64 FLRA No. 208

FEDERAL DEPOSIT
INSURANCE CORPORATION
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

0-AR-4299

_____

DECISION

July 30, 2010

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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 Roger P. Kaplan filed by the Agency and by the Union under § 7122 of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions, and the Agency filed an opposition to the Union's exceptions.

The Arbitrator found that the Agency violated the Statute and the parties' agreement by unilaterally rescinding an Agency travel policy (the Shumway rule), and he directed the Agency to continue to apply the Shumway rule.

For the reasons discussed below, we deny the Agency's and the Union's exceptions.

II. Background and Arbitrator's Award

The employees at issue in this matter conduct onsite examinations of financial institutions. Award at 4. The employees usually travel on a Monday directly from their homes to the financial institutions they are examining and return home from the financial institutions on a Friday. *Id.*

Since 1984, the employees' travel was subject to the Shumway rule,[1] which stated, in pertinent part:

> 2. Policy. While there will be times when it is either unavoidable or in the best interests of [the Agency] to require that employees travel outside duty hours, on nonbusiness days or holidays, it is the general policy that travel to initial assignments will not begin on Sunday and that travel on Monday will not commence prior to one hour before the beginning of the normal workday. Also, upon completion of a regular assignment on Fridays, travel should generally terminate not later than one hour after the close of the normal workday.
>
> All commuting travel other than that mentioned previously in regard to the initial reporting to an assignment and return upon its completion, will be on the employee's own time.

Id. at 4-5.

Under the Shumway rule, travel was scheduled to begin on a Monday no earlier than an hour before the beginning of an employee's normal workday, and end on a Friday no later than an hour after the end of an employee's normal workday. *Id.* at 11. The hour of travel on Monday before the beginning of the employee's normal workday, and the hour of travel on Friday after the end of the employee's normal workday, was on the employee's "own time[.]" *Id.* To the extent that there was more than one hour of travel required, that additional travel occurred on "duty time[.]" *Id.*

In August 2005, the Agency informed the Union that it would begin to apply Office of Personnel Management (OPM) regulations regarding compensatory time off for travel (the CTT regulations), *id.* at 5, under which an employee may earn compensatory time off for time in travel status that is not otherwise compensable.[2] *See id.* at 5.

1. The Shumway rule is named after its originator, former Director of the Division Robert Shumway. *See* Award at 4.

2. Although the Arbitrator did not specify which sections of the Code of Federal Regulations contain the CTT regulations, *see* Award at 5, the record indicates that the CTT regulations are set forth in 5 C.F.R. §§ 550.1401-1409. *See* Agency Exceptions at 2-4, 13-14; Union's Opp'n at 2-3 (explaining that, effective January 28, 2005,

After the Agency began applying the CTT regulations, the Union filed a grievance claiming that the Agency "'unilaterally terminated the . . . 'Shumway' rule," violating "[§] 7116(a)(1) and (5) of the [Statute], as well as Article 50 of the [parties' agreement]."[3] *Id.* at 8-9. As relevant here, the Union requested that the Arbitrator restore the *status quo ante* (SQA) and provide any other appropriate remedies. *Id.* at 9. The Agency denied the grievance, and the Union invoked arbitration. *Id.* at 10.

The Arbitrator framed the issue before him, in pertinent part, as whether the "Agency unilaterally terminat[ed] the Shumway rule . . . in violation of 5 [U.S.C.] [§] 7116(a)(1) and (5) and/or Article 50 of

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"OPM[] promulgated new interim [CTT] regulations" (codified as amended at 5 C.F.R. § 550.1401)). These regulations were implemented, in interim form, in 2005, and were finalized, with changes not relevant here, in 2007. *See* 70 Fed. Reg. 3855-01 (Jan. 27, 2005); 72 Fed. Reg. 19093-01 (Apr. 17, 2007). These regulations were adopted pursuant to 5 U.S.C. § 5550b, entitled "Compensatory time off for travel[.]"

