

**63 FLRA No. 103**

SOCIAL SECURITY ADMINISTRATION  
(Agency)

and

ASSOCIATION OF ADMINISTRATIVE  
LAW JUDGES INTERNATIONAL  
FEDERATION OF PROFESSIONAL AND  
TECHNICAL ENGINEERS, AFL-CIO  
(Union)

0-AR-4079

—————  
DECISION

May 15, 2009

—————  
Before the Authority: Carol Waller Pope, Chairman and  
Thomas M. Beck, Member

**I. Statement of the Case**

This matter is before the Authority on exceptions to an award of Arbitrator Louis D. Ridle filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union did not file an opposition to the Agency's exceptions.

The Arbitrator sustained the grievants' claim and ordered the reimbursement of parking fees. For the reasons discussed below, we set aside the Arbitrator's award.

**II. Background and Arbitrator's Award**

This case concerns the monthly parking rates paid by individual Administrative Law Judges (ALJs) in the Social Security Administration (SSA), Office of Hearings and Appeals (OHA) in Oklahoma City. In 2001, pending the completion of a new Federal Building Complex, the OHA was temporarily relocated to the Old Post Office and Federal Courthouse buildings. These buildings were adjacent to the Murrah Building parking garage. To motivate employees to park in the Murrah Building parking garage, the General Services Administration (GSA) offered the ALJs special parking rates.<sup>1</sup> The Arbitrator found that the special parking rates were to stay in effect as long as the hearing offices remained in their temporary location. Award at 2. The ALJs did not move to their new location until December 2005.

From October 1, 2002 until October 1, 2003, the ALJs paid \$20.00 per month for parking. On October 1, 2003, when the parking rates were raised to \$50 per month, the ALJs paid \$40.00 per month for the remainder of the year. However, on January 1, 2004, the parking rate was raised for everyone to \$60.00 per month. *See id.* at 2-3. The Union filed a grievance claiming that the parking rate should have remained at \$40.00 per month until the ALJs relocated to the new office space in December 2005. The dispute was not resolved and was submitted to arbitration. As relevant here, the Arbitrator stated that the following issues were before him for resolution:

1. Whether individual [ALJs] in the [OHA] were entitled to park in the Murrah Building Parking Garage at a fixed rate of \$40.00 per month for as long as the hearing office remained at the Federal Complex or until December 12, 2005, at which time the move was made to the new Federal Building.

....

3. Whether there is a basis or authority for the Union's requested relief to be awarded by the [A]rbitrator.

*Id.* at 1.

The Arbitrator found that there was an agreement between GSA and the Chief ALJ in which GSA offered, as an incentive to park in the Murrah Federal Building, a parking rate of \$20.00 per month for the first year and \$40.00 a month for the next three years, or until the new Federal Building Complex was completed. *See id.* at 21. The Arbitrator also found that GSA disregarded the agreement and raised parking rates when it began to rent parking spaces to other agencies. *See id.* Finally, in response to the last issue, the Arbitrator found that he had authority under Article 11 of the parties' collective bargaining agreement to render an award on the matter. Thus, he concluded that the ALJs were entitled to

—————  
1. The parking rate agreement between GSA and the ALJs states as follows:

Parking for employees will be made available in the Murrah Parking [g]arage for a reduced rate for the first 12 months of occupancy. The reduced rate (\$20.00 per month) is predicated upon completion of a rental contract between the Federal Executive Board and the employees and is based upon the assumption the employees will remain in the garage and continue past the 12<sup>th</sup> month at the full \$40.00 rate. Failure to complete the contract will result in employees' payment of the full rate beginning with commencement of occupancy.

Award at 2.

“recover \$3730.00 or other non-traditional relief” for breach of the parking agreement. *See id.* As his award, the Arbitrator ordered various amounts of monetary compensation for each of the affected ALJs.

### III. Agency’s Exceptions

The Agency claims that the Arbitrator’s award is contrary to law because there is no authority for an award of monetary damages. Exceptions at 10. In this regard, the Agency argues that the award is contrary to law because “there is no applicable waiver of sovereign immunity” and that “[t]o sustain a claim that the [g]overnment is liable for awards of monetary damages, the waiver of sovereign immunity must extend unambiguously to such monetary claims.” *Id.* at 14 (quoting *Lane v. Pena*, 518 U.S. 187, 192 (1996)). The Agency asserts that a waiver of the Federal government’s sovereign immunity must be “unequivocally expressed in statutory text.” *Id.* (citing *Lane v. Pena*, 518 U.S. at 192). The Agency further claims that there is no statutory waiver of sovereign immunity authorizing payment of parking expenses under the Back Pay Act, 5 U.S.C. § 5596, the Travel Expense Act, 5 U.S.C. § 5701, or the Federal Travel Regulations (FTRs), 41 C.F.R. Part 301. *See* Exceptions at 12-13. The Agency argues that “the established rule is that Federal employees must bear as personal commuting expenses all costs of transportation, including parking fees, between their residences and their official duty stations.” *Id.* at 12 (quoting *NTEU*, 30 FLRA 677, 678 (1987) (*NTEU*)).

The Agency also argues that the award is based on nonfacts, that it fails to draw its essence from the parties’ agreement, and that the Arbitrator exceeded his authority because he failed to address the issue of whether there was authority for the award of monetary damages.

