71 FLRA No. 50

UNITED STATES
DEPARTMENT OF THE ARMY
CORPUS CHRISTI ARMY DEPOT
CORPUS CHRISTI, TEXAS
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2142
(Union)

0-AR-5393

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DECISION

August 8, 2019

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

I. Statement of the Case

Arbitrator James P. O'Grady issued an award finding that the Agency lacked just cause to suspend an employee (the grievant) for fourteen days. As a remedy, the Arbitrator reduced the suspension to a one-year letter of reprimand.

The Agency argues that the award fails to draw its essence from the parties' collective-bargaining agreement, but we deny the Agency's exception because the award is not irrational, unfounded, implausible, or in manifest disregard of the agreement.

II. Background and Arbitrator's Award

The grievant works at a helicopter-repair facility that the Agency operates. Under the Agency's rules, any helicopter part that falls on the floor must undergo quality-assurance testing. While at work, the grievant dropped a small part. A nearby quality-control inspector told the grievant that he must send the dropped part for testing. Instead, the grievant put the dropped part in a container with twenty-four identical parts, shook the container, and then said to the inspector, "Now you don't know which one it is."[1] The Agency proposed to suspend the grievant for fourteen days for conduct unbecoming a federal employee and for failure to observe written regulations.

The deciding official considered that the grievant took responsibility, showed remorse, and pledged that no future incidents would occur. And the deciding official considered the grievant's lack of previous discipline, and highly successful performance ratings for the previous three years. Nevertheless, the deciding official imposed the fourteen-day suspension because of the grievant's "flagrant disregard" of procedure and lack of professionalism in the presence of a quality-control inspector.[2]

The Union filed a grievance that went to arbitration, where the parties stipulated to the following issues: "Was the [fourteen-d]ay [s]uspension . . . for just cause? If not, what should be the appropriate remedy?"[3] The parties provided the Arbitrator with a copy of Article 22, Section 2 of their agreement. That section states, in pertinent part, that disciplinary actions "will be for just causes only"; "will be directed toward improving employees' work habits, conduct, attitude, and efficiency"; and "should be no more severe than the violations warrant."[4] Further, the section says that "[c]onsideration should be given to whether the offense is minor, flagrant, or a repeated one."[5]

The Arbitrator found that the grievant "took full responsibility for his actions,"[6] "explained [that] this was not something he would normally have done,"[7] "demonstrated his remorse,"[8] and "gave assurances" that there would be "no recurrence[]."[9] Further, the Arbitrator observed that the grievant's work performance was above average, and he had no previous discipline. For these reasons, the Arbitrator found that – although the grievant's offense was serious – a fourteen-day suspension was not the "minimum discipline" that the Agency could have imposed "to correct the [g]rievant's behavior."[10] Therefore, the Arbitrator concluded that the suspension was "not for just cause."[11]

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[1] Award at 5.

[2] Exception, Attach. 2., Notice of Decision on Proposed Suspension (Notice) at 2.

[3] Award. at 2.

[4] Exception, Attach. 3, Collective-Bargaining Agreement (CBA) at 188.

[5] *Id.*

[6] Award at 2.

[7] *Id.*

[8] *Id.* at 5.

[9] *Id.* at 6.

[10] *Id.* at 7.

[11] *Id.*

As remedies, the Arbitrator directed the Agency to reduce the suspension to a one-year letter of reprimand and to provide the grievant backpay.

On June 29, 2018, the Agency filed an exception to the award, and, on July 27, 2018, the Union filed an opposition to that exception.

III. Preliminary Matter: The Agency timely filed its exception.

The Arbitrator served his award on the parties by mail on May 29.[12] The time limit for filing exceptions to an award is thirty days from the date of service,[13] with five additional days to account for service by mail.[14] Applying those rules here, July 3 was the deadline for filing exceptions to the Arbitrator's award. The Authority did not receive the Agency's exception until July 23. Accordingly, the Authority's Office of Case Intake and Publication (CIP) ordered the Agency to show cause why its exception should not be dismissed as untimely.[15]

In response, the Agency provides a copy of an envelope containing its exception, which the Agency explains it first sent to the Authority via certified mail.[16] That envelope reflects the correct address for CIP and bears a June 29 postmark.[17] For unknown reasons, the U.S. Postal Service returned the envelope to the Agency as undeliverable.[18] Consequently, the Agency submitted its exception for a second time via eFiling on July 23.[19] But the Agency contends that, under the Authority's Regulations, its June 29 exception was timely, and the July 23 submission was merely a duplicate.[20]

As relevant here, § 2429.21(b)(1)(i) of the Authority's Regulations states that, for documents filed with the Authority by mail, "[i]f the mailing contains a legible postmark date, then that date is the date of filing."[21] As the mailing envelope that contained the Agency's originally filed exception has a legible June 29 postmark, that is the date of filing.[22] Accordingly, the exception is timely.