5 U.S.C. § 5550b states, in pertinent part:

> (a) Notwithstanding any provision of section 5542(b)(2) or 5544(a), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

5 C.F.R. § 550.1401 states:

> This subpart contains OPM regulations implementing 5 U.S.C. [§] 5550b, which establishes a separate type of compensatory time off. Subject to the conditions specified in this subpart, an employee is entitled to earn, on an hour-for-hour basis, compensatory time off for time in a travel status away from the employee's official duty station when the travel time is not otherwise compensable.

5 C.F.R. § 550.1402 states, in pertinent part: "This subpart applies to an employee as defined in 5 U.S.C. [§] 5541(2) who is employed by an agency." 5 U.S.C. §5541(2) states, in pertinent part, that an "employee" means "an employee in or under an Executive agency[.]"

5 C.F.R. §550.1403 states, in pertinent part:

> *Agency* means an Executive agency as defined in 5 U.S.C. [§] 105.
> . . . .
> *Compensable* refers to periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work time may not actually generate additional compensation because of applicable pay limitations.
> *Compensatory time off* means compensatory time off for travel that is credited under the authority of this subpart.
> . . . .
> *Regular working hours* means the days and hours of an employee's regularly scheduled administrative workweek established under 5 CFR part 610.
> . . . .
> *Travel status* means travel time as described in § 550.1404 that is creditable in accruing compensatory time off for travel under this subpart, excluding travel time that is otherwise compensable under other legal authority.

5 C.F.R. § 550.1404, entitled "Creditable travel time[,]" states, in pertinent part:

> (a) *General*. Subject to the conditions specified in this subpart, an agency must credit an employee with compensatory time off for time in a travel status if --
> (1) The employee is required to travel away from the official duty station; and
> (2) The travel time is not otherwise compensable hours of work under other legal authority.
> . . . .
> (c) *Travel between home and a temporary duty station*. (1) If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status if otherwise qualifying under this subpart. However, the agency must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.

3. Article 50 of the parties' agreement states, in pertinent part: "[T]he [Agency] shall provide the [Union] with reasonable advance notice of intended changes in personnel policies and practices or conditions of employment." Award at 3. Section 7116(a) of the Statute states, in pertinent part: "[I]t shall be an unfair labor practice for an agency . . . (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter; [and] . . . (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter[.]" 5 U.S.C. § 7116(a).

the [parties' agreement]?" and "[i]f so, what is the appropriate remedy?"[4] Award at 2.

The Arbitrator found that the Agency "fail[ed] to give notice of its intention to rescind the Shumway rule" and "fail[ed] to bargain such rescission[.]" *Id.* at 12. Thus, the Arbitrator determined that the Agency violated § 7116(a)(1) and (5) and Article 50 of the parties' agreement, and he sustained the grievance. *Id.* at 15-16. For a remedy, the Arbitrator directed the Agency to "apply the Shumway rule to travel which is not eligible for compensable time under the CTT[.]" *Id.* at 16. The Arbitrator did not determine the legality of the Shumway rule because, he said, the issue was not before him. *Id.* at 14.

III. Positions of the Parties

A. Agency's Exceptions[5]

The Agency contends that the award is contrary to law because it directs the Agency to reinstate the Shumway rule. In this regard, the Agency asserts that under the Shumway rule, employees whose home-to-office commute is greater than one hour receive compensation when traveling to and from a financial institution, and thus receive compensation for their commute time, in violation of 5 C.F.R. §§ 551.422(b) and 550.112(j)(2), which, the Agency claims, state that commute time is "not hours of work[.]"[6] Agency's Exceptions at 7-10. Further, the Agency argues, the Shumway rule does not require a deduction of commute time that, the Agency claims, is required under 5 C.F.R. §§ 551.422, 550.112, and 550.1404. Agency's Exceptions at 12 & 12 n.11, 13-14. In support of its claim that commute time is not compensable, the Agency cites: *NTEU v. FLRA*, 418 F.3d 1068, 1072 n.8 (9th Cir. 2005) (*NTEU v. FLRA*); *Adams v. U.S.*, 65 Fed. Cl. 217 (2005) (*Adams*), *reh'g and reh'g en banc denied*, 219 Fed. Appx. 993 (2007), *cert. denied*, 552 U.S. 1096 (2008); *U.S. Dep't of the Navy,*

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4. The Arbitrator also considered whether the Agency unilaterally terminated "the duty time travel policy agreed to in [a] side letter in violation of [§] 7116(a)(1) and (5) and/or Article 50 of the [parties' agreement]. Award at 2. That issue is not before us, and we do not address it further.