### IV. Analysis and Conclusions

When an exception involves an award’s consistency with law, the Authority reviews any question of law raised by the exception and the award *de novo*. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *United States Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard of *de novo* review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law. *See United States Dep’t of Def., Dep’ts of the Army and the Air Force, Ala. Nat’l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator’s underlying factual findings. *See id.*

The United States is immune from liability for money damages under the doctrine of sovereign immunity. *See Lane v. Pena*, 518 U.S. at 192. Sovereign immunity can be waived by statute, but a waiver will be found only if “unequivocally expressed in statutory text . . . and will not be implied[.]” *Id.* Thus, a Federal agency will be subject to a monetary claim only if the statute on which the claim is based unambiguously establishes that it extends to an award of money damages. *See id.*; *Dep’t of the Army, United States Army Commissary, Fort Benjamin Harrison, Indianapolis v. FLRA*, 56 F.3d 273 (D.C. Cir. 1995) (*Dep’t of the Army v. FLRA*), *vacating in part* 48 FLRA 6 (1993). As such, for the Authority to uphold an Arbitrator’s award ordering monetary damages, the award must be supported by statutory authority to impose such a remedy. *See United States Dep’t of Health & Human Serv. Food & Drug Admin.*, 60 FLRA 250, 252 (2004) (*Food & Drug Admin.*).

In *United States Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington*, 55 FLRA 293, 298-99 (1999) (*FAA*), the Authority stated that money damages have been characterized as a payment to a plaintiff of a sum of money for “something lost *in consequence* of the defendant’s act” and “as a substitute for a suffered loss in an action at law for damages.” *Id.* at 298 (emphasis in original) (quoting *Dep’t of the Army v. FLRA*, 56 F.3d at 276). Here, as the award of parking fees provides payment of a sum of money for the breach of the parking agreement, we find that the remedy awarded constitutes monetary damages. *See Dep’t of the Army v. FLRA*, 56 F.3d at 276. As such, the award is only lawful if it is based upon an explicit waiver of sovereign immunity. *See Food & Drug Admin.*, 60 FLRA at 252.

The Agency claims that there is no statutory waiver of sovereign immunity to authorize payment for parking expenses under the Back Pay Act, 5 U.S.C. § 5596, the Travel Expense Act, 5 U.S.C. § 5701, or the FTRs, 41 C.F.R. Part 301. For the following reasons, we agree.

Under the Back Pay Act, an award of backpay is authorized only when an arbitrator finds that: (1) the aggrieved employee was affected by an unjustified or unwarranted personnel action; (2) the personnel action directly resulted in the withdrawal or reduction of the grievant’s pay, allowances or differentials; and (3) but for such action, the grievant otherwise would not have suffered the withdrawal or reduction. *See United States Dep’t of Justice, Immigration & Naturalization Serv., San Diego, Cal.*, 51 FLRA 1094, 1097 (1996). Thus, unless an arbitrator finds that an aggrieved employee

was affected by an unjustified or unwarranted personnel action, an award of backpay is deficient. *Id.*; *United States Dep't of Health & Human Servs.*, 54 FLRA 1210, 1218-19 (1998) (*HHS*). The Code of Federal Regulations (C.F.R.) defines “pay, allowances, and differentials” as “pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation . . . .” 5 C.F.R. § 550.803.

Here, the Arbitrator did not find, and the record does not show, that the ALJs lost legally recognizable pay, allowances, or differentials as defined by § 550.803. *See* 5 C.F.R. § 550.803. Moreover, the Authority has specifically held that personal commuting expenses do not constitute pay, allowances or differentials under the Back Pay Act. *See HHS*, 54 FLRA at 1222 (citing *United States Customs Serv., Chicago-O'Hare*, 23 FLRA 366, 367-68 (1986) (*Customs*)). As the ALJs' parking fees constitute personal commuting expenses, *see NTEU*, 30 FLRA 677, the payment of parking fees here is not authorized under the Back Pay Act.

Further, the payment of employee travel expenses is governed by provisions of the Travel Expense Act, specifically 5 U.S.C. §§ 5701-5702, 5704, and 5706-5707, and the FTRs, 41 C.F.R. Part 300-1 *et seq.* *See Naval Public Works Ctr., San Diego*, 34 FLRA 750, 754 (1990). Under the Travel Expense Act and the FTRs, federal employees must bear as personal commuting expenses all costs of transportation, including parking fees, between their residences and their official duty stations. *See NTEU*, 30 FLRA at 678; *Customs*, 23 FLRA at 367. Employees may be reimbursed for various travel expenses, including parking fees, when they are engaged in official business for the Federal Government. *See NTEU*, 30 FLRA at 678-79; 5 U.S.C. § 5704(b).

In this case, the record does not indicate that the ALJs used their personal vehicles to conduct government business, but rather, as in *NTEU*, the parking fees were personal commuting expenses incurred by the ALJs' as a result of their choice to drive their personal vehicles to work. As such, the Arbitrator's award ordering the reimbursement of parking fees is not authorized by the Travel Expense Act or the FTRs. *See AFGE, Local 3006*, 47 FLRA 155, 159-61 (1993) (reimbursement of expenses related to home-to-work travel prohibited by 5 U.S.C. § 5704); *see also NTEU*, 30 FLRA at 678.

As the reimbursement of the parking fees here is not authorized by the Back Pay Act, the Travel Expense Act, or the FTRs, the Arbitrator's award is set aside as

contrary to law. *See United States, Dep't of Justice, Fed. Bureau of Prisons, United States Penitentiary, Marion, Ill.*, 59 FLRA 811 (2004).

## V. Decision

The Arbitrator's award is set aside.<sup>2</sup>

---

2. In light of this decision, it is unnecessary to address the Agency's remaining exceptions. *See United States Dep't of the Army, Headquarters, United States Army Training & Doctrine Command, Fort Monroe, Va.*, 61 FLRA 299 (2005).