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**Government of the District of Columbia
Public Employee Relations Board**

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In the Matter of:)
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District of Columbia Department of Public Health)
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	Petitioner)
)
	v.)
)
American Federation of Government Employees, Local 2725)
)
	Respondent)
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PERB Case No. 21-A-07
Opinion No. 1778

DECISION AND ORDER

I. Statement of the Case

On January 6, 2021, the District of Columbia Department of Health (DOH) filed an Arbitration Review Request (Request)¹ pursuant to the Comprehensive Merit Personnel Act (CMPA)² seeking review of an arbitration award dated December 15, 2020.³ DOH asserts that the Arbitrator exceeded his authority, and that the arbitration award is contrary to law and public policy.⁴ AFGE filed an Opposition, asserting that DOH’s Request is untimely and that the Board should deny DOH’s Request.

Upon consideration of the record and the parties’ filings, DOH’s Request is dismissed for the reasons stated herein.

¹ The initial Request was deficient as it did not include a signed certificate of service, in violation of PERB Rule 502.1(2). DOH remedied that deficiency on January 26, 2021. However, the Request still lacks a copy of the Final Award, in violation of PERB Rule 538.2(c). The Board is dismissing this case for untimeliness, so the deficiency issue will not be addressed herein.

² D.C. Official Code § 1-605.02(6).

³ The Request states that DOH seeks review of the December 15, 2020, remedy award. Request at 1. It does not explicitly state that DOH seeks review of the October 15, 2020 merits award. However, the Request asserts that the Agency seeks review of the Arbitrator’s finding that the Grievant was performing duties at the Grade 9 level, a finding that was made in the merits award. Request at 1.

⁴ Request at 3-5.

II. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. DOH requests review on the grounds that the Arbitrator exceeded his authority and that the award is contrary to law and public policy. AFGE raises the defense that the Request is untimely and should be dismissed. AFGE also opposes DOH's substantive arguments.

As an initial matter, the Board must determine if the Request is timely. Board Rule 538.1 states that an Arbitration Review Request must be filed no later than twenty-one (21) days after the petitioner has been served the arbitration award. The Board has held that Board Rule 538.1 is a claim-processing rule.⁵ Furthermore, the D.C. Court of Appeals has determined that a claim-processing rule is subject to forfeiture or waiver and equitable tolling.⁶ However the court has held, "In general, where a [] claim-processing rule is 'properly invoked [by a party] . . . [it] must be enforced[.]'"⁷ "[C]laim-processing rules . . . assure relief to a party properly raising them, but do not compel the same result if the party forfeits them."⁸

As AFGE notes in its Opposition, the Arbitrator issued the Final Award on December 15, 2020. Under Rule 538.1, the deadline for DOH to file its Arbitration Review Request was January 5, 2021, yet DOH did not file its Request until January 6, 2021.⁹ Consequently, DOH's Request was untimely. AFGE properly raised timeliness in its Opposition. DOH did not provide any reason for not meeting the Board's filing deadline, so the Board finds no basis for equitable tolling. Therefore, the Board finds that DOH's Request must be dismissed for untimeliness.

III. Conclusion

The Board rejects DOH's Request as untimely. Accordingly, DOH's Request is denied and the matter is dismissed in its entirety.

⁵ See *Jenkins et al. v. DOC*, 65 D.C. Reg. 4046, Slip Op. No. 1652 at 10, PERB Case No. 15-U-31 (2018).

⁶ *Neill v. D.C. Pub. Employee Relations Bd.*, No. 18-CV-1253, Slip Op. No. at 17 (D.C. Aug. 6, 2020).

⁷ *Neill v. D.C. Pub. Employee Relations Bd.*, No. 18-CV-1253, Slip Op. No. at 17-18 (D.C. Aug. 6, 2020) (citing *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 (2017); *In re Na.H.*, 65 A.3d 111, 116 (D.C. 2013)).

⁸ *Neill v. D.C. Pub. Employee Relations Bd.*, 93 A.3d 229, n. 5 (D.C. 2014) (citing *Smith v. United States*, 984 A.2d 196, 199 (D.C. 2009); *Eberhart v. United States*, 546 U.S. 12, 19, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005)).

⁹ Opposition at 2. The Board granted DOH an extension until January 26, 2021 to cure the deficiency with its initial filing. However, the amended Request the Agency submitted on January 26, 2021 relates back to the original untimely filing date, so the extension does not make the Request timely.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

March 18, 2021

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 21-A-07, Op. No. 1778 was sent by File & ServeXpress to the following parties on this the 24th day of March 2021.

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