

**American Federation of Government Employees, Local 1923, AFL-CIO and
Social Security Administration, Baltimore, MD**

58 FLRA 376

Federal Labor Relations Authority

58 FLRA No. 91
0-AR-3544

March 21, 2003

Case Summary

The union filed exceptions to an arbitrator's award. The agency suspended three employees for unauthorized access of its computers. One employee was suspended for 14 days, the other two received two-day suspensions. Each employee filed a complaint. The complaints were consolidated. The arbitrator decided the agency failed to give due consideration to the Douglas factors. The arbitrator explained that "... in the selection of an appropriate disciplinary penalty, agencies exercise responsible judgment in each case based on individual considerations rather than acting automatically on the basis of generalizations unrelated to the individual situation." The arbitrator remanded the case. The agency was to give the discipline of each employee further consideration, taking into account the Douglas factors.

The union claimed the arbitrator's award was deficient. The arbitrator did not resolve the issue submitted to him. The arbitrator did not award an appropriate remedy in keeping with its finding that the agency failed to properly consider and apply the Douglas factors, the union argued. Remanding the case back to the agency was unprecedented. It lacked support under "generally recognized labor management operating procedures." Neither the Merit Systems Protection Board or the FLRA had approved such a remand in a disciplinary action, the union alleged.

Arbitrators exceed their authority "when they fail to resolve an issue submitted to arbitration" the FLRA explained. Here, the parties did not frame the issue for the arbitrator. Therefore the arbitrator was charged with the task. The appropriateness of the agency's decision suspending the grievants, was the issue the arbitrator created. He found the agency failed to take into account the Douglas factors. He ordered the agency to consider the factors and "reissue its decisions on the appropriate penalty." The FLRA ruled the award was responsive

to the issue before the arbitrator. The union failed to substantiate its claim the arbitrator failed to resolve an issue submitted thereby exceeding his authority. The FLRA had consistently given broad discretion to arbitrators having to fashion appropriate remedies. The union's claim the award was unprecedented was a bare assertion and denied. The union's exceptions were denied.

Cabaniss, Chair; Pope and Armendariz, Members

Decision

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Decision

I. Statement of the Case

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

The Agency suspended three employees in separate incidents. Each employee filed a grievance disputing the suspension, and the grievances were consolidated and submitted to arbitration. The Arbitrator remanded the grievances to the parties for further consideration by the Agency.

For the reasons set forth below, we find that the Union has provided no basis for finding the award deficient. Accordingly, we deny the Union's exceptions.

II. Background and Arbitrator's Award

The Agency suspended three employees in separate incidents of unauthorized access to the Agency's computer record system. Two employees were suspended for 2 days and the other employee was suspended for 14 days. Each employee filed a grievance disputing the suspension, and the grievances were consolidated and submitted to arbitration. The Arbitrator noted that the parties did not stipulate the issue submitted. Accordingly, he framed the issue to be resolved as "whether the Agency's action in suspending the three grievants was appropriate under the terms of the parties' collective bargaining agreement." Award at 1.

The Arbitrator stated that "[i]t has long been held in the Federal sector that in the selection of an appropriate disciplinary penalty, agencies exercise responsible

judgment in each case based on individual considerations rather than acting automatically on the basis of generalizations unrelated to the individual situation." Id. at 7 (citing Douglas v. Veterans Admin., 5 MSPR 280 (1981)).¹ The Arbitrator found that the evidence was insufficient to establish that the Agency gave due consideration to the Douglas factors in assessing the penalties against the grievants. Accordingly, he ruled as follows:

I shall order the grievances in this matter be remanded to the parties in order to afford the Agency the opportunity to fully consider and apply the Douglas Factors in assessing the penalties in each of the cases. After careful consideration and application of the Douglas Factors, the Agency should expeditiously reissue its decisions with respect to the subject grievances.

Id. at 8 (footnote omitted). The Arbitrator noted that in the event the Union disagrees with any of the reissued decisions, it may again invoke arbitration in accordance with the parties' agreement.

