

68 FLRA No. 52

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2607
(Union)

and

UNITED STATES
DEPARTMENT OF EDUCATION
FEDERAL STUDENT AID
(Agency)

0-AR-5074

—
DECISION

February 24, 2015

—
Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella concurring)

This matter is before the Authority on exceptions to an award of Arbitrator Joel S. Trosch filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute¹ and part 2425 of the Authority's Regulations.² The Agency filed an opposition to the Union's exceptions.

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.³

Several of the Union's exceptions – that the grievant's three-day suspension was not issued for just cause,⁴ that the Arbitrator improperly applied the factors set forth in *Douglas v. Veterans Administration*,⁵ that the Agency's grievance decision was improperly served,⁶ and that the Union's grievance was timely filed⁷ – do not raise recognized grounds for review listed in § 2425.6(a)-(c) of the Authority's Regulations⁸ and do not otherwise

demonstrate a legally recognized basis for setting aside the award. Therefore, we dismiss those exceptions under § 2425.6(e)(1) of the Authority's Regulations.⁹

The Union also argues that the Arbitrator was biased,¹⁰ and that the award is contrary to law because the Arbitrator wrongly denied the Union's three prehearing motions.¹¹ But the Union does not support those arguments. Therefore, we deny those exceptions under § 2425.6(e)(1) of the Authority's Regulations.¹²

Accordingly, we dismiss, in part, and deny, in part, the Union's exceptions.

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7 (“Even absent a [party’s] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.”).

⁴ Exceptions at 29-40.

⁵ 5 M.S.P.R. 280, 306-07 (1981); *see* Exceptions at 33-35.

⁶ *Id.* at 40.

⁷ *Id.* at 40-42.

⁸ 5 C.F.R. § 2425.6(a)-(c).

⁹ *Id.* § 2425.6(e)(1); *see also* *AFGE, Local 2272*, 67 FLRA 335, 335 n.2 (2014) (exceptions are subject to dismissal under § 2425.6(e)(1) of the Authority's Regulations if they fail to raise a recognized ground for review or, in the case of exceptions based on private-sector grounds not currently recognized by the Authority, if they provide insufficient citation to legal authority establishing the grounds upon which the party filed its exceptions) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011)).

¹⁰ Exceptions at 16-17.

¹¹ *Id.* at 4, 11-16, 18-29.

¹² 5 C.F.R. § 2425.6(e)(1); *see also* *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 784 (2011) (exceptions are subject to denial under § 2425.6(e)(1) of the Authority's Regulations if they fail to support arguments that raise recognized grounds for review).

Member Pizzella, concurring:

Unlike my colleagues, I would not dismiss one of the Union's exceptions. By arguing that the Arbitrator improperly applied the factors set forth in *Douglas v. Veterans Administration*,¹ the Union has set forth a contrary-to-law exception that should not be merely dismissed.² Additionally, by arguing that the Arbitrator improperly denied the Union's three pre-hearing motions, I would find that the Union has set forth a fair-hearing exception.³ As I have previously noted, the Authority's Regulations do not require a party "to invoke any particular magical incantation[s]" to perfect an exception.⁴

However, I would still deny the Union's contrary-to-law exception because arbitrators are not required to consider the *Douglas* factors in cases involving suspensions of fourteen days or less.⁵ As this case involves a three-day suspension, the Union's exception provides no basis for finding the award contrary to law on this ground.⁶

I would also deny the Union's fair-hearing exception because the Union failed to establish that the Arbitrator did not conduct a fair hearing.⁷

I also write separately to comment on the unusual facts of this case. Not since the final episode of *Seinfeld* in 1998 has there been a workplace commotion like the one before us today. In fact, one wonders if this case is actually the script to a lost episode.

This Costanza-worthy affair begins with a "verbal dispute" between the grievant, Anthony Radford, and his supervisor.⁸ A meeting was held to diffuse the disagreement, but things "did not go smoothly" after the grievant and his supervisor threw accusations at each other.⁹ Rather than reaching a resolution, the grievant left the meeting insisting that he feared for his safety.¹⁰

A few days later, another "disagreement" erupted between the combatants, prompting the grievant to send an email to his fourth-level supervisor – the chief operating officer for the Office of Federal Student Aid – asserting again that he feared for his safety.¹¹ In response, the office of the chief operating officer "authorize[d] [the grievant] to telework for the remainder of the week" while management conducted an investigation of the situation.¹²

Despite the chief operating officer's authorization to work from home, the grievant returned to the workplace two days later and worked out of the Union office until Sharon Harris, president of AFGE, Local 2607, learned of his presence and immediately advised him to leave.¹³

The Agency's investigation, which concluded shortly thereafter, revealed that the grievant's safety concerns were unsubstantiated.¹⁴ The Agency then suspended the grievant for showing up to the office despite being instructed to telework until the investigation was completed.¹⁵

Not one aspect of this case furthers the "effective conduct of [the government's] business."¹⁶ Instead, the grievant was punished for *showing up* to work. Not since George Costanza launched a Friday-afternoon tirade against his boss, quit his job, and simply reappeared at the office Monday morning as though nothing had happened, has such an odd situation generated a full-blown grievance, and arbitration, which can only be described as bizarre.¹⁷

Thank you.

¹ 5 M.S.P.R. 280, 306-07 (1981).

² Exceptions at 33-35.

³ *Id.* at 11-16, 18-29.

⁴ *AFGE, Local 1815*, 68 FLRA 26, 27 n.18 (2014) (quoting *AFGE, Local 1897*, 67 FLRA 239, 243 (2014) (Concurring Opinion of Member Pizzella) (citation and internal quotation marks omitted)); *see also NTEU v. FLRA*, 754 F.3d 1031, 1040 (D.C. Cir. 2014) ("A party is not required to invoke 'magic words' in order to adequately raise an argument before the Authority. Instead, an argument is preserved if the party has 'fairly brought' the argument 'to the Authority's attention.'").

⁵ *AFGE, Local 918*, 68 FLRA 113, 114 (2014) (citing *AFGE, Local 522*, 66 FLRA 560, 563 (2012)).

⁶ *See Prof'l Airways Sys. Specialists, Dist. No. 1, MEBA/NMU (AFL-CIO)*, 48 FLRA 764, 768-69 (1993) (award not deficient as contrary to law, rule, or regulation where excepting party fails to establish that the award is contrary to the law, rule, or regulation on which the party relies).

⁷ *AFGE, Local 1668*, 50 FLRA 124, 126 (1995) (award not deficient on ground that arbitrator failed to provide a fair hearing where excepting party fails to demonstrate that the arbitrator refused to hear or consider pertinent and material evidence or conducted the proceedings in a manner that so prejudiced the party as to affect the fairness of the proceeding as a whole).

⁸ Award at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* (internal quotation marks omitted).

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5-6.

¹⁶ *NTEU, Chapter 32*, 67 FLRA 174, 177 (2014) (Concurring Opinion of Member Pizzella) (quoting *U.S. DHS, CBP*, 67 FLRA 107, 112 (2013) (Concurring Opinion of Member Pizzella) (internal quotation marks omitted)).

¹⁷ *Seinfeld: The Revenge* (NBC television broadcast Apr. 18, 1991).