

**CASE DIGEST:** *U.S. Dep't of the Treasury, Office of the Comptroller of the Currency,*  
71 FLRA 387 (2019) (Member DuBester dissenting in part)

This case involved grievances over a 2014 and a 2015 performance evaluation. The Arbitrator determined that the 2014 grievance was timely, sustained both grievances on the merits, and directed the Agency to adjust the grievant's performance evaluation ratings and pay accordingly. On exceptions, the Agency challenged the Arbitrator's procedural-arbitrability determination and her determination on the merits as failing to draw their essence from the parties' agreement. The Agency also challenged the remedy as contrary to management's rights to direct employees and assign work. The Authority found the Arbitrator's procedural-arbitrability determination inconsistent with the plain language of the parties' agreement, and set aside the portion of the award relating to the 2014 grievance. The Authority denied the Agency's essence exception as it pertained to the 2015 grievance. However, the Authority granted the Agency's management right's exception, finding the Arbitrator's remedy contrary to law because it excessively interfered with management's right to evaluate and rate the grievant's job performance, and also vacated that portion of the award.

Member DuBester agreed with the denial of the essence exception as to the 2015 grievance. He dissented from the remainder of the decision, finding that the Arbitrator's procedural-arbitrability determination is a plausible interpretation of the parties' agreement and her remedy is not contrary to management's rights.

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.