III. Union's Exceptions

The Union contends that the award is deficient because the Arbitrator failed to resolve an issue submitted to arbitration. The Union maintains that because the Arbitrator found that the Agency failed to establish that it had properly considered and applied the Douglas factors, he was bound to award an appropriate remedy not in conflict with that finding. The Union argues that the Arbitrator's finding that the Agency failed to consider the Douglas factors conflicts with his failure to award a remedy.

The Union further asserts that remanding the cases back to the Agency is unprecedented and without support under "generally recognized labor management operating procedures." Exceptions at 4. The Union claims that there is no instance where the Merit Systems Protection Board (MSPB) or its administrative judges have remanded a disciplinary action back to the agency to correct its deficiencies. The Union similarly claims that there are no cases in which the Authority has approved such a remand in a disciplinary action. The Union also argues that by failing to award relief the award is not final as required by the parties' collective bargaining agreement.

IV. Analysis and Conclusions

The Union contends that the award is deficient because the Arbitrator failed to resolve an issue submitted to arbitration. The Authority will find that arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration. See, e.g., NAGE Local R5-188, 54 FLRA 76, 80 (1998).

In this case, the parties did not stipulate the issue submitted to the Arbitrator for resolution. In absence of a stipulation, the Arbitrator framed the issue as the

appropriateness of the Agency's action in suspending the three grievants. He essentially found that the Agency's action was inappropriate because the Agency had failed to consider the Douglas factors. Accordingly, he ordered the cases remanded to the parties to have the Agency consider the Douglas factors and reissue its decisions on the appropriate penalty, subject to grievances being filed over the reissued decisions.

In our view, the award is responsive to the issue submitted as the Arbitrator framed it. Consequently, the Union fails to establish that the Arbitrator exceeded his authority by failing to resolve an issue submitted. See, e.g., Soc. Sec. Admin., Baltimore, Md., 55 FLRA 498, 503 (1999) (SSA, Baltimore). In addition, contrary to the claims of the Union, we find that the remand is consistent with the Arbitrator's finding that the Agency failed to fully consider the Douglas factors and that the remand constitutes a final resolution by the Arbitrator of the submitted issue as required by the parties' collective bargaining agreement.

To the extent that the Union is asserting that the Arbitrator erred by failing to order a remedy for his finding that the Agency did not consider the Douglas factors, we disagree. The remand, which compels the Agency to fully consider and apply the Douglas factors in determining the appropriate penalty in each case and reissue decisions, subject to being grieved by the Union, constitutes a remedy for the Agency's failure to fully consider the factors. The Authority has consistently emphasized the broad discretion to be accorded arbitrators in the fashioning of appropriate remedies. See, e.g., United States Dep't of the Air Force, Wright-Patterson Air Force Base, Ohio, 58 FLRA 145, 146 (2002). The Union's disagreement with the remedy fashioned by the Arbitrator provides no basis on which to find the award deficient. See, e.g., AFGE Local 916, 46 FLRA 846, 852 (1992).

The Union's argument that the remand is deficient because the MSPB has never remanded in these circumstances is misplaced. Even assuming that the Union correctly describes MSPB practice, the Union fails to establish that the Arbitrator was governed by the practice of the MSPB in resolving the grievances over suspensions of 14 days or less. See, e.g., AFGE Local 1770, 51 FLRA 1302, 1306 (1996) (arbitrators are not bound to follow the same substantive standards as the MSPB for suspensions of 14 days or less).²

In sum, the Union has provided no basis for finding that the Arbitrator exceeded his authority by remanding these cases or that the award is otherwise deficient as asserted by the Union. See SSA, Baltimore, 55 FLRA at 503 (the award was not deficient on the basis of the arbitrator's remand of the grievance to the parties to allow them to resolve their future interests). Accordingly, we deny the exceptions.

V. Decision

The Union's exceptions are denied.

1The phrase "Douglas factors" refers to factors established by the Merit Systems Protection Board in *Douglas v. Veterans Admin.*, 5 MSPR 280 (1981), that essentially constitute guidelines governing the appropriateness of penalties.

2The Union has not set forth any argument to support its claim that the award is contrary to generally recognized labor management operating procedures. As such, this claim is dismissed as a bare assertion. See, e.g., *United States Dep't of Veterans Affairs Med. Ctr., Coatesville, Pa.*, 56 FLRA 966, 971 (2000).