5. The Agency does not contest the finding that the Agency violated the Statute and the parties' agreement. Agency's Exceptions at 4.

6. 5 C.F.R. § 551.422 states, in pertinent part:

> (a) Time spent traveling shall be considered hours of work if:
>
> (1) An employee is required to travel during regular working hours;
>
> (2) An employee is required to drive a vehicle or perform other work while traveling;
>
> (3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
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> (4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.
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> (b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section.

5 C.F.R. § 550.112 states, in pertinent part:

> The computation of the amount of overtime work of an employee is subject to the following conditions:
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> . . . .
>
> (g) *Time in travel status*. Time in travel status away from the official duty-station of an employee is deemed employment only when:
>
> (1) It is within his regularly scheduled administrative workweek, including regular overtime work[.]
>
> . . . .
>
> (j) *Official duty station*.
>
> . . . .
>
> (2) Travel from home to work and vice versa is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work.

Coastal Sys. Station, Dahlgren Div., Naval Surface Warfare Ctr., Panama City, Fla., 61 FLRA 57 (2005) (*Navy*); *AFGE, Council 236*, 56 FLRA 136 (2000) (*Council 236*); *AFGE, AFL-CIO, Local 3232*, 31 FLRA 355 (1988) (*Local 3232*); and *INS*, 19 FLRA 319 (1985) (*INS*).[7] *See* Agency's Exceptions at 7, 12, 15-16. Finally, the Agency argues that its "decision that its own rule -- the Shumway rule -- is illegal should be given great weight." *Id.* at 13 n.12 (citing *U.S. Dep't of Transp., FAA*, 55 FLRA 797, 801 (1999) (*DOT*)).

B. Union's Opposition

The Union contends that the Shumway rule is not contrary to 5 C.F.R. § 551.422 because: (1) the rule that commuting time be deducted from hours of work, at § 551.422(b), does not apply to travel that occurs during regular working hours under § 551.422(a)(1); and (2) the Monday and Friday travel that occurs under the Shumway rule does not constitute normal home-to-work travel under § 551.422(b) because it does not occur within one day. *See* Union's Opp'n at 6. In the alternative, the Union argues that, if the Authority were to find that employees' compensated travel constitutes commuting time, "non-exempt employees [can] be compensated for this time under limited circumstances[,]" under 29 U.S.C. § 254(b).[8] Union's Opp'n at 9-10. Additionally, the Union maintains that the Shumway rule is not contrary to 5 C.F.R. § 550.112 because that section pertains to travel that occurs on overtime, while compensated travel under the Shumway rule occurs during an employee's normal workday. Finally, the Union asserts that the Agency holds a special statutory status and that, pursuant to that status, "[c]ompensation for travel during regular duty hours[] is within the Agency's statutory discretion to determine employee compensation and benefits[.]" *Id.* at 14 & n.7, 15-16 (citing 31 U.S.C. § 9101, 12 U.S.C. § 1819(a), and 5 U.S.C. §§ 5102, 5331(a), 5701, and 5541).[9]

C. Union's Exceptions

The Union argues that the Arbitrator erred by declining to award an SQA remedy because the Authority has "recognize[d] the propriety of" such a remedy when an "employer's illegal action has resulted in either increased costs to employees or otherwise [has had] adverse effects on their financial interests[.]" Union's Exceptions at 12. Additionally, the Union claims that the "award is ambiguous and incomplete with respect to remedy[,]" *id.* at 13, because "the remedies provided are . . . unclear" and the "[A]rbitrator[] fail[ed] to explicitly provide [SQA] and make whole remedies[.]" *Id.* at 1.

