71 FLRA No. 52

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEMBER SERVICES
HEALTH RESOURCE CENTER
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 906
(Union)

0-AR-5456

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DECISION

August 13, 2019

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

Decision by Member Abbott for the Authority

I. Statement of the Case

This case concerns a disagreement over the interpretation of a collective-bargaining agreement (CBA) provision that requires ten-minute breaks for every hour that Contact Representatives (CRs) spend working on Visual Display Terminals (VDTs).[1]

In an award dated December 3, 2018, Arbitrator Ronald G. Iacovetta found that the Agency violated the parties' CBA when it failed to schedule – and refused to grant – breaks as called for by the parties' agreement.[2]

The Agency argues that the Arbitrator's interpretation fails to draw its essence from the agreement because it is implausible and "too constricting to be connected with the wording and purposes" of the CBA.[3] Because the Arbitrator's interpretation is consistent with the plain language of the agreement, and the Agency otherwise fails to demonstrate how the Arbitrator's interpretation is implausible, we deny the exception.

[1] VDTs are computer-like terminals that display information on a television-like screen.
[2] Award at 18.
[3] Exceptions Br. at 13.

II. Background and Arbitrator's Award

The grievants are CRs who work at Agency call centers answering questions from veterans and their family members. CRs answer such calls through VDTs. Most of the work performed by the CRs – receiving calls and inputting information – is performed on and with the VDT.[4]

Article 29, § 20F of the parties' CBA states:

> Where an employee uses a VDT or other screening device for at least an hour, the employee shall receive a [ten-]minute break for every hour of utilization. Such breaks will be in addition to regularly scheduled rest periods. This does not pre[c]lude employees from receiving rest breaks when suitable non-VDT work is not available.[5]

A joint labor-management training presentation, after the implementation of the agreement, noted that the breaks provided for by this provision are "meant to be breaks from staring at the screen[, but] are not intended to be work-free periods."[6]

After the Agency denied several requests for VDT breaks, the Union filed a grievance alleging that the Agency was failing to comply with Article 29, § 20F on an ongoing basis by not scheduling VDT breaks every hour as required. As a remedy, the Union wanted the Agency to schedule breaks whenever employees used a VDT for at least one hour, for each hour of use. The Agency argued[7] that it had not violated the parties' agreement because, in an earlier arbitration case – *Dep't of VA* (*VA*) – involving the same provision,[8] the arbitrator had held that "in order to qualify for [a VDT] break a [CR] must have *continuously* stared at a VDT screen with or without using the keying device for at least one hour."[9] According to the Agency, CRs do not stare *continuously* at the VDT screen for one hour. The Agency reasoned that its refusal to grant VDT breaks to CRs was consistent with the CBA and it, therefore, denied the grievance. The Union invoked arbitration.

[4] Award at 17 ("The Agency and the Union agree that all work assigned is on the computer and this makes the CR's full[-]time VDT users.").
[5] *Id.* at 10.
[6] *Id.*; Exceptions, Agency Ex. 1 at 16 ("If you work with VDTs . . . and that's your full[-]time job, you are entitled to a ten-minute break from VDT work for each hour of use.").
[7] Exceptions Br. at 10.
[8] 113 LRP 15091 (2013).
[9] Exceptions, Agency Ex. 3 at 13 (emphasis added); *see also* Award at 14.

The Arbitrator found that Article 29, § 20F was "clear and unambiguous"[10] and noted that nothing in the provision required an employee to be "constantly staring at the computer monitor for at least an hour in order to qualify for a VDT break."[11] Additionally, the Arbitrator found that the earlier arbitration case, cited by the Agency, was irrelevant because it involved an allegation that the agency was obligated to alert local union officials about employees' entitlement to VDT breaks, whereas in this case the Agency denied VDT break requests altogether. Although the Arbitrator considered the Agency's arguments that CRs may look away from the VDT screen between calls and take other breaks, he concluded that those arguments did not negate the Agency's unambiguous obligation to grant breaks under Article 29, § 20F.[12] Accordingly, the Arbitrator sustained the grievance.

The Agency filed an exception to the award on January 2, 2019 and the Union filed an opposition on January 28, 2019.

III. Analysis and Conclusions: The award draws its essence from the parties' agreement.

The Agency argues that the award fails to draw its essence from the agreement because the Arbitrator's interpretation of Article 29, § 20F is not plausible or connected with the wording and purposes of the CBA.[13] Specifically, the Agency argues that the Arbitrator's "strict interpretation" will disrupt its operations by "conceivably granting breaks to all its employees for every hour they work," and that the Agency's interpretation is "consistent with reasonable business practices" and the earlier arbitral award in *VA*.[14]

The Arbitrator's interpretation of Article 29, § 20F is neither implausible nor overly "strict."[15] The Arbitrator simply found that Article 29, § 20F clearly and unambiguously states that an employee "shall receive" a ten-minute break when an employee "*uses a VDT* . . . for at least an hour."[16] The Arbitrator correctly observed that nothing in that contractual provision requires that a CR stare continuously at the VDT screen for more than an hour to qualify for the break. The Arbitrator's decision is plausible and consistent with the plain wording of Article 29, § 20. Thus, the Agency has not established that the award fails to draw its essence from the agreement.[17]

Regarding the Agency's arguments concerning the earlier arbitration, the Authority has long held that generally arbitration awards are not precedential.[18]

Accordingly, we deny the exception.

IV. Decision

We deny the Agency's exception.

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[10] Award at 18.
[11] *Id.* at 17.
[12] *Id.* at 20. The Arbitrator also found that the Agency violated Article 17 of the CBA by denying some VDT break requests while approving others. *Id.*
[13] When reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector. Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the collective-bargaining agreement when the appealing 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 the Treasury, IRS*, 70 FLRA 539, 542 n.24 (2018) (Member DuBester concurring) (citing *Bremerton Metal Trades Council*, 68 FLRA 154, 155 (2014)).
[14] Exceptions Br. at 10.
[15] *Id.*
[16] Award at 17 (emphasis added).
[17] *See, e.g.*, *IFPTE, Ass'n Admin. Law Judges*, 70 FLRA 316, 317 (2017) (finding the union failed to establish the arbitrator's plain-language interpretation of the agreement was implausible); *SSA*, 65 FLRA 339, 343 (2010) (denying an essence exception challenging the arbitrator's interpretation of the agreement).
[18] *See, e.g.*, *AFGE, Local 2328*, 70 FLRA 797, 798 n.18 (2018) ("arbitration awards are not precedential, and arbitrators are not bound to follow them") (citing *U.S. Dep't of the Air Force, Warner Robins Air Logistics Complex, Robins Air Force Base, Ga.*, 68 FLRA 102, 106 (2014); *AFGE, Council 236*, 49 FLRA 13, 16-17 (1994)).

Member DuBester, concurring:

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