IV. Analysis and Conclusion: The award draws its essence from the parties' agreement.

The Agency argues that the award fails to draw its essence from the parties' agreement for two reasons.[23] First, the Agency notes that Article 22, Section 2 requires that disciplinary actions "should be no more severe than the violations warrant,"[24] and the Agency contends that the grievant's actions warrant a more severe penalty than a letter of reprimand.[25] However, the Arbitrator found that a letter of reprimand would be sufficiently severe to "correct the [g]rievant's behavior,"[26] and that determination is consistent with the agreement's requirement that discipline be "directed toward improving employees' work habits, conduct, attitude, and efficiency."[27] Thus, we find that the Arbitrator's determination on this point was not irrational, unfounded, implausible, or in manifest disregard of the agreement.[28]

Second, the Agency notes that Article 22, Section 2 requires that "[c]onsideration . . . be given to whether [an] offense is minor, flagrant, or a repeated one."[29] The Agency asserts that the Arbitrator impermissibly considered a variety of other factors, like the grievant's "admission of guilt, remorse, assurance[s]," and job performance.[30] But, as noted above, Section 2 specifically requires disciplinary actions to "be directed toward improving employees' work habits, conduct, attitude, and efficiency."[31] Thus, the Arbitrator appropriately considered evidence relating to those factors.[32] The Agency provides us with no other explanation of how the Arbitrator erred by considering

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[12] All dates are 2018.
[13] 5 U.S.C. § 7122(b).
[14] 5 C.F.R. § 2429.22(a).
[15] Order to Show Cause (Order) at 2.
[16] Resp. to Order, Attach. 3.
[17] *Id.*
[18] *Id.* (showing envelope with the words "return to sender" and "addressee unknown" circled on the front).
[19] Resp. to Order at 1-4.
[20] *Id.* at 3.
[21] 5 C.F.R. § 2429.21(b)(1)(i).
[22] *See id.*

[23] Exception at 2-4. An award fails to draw its essence from a collective-bargaining agreement when the excepting party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *U.S. Dep't of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 103, 104 n.13 (2019) (*VA*).
[24] CBA at 188.
[25] Exception at 3.
[26] Award at 7.
[27] CBA at 188 .
[28] *See VA*, 71 FLRA at 104-05.
[29] CBA at 188.
[30] Exception at 3.
[31] CBA at 188.
[32] Award at 6 (considering acceptance of responsibility, remorse, and above-average job performance), 7 (considering assurances of no recurrence).

these factors, so akin to the *Douglas* factors.[33] Indeed, the deciding official referred to nearly the same considerations as the Arbitrator; therefore, the Agency's arguments here are inconsistent with its own actions as taken below.[34] Moreover, the Arbitrator undeniably considered whether the grievant's offense was "minor, flagrant, or a repeated one" when he found that the offense was serious but not repeated.[35] Therefore, we find that the Arbitrator's disciplinary considerations were not irrational, unfounded, implausible, or in manifest disregard of the agreement.[36]

Accordingly, we deny the Agency's essence exception.

V. Decision

We deny the Agency's exception.

Member DuBester, concurring:

I concur in the Decision to deny the Agency's exception.

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[33] The *Douglas* factors are rules developed by the Merit Systems Protection Board (MSPB) to assist a deciding official in determining an appropriate penalty. The factors may either be mitigating or aggravating. *See Douglas v. Veterans Admin.*, 5 M.S.P.R. 280 (1981); *see generally AFGE, Local 522,* 66 FLRA 560, 563 (2012) (noting that arbitrators are not required to consider the *Douglas* factors in cases involving suspensions of fourteen days or less); *U.S. Dep't of VA, Med. Ctr. Richmond, Va.*, 63 FLRA 181, 181 n.1 (2009) (discussing application of *Douglas* factors in minor discipline).
[34] Notice at 1-2.
[35] CBA at 188; Award at 7.
[36] *See VA*, 71 FLRA at 104-05.