D. Agency's Opposition

The Agency alleges that the Union's exceptions are untimely and must be dismissed. Agency's Opp'n at 4-5. In the alternative, the Agency argues

7. Additionally, the Agency cites *NAGE, SEIU, AFL-CIO*, 32 FLRA 206 (1988) (*NAGE*), for the proposition that the Authority has "reject[ed], as illegal past practices or proposals, time and leave issues that are contrary to OPM regulations[.]" Agency's Exceptions at 15. As the Union does not dispute that an Agency is permitted to terminate an unlawful practice, we do not address *NAGE* further.

8. 29 U.S.C. § 254 states, in pertinent part:

> (b) Compensability by contract or custom
> Notwithstanding . . . subsection (a) . . . which relieve[s] an employer from liability[,] . . . the employer shall not be so relieved if such activity is compensable by either--
> (1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or
> (2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

9. 31 U.S.C. § 9101 states, in pertinent part, that "'Government corporation' means a mixed-ownership Government corporation and a wholly owned Government corporation[,]" and that the Agency is a "'mixed-ownership Government corporation[.]'" 12 U.S.C. § 1819(a) states, in pertinent part, that the Agency shall have the power to "appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter, to define their duties, [and] fix their compensation[.]" 5 U.S.C. § 5102, which pertains to pay and allowances and classification, states, in pertinent part, that an "'agency'" does not include a "Government controlled corporation[.]" 5 U.S.C. § 5331, which pertains to General Schedule pay rates, states, in pertinent part, that "'agency', 'employee', 'position', 'class' and 'grade' have the meanings given them by section 5102 of this title." 5 U.S.C. § 5701, which pertains to travel expenses, states, in pertinent part, that "'agency'" does not include a "Government controlled corporation[.]"

that the Union is not entitled to SQA relief because that would require the Agency to reinstate the Shumway rule, which the Agency claims is illegal, *see id.* at 11-12, and because arbitrators have great latitude to fashion remedies. *See id.* at 12. In addition, the Agency contends that the Union fails to demonstrate that the award is incomplete, ambiguous, or contradictory. *See id*. at 9-11

IV. Analysis and Conclusions

A. Preliminary Matter: The Union's exceptions are not untimely.

Section 7122(b) of the Statute provides, in pertinent part, that exceptions to an arbitrator's award must be filed "during the 30-day period beginning on the date the award is served on the party[.]" 5 U.S.C. § 7122(b). *See also* 5 C.F.R. § 2425.1(b) ("The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party."). Where the date of service is not in the record, the date of an arbitration award is presumed to be the date of service. *E.g.*, *U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., U.S. Border Patrol*, 63 FLRA 345, 346 (2009) (*DHS*). If the last day of the thirty-day period falls on a weekend or federal holiday, then the due date for the exceptions is the end of the next day that is not a weekend day or federal holiday. 5 C.F.R. § 2429.21(a). In addition, if the award was served on the excepting party by mail, then the time period is extended an additional five days. 5 C.F.R. § 2429.22.

There is no evidence in the record of the service date of the award, other than the date of the award. Thus, the award is considered to have been served on August 24, 2007.[10] *DHS*, 63 FLRA at 346. Counting thirty days beginning on August 24, the due date for filing exceptions was September 22. As September 22 was a Saturday, the due date for filing then became Monday, September 24. In addition, as the award was served by mail, the time period is extended for five days, until Saturday, September 29, and then is further extended until Monday, October 1. *See* 5 C.F.R. § 2429.22; 5 C.F.R. § 2429.21(a). *See also U.S. Dep't of the Treasury, IRS, Nat'l Distrib. Ctr., Bloomington, Ill.*, 64 FLRA 586, 591 (2010). As the Union's exceptions were filed on October 1, we find that those exceptions were timely filed.

10. All dates in this section are 2007.

B. The award is not 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. DOD, 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.*

As an initial matter, the Agency argues that the Authority accords deference to an Agency's interpretation of its own regulations. *See Cong. Research Emps. Ass'n, IFPTE, Local 75*, 59 FLRA 994, 1000 (2004). However, as the regulations at issue here are not the Agency's own regulations, we do not defer to the Agency's interpretation of them. Rather, we engage in *de novo* review of these regulations.

