

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

)	
In the Matter of:)	
)	
District of Columbia Housing)	
Authority,)	
)	
Petitioner,)	PERB Case No. 99-A-05
)	Opinion No. 599
and)	
)	
American Federation of Government)	
Employees, Local 2725, AFL-CIO)	
(on behalf of Roy Mack),)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On April 26, 1999, the District of Columbia Housing Authority (DCHA or Petitioner) filed an Arbitration Review Request seeking review of an arbitration award (Award) issued on March 27, 1999. The Award sustained a grievance filed by the American Federation of Government Employees, Local 2725 (AFGE) on behalf of a bargaining unit employee, Roy Mack (Grievant). DCHA asserts that grounds exist for finding that the Arbitrator exceeded her jurisdiction. AFGE filed an Opposition to the Arbitration Review Request, denying that DCHA has presented any statutory grounds for review.

DCHA's Request presents a threshold jurisdictional issue of timeliness. The Arbitration Award was served on the parties by mail on March 27, 1999. As documented proof of the service date, DCHA provided a copy of the Arbitrator's Award which reflects a March 27, 1999 issuance date, and a DCHA stamp denoting a March 31, 1999 DCHA receipt date. (DCHA Exh. 3.) AFGE attached a copy of the Arbitrator's cover letter to its Opposition which also reflects that the Award was issued on March 27, 1999. (AFGE Exh. 6.)

Board Rule 538.1 provides that an aggrieved party "may file a request for review with the Board not later than twenty (20) days after service of the award." Board Rule 501.4 provides that when "service is by mail, five (5) days shall be added to the

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proscribed period." Therefore, DCHA's Request had to be filed no later April 21, 1999 (twenty-five days from the March 27, 1999 service of the Award by mail). However, DCHA did not file its Request until April 26, 1999. This filing date clearly exceeds the time provided under Board Rule 538.1 and 501.4. Accordingly the Request is untimely filed.

Board Rule 538.1 is mandatory and jurisdictional. As a mandatory and jurisdictional provision of our rules, it provides no discretion for extending the prescribed time for initiating an action before the Board. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991). DCHA's "right to request review of the Arbitration Award was automatically forfeited when it failed to do so within the prescribed time limit." D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 1931, Slip Op. No. 286 at p. 2, PERB Case No. 87-A-07 (1992).^{1/}

Notwithstanding its untimeliness, the Request does not present a statutory basis for disturbing the Award. Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-605.2(6), the Board is authorized to "[c]onsider appeals from arbitration awards pursuant to grievance procedures: Provided, however, that such awards may be reviewed only if the arbitrator was without, or exceeded, [] her jurisdiction"

DCHA terminated the grievant for possession of heroin on DCHA property during duty hours.^{2/} The Arbitrator reduced the termination to a suspension without pay and reinstated the grievant. DCHA asserts that the parties' collective bargaining

^{1/} Board Rule 501.4 provides no discretion in the 5 additional days afforded an individual when service is by mail. However, DCHA does not dispute, nor does anything in the parties' pleadings or attachments conflict with, the March 31, 1999 receipt date stamped on DCHA's copy of the Award or the March 27, 1999 mail service date noted in the letter that accompanied the Arbitrator's Award. Absent documented evidence to the contrary, we find the Award was served, by mail, on March 27, 1999. See, e.g., District of Columbia Public School and Washington's Teachers' Union, 42 DCR 5479, Slip Op. No. 335, at p. 2., PERB Case No. 92-A-10 (1992).

^{2/} Specifically, the grievant was terminated for cause as prescribed under the parties' CBA which provides: "Other conduct during and outside of duty hours that would affect adversely the employee's or the agency's ability to perform effectively: Illegally possessing, selling, manufacturing, dispensing, or distributing any controlled substance during duty hours." Criminal charges were eventually dismissed by the D.C. Superior Court.

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agreement (CBA) provides for termination of the grievant for the infraction. Therefore, DCHA contends, the Arbitrator exceeded her authority by reinstating the grievant notwithstanding her finding that the grievant had been in possession of heroin.

Notwithstanding an arbitrator's finding of employee misconduct, we have held that "an arbitrator does not exceed his authority by exercising his equitable powers (unless it is expressly restricted by the parties' contract) to decide what, if any, mitigating factors warrant a lesser discipline than that imposed." D.C. Metropolitan Police Department and FOP/MPD Labor Committee, 39 DCR 6232, Slip Op. No. 282, PERB Case No. 97-A-04 (1992). Although the parties' CBA permits a penalty of termination for a first offense violation of the grievant's cause for disciplinary action, nothing in the CBA mandates termination for a first offense. In view of the above, DCHA's Request presents no grounds for finding that the Arbitrator exceeded her authority and therefore no statutory basis for remanding the Award to the Arbitrator or for modifying or setting aside the Award.

For the reasons discussed, DCHA's Request is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

August 2, 1999

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Cases No. 99-A-05 was served, via (U.S. Mail), on the following parties on this the 2nd day of August, 1999.

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