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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
District of Columbia General)	
Hospital,)	
)	
Petitioner,)	PERB Case No. 96-A-08
)	Opinion No. 493
and)	
)	
Doctors' Council of the District)	
of Columbia General Hospital,)	
)	
Respondent.)	

DECISION AND ORDER

On August 27, 1996, Petitioner District of Columbia General Hospital (DCGH), filed by facsimile transmission (fax) an Arbitration Review Request seeking review of an arbitration award. The Award sustained a grievance filed by the Doctors' Council of the District of Columbia (DCDC) concerning the contracting out of work by DCGH. In sustaining the grievance, the Arbitrator concluded that circumstances did not exist that relieved DCGH of certain obligations under the parties' collective bargaining agreement before contracting out work performed by bargaining unit employees and awarded remedial relief.

By letter dated August 28, 1996, the Board's Executive Director dismissed DCGH's Arbitration Review Request on the basis of timeliness, finding that service of the Award on DCGH was actually effected no later than August 2, 1996.^{1/} On September 6, 1996, the Petitioner filed a request that the Board reconsider the Executive Director's administrative dismissal. Before transmitting the matter to the Board, on September 12, 1996, the Executive Director issued a letter to the Petitioner further expounded upon the basis of his dismissal and requested that the Petitioner submit evidence to show cause why the Board should not deem service of the Award as received on August 2, 1996.

DCGH responded on September 19, 1996. Based on DCGH's response, the disposition of the Arbitration Review Request prior to review by the Board was rescinded, and DCDC was provided an opportunity to respond to the Arbitration Review Request, including the issue of its timeliness. DCDC filed an Opposition to the

^{1/} Board Rule 538.1 requires that arbitration review requests be filed not later than 20 days after service of the award.

Arbitration Review Request on October 17, 1996. For the reasons discussed below, we dismiss the Arbitration Review Request as untimely.

In his August 28 and September 12, 1996 letters, the Executive Director advised the Petitioner that his appeal of the Award was being dismissed as untimely because the required proof of service attached to the Arbitration Review Request included documented evidence that the Office of Labor Relations and Collective Bargaining (OLRCB), DCGH's representative in the arbitration proceeding, received service of the Award as early as August 1 and 2, 1996, by fax. Since the evidence reflected that the Award was received no later than August 2, 1996, the August 27, 1996 filing of the Arbitration Review Request exceeded the 20-day mandatory jurisdictional limit for filing the Request as prescribed under Board Rule 538.1.

DCGH counters that the documented evidence reflecting that the Award was received on August 1 and 2, 1996, concerns an "unsigned draft" of the Award. DCGH further states that under the American Arbitration Association (AAA) rules, service is made when the arbitrator sends the parties an executed copy of the award.^{2/} DCGH argues that service occurred when the Arbitrator mailed a signed copy of the Award under a cover letter certifying that service was made by mail on August 2, 1996. Therefore, DCGH asserts that the August 2, 1996 letter from AAA establishes when service was made. In view of the above, DCGH contends that it had until August 27, 1996 to file its Arbitration Review Request since, pursuant to Board Rule 501.4, "[w]henver a period of time is measured from service of a pleading and service is by mail, 5 days shall be added to the prescribed period."

^{2/} The parties employed the services of AAA in this arbitration proceeding. Petitioner cites AAA Rules 38 and 40 in support of its position. These rules provide as follows:

38. FORM OF THE AWARD

The award shall be in writing and shall be signed either by the neutral arbitrator or by a concurring majority if there is more than one arbitrator.

40. DELIVERY OF AWARD TO PARTIES

Parties shall accept as legal delivery of the award: the placing of the award or a true copy thereof in the mail by the AAA, addressed to the party at its last known address or to its representative; personal service of the award; or the filing of the award in any manner that is permitted by law.

The Board's Rules exist to establish and provide notice of a uniform and consistent process for proceeding in matters properly within our jurisdiction. In this regard, we do not interpret our rules in such a manner as to allow form to be elevated over the substantive objective for which the rule was intended. DCGH's arguments is such an application of our Rules. While the copy of the Award that DCGH received on August 2, 1996, was not signed by the Arbitrator in accordance with AAA rules, we find under these facts that the impact of this requirement is one of form rather than substance when, as here, the Petitioner does not contend that the signed mailed Award or Opinion, for purposes of its appeal, differs in any significant way from the one it received on August 2, 1996. Notwithstanding the effect of an unsigned award on proceedings under the auspices of AAA, we find no reasonable basis for discounting DCGH's receipt of the unsigned copy of the Award for purposes of commencing the time that DCGH had to file its Arbitration Review Request under Board Rules. We find that Board Rule 501.4 was not invoked under the instant circumstances and the Executive Director properly commenced the 20-day jurisdictional time period prescribed by Board Rule 538.1 for filing an arbitration review request, on August 2, 1996. In view of the foregoing, DCGH's Arbitration Review Request should have been filed no later than August 22, 1996; therefore it is dismissed as untimely.^{3/}

^{3/} DCGH also argued that AAA rules do not provide for faxed awards as meeting its requirements for service. As we discussed above, while this argument may be of some import to proceedings before AAA, it is not controlling with respect to determining the sufficiency of service in proceedings before the Board. We note, however, that AAA Rule 40 permits delivery of an award "in any manner that is permitted by law." (See n. 2) Moreover, pursuant to Board Rule 501.4 and 538.1, DCGH's argument that its Arbitration Review Request is timely relies on a faxed filing date of August 27, 1996, 20 plus 5 days after DCGH received its mailed copy of the Award from AAA. DCGH relies on its August 27, 1996 faxed filing as adequate, while noting no prejudice, lack of fundamental fairness or other compelling reason for treating similarly this same mode of service of the Award on August 2, 1996.

We further note that DCGH's August 27, 1996 filing did not meet the filing requirements of Board Rule 538.1(e). Board Rule 538.1(e) provides that an arbitration review request must be accompanied by a copy of the award and proof of service. DCGH did not cure this deficiency until August 28, 1996, when it hand-delivered a copy of its Arbitration Review Request. Board Rule 501.13 provides that "[p]leadings submitted for filing will not be assigned a filing date or case number until any noted deficiencies are timely cured." (emphasis added.) Accordingly, DCGH's Arbitration Review Request was not officially filed until August

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ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is dismissed.

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

October 31, 1996

28, 1996, the date DCGH cured the filing requirement deficiencies in its August 27, 1996 faxed Request. Parties must meet the respective filing requirements for a cause of action no matter what mode of filing is used. Therefore, DCGH's Request is untimely notwithstanding its argument.