the failure to bring this matter to an earlier conclusion and it can only be assumed that the Union failed to move the same to arbitration.

Id.

III. Union's Exceptions

The Union contends that the Arbitrator based his award on two nonfacts: (1) that there was evidence that the Union did not make attempts to move forward to a hearing and (2) that the delay in scheduling was the fault of the Union. *See Exceptions* at 2. According to the Union, no evidence exists that the hearing was delayed or that the Union acted nefariously. *See id.* at 3.

The Union asserts that the Arbitrator's statements are supported only by the Agency's "generalized complaint" "that the grievance had lingered without proceeding to a hearing in a timely manner[.]" *Id.* at 2-3. The Union contends that the Agency, however, failed to provide any evidence or proof that the grievance was required to proceed to a hearing by a specific timeframe. *See id.* at 2. Moreover, the Union asserts that the arbitration request was timely filed and that, once the request was made, the parties attempted to resolve the grievance informally before ultimately electing to pursue a formal hearing. *See id.* at 3. The Union also notes that both parties had to agree to a date for the hearing and to select an arbitrator. *See id.*

The Union also contends that the Arbitrator's award of backpay without interest conflicts with 5 U.S.C. § 5596(b)(2)(A) and is, therefore, contrary to law. *See id.* at 5. According to the Union, the Arbitrator found that the grievant was entitled to hazardous duty pay for the work assignment and, therefore, pursuant to the Back Pay Act, awarded the

grievant the amount of hazardous duty pay that he should have received. *See id.* The Union contends that the Arbitrator, by “issuing a make-whole remedy in awarding backpay for the hazardous duty,” also was required, under Authority precedent and 5 U.S.C. § 5596(b)(2)(A), to award interest. *Id.*

IV. The award is contrary to law.

When an exception involves an award’s consistency with law, the Authority reviews any question of law raised by the exception and the award *de novo*. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard of *de novo* review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law. *See U.S. Dep’t of Def., Dep’ts of the Army & the Air Force, Ala. Nat’l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator’s underlying factual findings. *See id.*

Under the provisions of the Back Pay Act, “interest must be paid” on backpay awards. *U.S. Dep’t of Def., Marine Corps Logistics Base, Barstow, Cal.*, 37 FLRA 796, 797 (1990); *see also* 5 U.S.C. § 5596(b)(2)(A). The Arbitrator here awarded the grievant backpay for his hazardous duty assignment. Because the Arbitrator awarded the grievant backpay under the Act, and no exception to that aspect of the award was filed, the payment of interest is required. *See Fraternal Order of Police, N.J. Lodge 173*, 58 FLRA 384, 387 (2003) (holding that, because grievant was awarded backpay and no exception was filed to that part of the award, grievant was entitled to interest under the Back Pay Act).

Accordingly, because the award in this case does not include interest, the award is deficient as contrary to law. *See Tidewater Va. Fed. Employees Metal Trades Council*, 53 FLRA 218, 220-21 (1997) (finding that, because award of backpay did not include interest, award was deficient as contrary to law). Consequently, the award will be modified to include interest on the hazardous duty pay awarded the grievant, consistent with the requirements of the Back Pay Act.*

V. Decision

The Union’s exception is granted, and the award is modified to include interest, consistent with the requirements of the Back Pay Act.

* Based on this finding, we note that it is not necessary to address the Union’s exception alleging that the award is based on nonfacts.