1. 5 C.F.R. § 551.422

Section 551.422(a)(1) provides that "[t]ime spent traveling shall be considered hours of work if . . . [a]n employee is required to travel during regular working hours[.]" *Id.* Additionally, time that is "hours of work" is compensable. *See NTEU v. FLRA*, 418 F.3d at 1073 ("hours of work" are "compensable[]") (quoting 45 Fed. Reg. 85,660 (Dec. 30, 1980)). The compensated travel under the Shumway rule is travel that occurs during the normal workday, and thus, occurs during "regular working hours[.]" 5 C.F.R. § 551.422(a)(1). *See* 5 C.F.R. § 551.421(a) ("'[R]egular working hours' means the days and hours of an employee's regularly scheduled administrative workweek[.]").[11] Further, it is undisputed that the travel under the Shumway rule is "required" within the meaning of § 551.422(a), as it is travel that the Agency directs an employee to take. Additionally, since travel under the Shumway rule "will not commence" earlier than one hour before the start of the normal workday on a Monday, and "should generally terminate" no later than one hour after the end of a normal workday on a Friday,

11. 5 C.F.R. § 551.421(a) states, in pertinent part: "'[R]egular working hours' means the days and hours of an employee's regularly scheduled administrative workweek established under part 610 of this chapter."

the Shumway rule effectively requires that travel assignments that are longer than one hour be conducted during the normal workday. Award at 4-5. Therefore, the Shumway rule also effectively requires travel to occur during regular working hours.[12] As compensated travel under the Shumway rule is travel in which "[a]n employee is required to travel during regular working hours[,]"compensated travel under the Shumway rule is "hours of work[]" under § 551.422(a)(1).

By contrast, the compensated travel under the Shumway rule does not fit the description in § 551.422(b). In this connection, the "normal 'home to work' travel[]" under § 551.422(b) is travel in which "[a]n employee . . . travels from home before the regular workday begins and returns home at the end of *the workday*[.]" *Id.* (emphasis added). Effectively, this means that "normal 'home to work' travel" is travel that occurs within a single workday. *Cf.* 29 C.F.R. § 785.39 ("Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday."). The compensated travel under the Shumway rule involves travel in which an employee leaves home to a financial institution on a Monday and returns home on a Friday. No basis has been provided for concluding that this is "normal 'home to work' travel[.]" 5 C.F.R. § 551.422(b). As such, decisions cited by the Agency involving normal home to work travel are inapposite. *See NTEU v. FLRA*, 418 F.3d 1068; *Adams*, 65 Fed. Cl. 217; *Local 3232*, 31 FLRA 355. We note, in this regard, that travel that "is required . . . during regular working hours[]" is "hours of work" under § 551.422(a)(1), whereas "normal 'home to work' travel" is "not hours of work" under § 551.422(b). This further supports the conclusion that "normal 'home to work' travel" is not travel that "is required . . . during regular working hours[.]" Consistent with the foregoing, as the compensated travel that occurs under the Shumway rule is travel that is required during regular working hours, the Shumway rule does not compensate employees for "normal 'home to work' travel[]" as the Agency claims.

The Agency also claims that the Shumway rule is contrary to § 551.422(b) because the Shumway rule does not require that an employee who "travels directly from home to a temporary duty location outside the limits of his or her official duty station [deduct] the time the employee would have spent in normal home to work travel[.]" *Id.* Even assuming § 551.422(b) applies generally, this "deduction rule" does not apply to the compensated travel that employees are required to take under § 551.422(a)(1). Rather, the deduction rule applies to travel "as specified in paragraphs (a)(2) and (a)(3)[.]"[13] 5 C.F.R. § 551.422(b). The Union contends, and the Agency does not dispute, that § 551.422(a)(2) and (a)(3) do not apply to travel under the Shumway rule. As the deduction rule does not apply to § 551.422(a)(1), there is no basis for finding that the fact that the Shumway rule does not contain a "deduction rule" does not render the Shumway rule contrary to § 551.422(b).

For the foregoing reasons, the award is not contrary to 5 C.F.R. § 551.422.

