

**70 FLRA No. 75**

UNITED STATES  
DEPARTMENT OF THE NAVY  
NAVAL FACILITIES ENGINEERING COMMAND  
MID-ATLANTIC (NAVFAC MIDLANT)  
NORFOLK, VIRGINIA  
(Agency)

and

TIDEWATER VIRGINIA FEDERAL EMPLOYEES  
METAL TRADES COUNCIL  
(Union)

0-AR-5305

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ORDER DISMISSING EXCEPTIONS

December 27, 2017

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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 exceptions to an award of Arbitrator Jane Rigler filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute<sup>1</sup> and part 2425 of the Authority's Regulations.<sup>2</sup> The Union filed an opposition to the Agency's exceptions.

We issue our decision as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.<sup>3</sup>

Parties to an arbitration may agree as to what method of service should be used to serve an award, and that agreement is controlling for purposes of calculating the time limit for filing exceptions.<sup>4</sup> Here, the parties agreed that the Arbitrator would serve her

award by email.<sup>5</sup> The Arbitrator transmitted her award by email on July 17, 2017.<sup>6</sup>

The time limit for filing exceptions to an arbitration award is thirty days "after the date of service of the award."<sup>7</sup> When an award is served by email, the date of service is the date the email is *transmitted* to the parties.<sup>8</sup> Thus, in order to be timely, any exceptions to the award had to be filed with the Authority no later than August 16, 2017.<sup>9</sup> The Agency filed its exceptions on August 17, 2017.<sup>10</sup>

Further, the Authority will dismiss a party's filing when the party fails to respond to a show-cause order.<sup>11</sup> The Authority issued a show-cause order directing the Agency to explain why its exceptions were not untimely, but the Agency did not respond.

For these reasons, we dismiss the Agency's exceptions.

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<sup>1</sup> 5 U.S.C. § 7122(a).

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

<sup>3</sup> *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

<sup>4</sup> *Id.* § 2425.2(c).

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<sup>5</sup> Opp'n, Ex. 2 (copy of email from the Arbitrator to the parties stating that the Agency representative asked to be served the award electronically).

<sup>6</sup> Opp'n, Ex. 3 (copy of email from the Arbitrator to the parties transmitting the award on July 17, 2017).

<sup>7</sup> 5 C.F.R. § 2425.2(b); *see also id.* § 2429.23(d) (the Authority may not extend or waive the time limit for filing exceptions to an arbitration award); *AFGE, Local 3961*, 68 FLRA 443, 443-45 (2015) (Member DuBester dissenting) (Authority declined to waive deadline when exceptions were filed six minutes late); *U.S. Dep't of VA Med. Ctr., Richmond, Va.*, 68 FLRA 231, 232-34 (2015) (Member Pizzella dissenting) (Authority equitably tolled exceptions deadline due to government shutdown).

<sup>8</sup> 5 C.F.R. § 2425.2(c)(3).

<sup>9</sup> *Id.* §§ 2425.2(c), 2429.21.

<sup>10</sup> Exceptions at 13.

<sup>11</sup> *See, e.g., U.S. Dep't of VA Med. Ctr., Coatesville, Pa.*, 56 FLRA 829, 830 n.1 (2000) (exceptions dismissed for failure to respond to a show-cause order on why exceptions should not be dismissed as interlocutory); *U.S. Dep't of the Air Force, Albrook Air Force Base, Pan.*, 39 FLRA 629, 630-32 (1991) (exceptions dismissed for failure to respond to a show-cause order on why exceptions should not be dismissed as untimely).