

CASE DIGEST: SSA, 71 FLRA 205 (2019) (Member Abbott concurring; Member DuBester dissenting)

This case concerned a grievance alleging that the Agency failed to pay a Schedule A, term employee, who was paid at the General Schedule (GS)-5 level pursuant to signed agreements, at the GS-8 level for her performance of higher-graded duties over several years. The Arbitrator sustained the grievance in a bench decision and ordered that the grievant should be given a GS-8 rating and be paid retroactively. The Authority found that the grievance was not arbitrable because it concerned classification and was, therefore, barred by 5 U.S.C. § 7121(c)(5). Accordingly, the Authority vacated the Arbitrator's award in its entirety.

Member Abbott wrote separately to concur with the § 7121(c)(5) application and to note that the grievance was also not arbitrable because it sought to force a conversion of the grievant's excepted-service status to that of the competitive service, which is beyond the power of an arbitrator.

Member DuBester dissented, finding that the grievance did not concern a classification matter with the meaning of § 7121(c)(5) of the Statute. Rather, he found that the record demonstrated that the essential nature of the grievance concerned whether the grievant was entitled to a temporary promotion under the parties' collective-bargaining agreement for performing the established duties of a higher-graded position. Thus, he would not have vacated the award.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.