2. 5 C.F.R. § 550.112

5 C.F.R. §550.112 involves "[t]he computation of the amount of overtime work[.]" As relevant here, overtime work "means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek[.]" 5 C.F.R. § 550.111(a). As stated above, compensated travel under the Shumway rule occurs during an employee's "normal workday." Award at 4. Thus, it is not overtime work under § 550.111(a), and the "deduction rule" at § 550.112(j)(2), which pertains to the calculation of overtime, does not apply. Further, the decisions cited by the Agency are inapposite because they involve the calculation of overtime. *See Navy*, 61 FLRA 57; *Council 236*, 56 FLRA 136; *INS*, 19 FLRA 319. Therefore, the award is not contrary to 5 C.F.R. § 550.112.

3. 5 C.F.R. § 550.1404

5 C.F.R. § 550.1404(a)(2) grants compensatory time off for "travel time [that] is not otherwise compensable hours of work under other legal authority."[14] Because the compensated travel under the Shumway rule *is* "otherwise compensable hours of work[,]" *id.*, employees who are compensated for travel under the Shumway rule do not accrue

12. We note that the scheduling of travel during the normal workday is consistent with 5 U.S.C. § 6101(b)(2), which states: "To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee."

13. Section 551.422(a)(2) and (a)(3) are stated at note 6, *supra*.

14. Compensatory time off under 5 C.F.R. §§ 550.1401-1409, is defined at 5 C.F.R. § 550.1403. *See* note 2, *supra.*

compensatory time off. Similarly, because the "deduction rule" at § 550.1404(c)(1) applies to accrued compensatory time off, but not to compensated travel, the "deduction rule" in § 550.1404(c)(1) does not apply to compensated travel under the Shumway rule. Thus, the fact that the Shumway rule does not include a "deduction rule" for compensated travel does not indicate that the Shumway rule is contrary to § 550.1404. As such, the award is not contrary to 5 C.F.R. § 550.1404.

For the foregoing reasons, we conclude that the Agency has not demonstrated that the award is contrary to law, and we deny the Agency's exceptions.[15]

4. Failure to Award SQA Relief

Where an arbitrator finds that an unfair labor practice (ULP) was committed, the Authority defers to the judgment and discretion of the arbitrator in the determination of the remedy. *NTEU*, 64 FLRA 504, 507 (2010). Unless the party excepting to the arbitrator's determination of remedy establishes that a particular remedy is compelled by the Statute, the Authority upholds an arbitrator's remedy determination "unless the determination is a '*patent attempt* to achieve ends other than those which can fairly be said to effectuate the policies of the Statute.'" *Id.* (quoting *NTEU v. FLRA*, 910 F.2d 964, 968 (D.C. Cir. 1990) (*en banc*) (emphasis in original).

Here, the Union argues that the Authority would have awarded an SQA remedy if the Authority had been determining the remedy in the first instance. However, this is not the standard that the Authority applies when considering an arbitrator's remedy. *NTEU*, 64 FLRA at 507. Further, the Union makes no claim that the remedy awarded by the Arbitrator was a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Statute. As such, the remedy awarded is not contrary to law, and we deny the Union's contrary-to-law exception.

C. The award is not ambiguous, incomplete, or contradictory.

The Union asserts that that the award is "ambiguous and incomplete with respect to remedy." Union's Exceptions at 13. We construe this as a claim that the award is incomplete, ambiguous, or contradictory. *See U.S. EPA*, 63 FLRA 30, 33 (2008). The Authority will find an award deficient when it is incomplete, ambiguous, or so contradictory as to make implementation of the award impossible. *Id.* Here, the Arbitrator directed the Agency to "continue to apply the Shumway rule to travel which is not eligible for compensable time under the CTT[.]" Award at 16. The Union provides no basis for finding that this direction is incomplete, ambiguous, contradictory, or impossible to implement. *See EPA*, 63 FLRA at 33. Therefore, the award is not deficient on this ground.

V. Decision

The Agency's and the Union's exceptions are denied.

15. As such, it is not necessary to resolve the Union's other arguments in response to the Agency's exceptions. *See HHS, FDA, New Eng. Dist. Office*, 58 FLRA 567, 570 n.5 (2003).