

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

American Federation of)
Government Employees, Local 872,)
(On behalf of Jocelynn Johnson),)

Petitioner,)

and)

District of Columbia)
Department of Public Works,)

Respondent.)

PERB Case No. 91-A-01
Opinion No. 290

DECISION AND ORDER

On October 30, 1991, the American Federation of Government Employees, Local 872 (AFGE) filed an Arbitration Review Request with the Public Employee Relations Board (Board) seeking review of an arbitration award (Award) issued on October 2, 1990. ^{1/} AFGE requests that the Board review the Award, which denied a grievance filed by AFGE regarding a decision of DPW to suspend Jocelynn Johnson (Grievant) for 10 days. The Arbitrator upheld the Grievant's suspension but, for reasons stated in his Award, reduced the suspension from 10 to 5 days.

^{1/} The Award was signed and dated October 2, 1990. However, AFGE stated in the Request that it was served with the Award on October 5, 1990. The Board's Executive Director advised AFGE that the Request had not been filed within the twenty (20) day period as required by Board Rule 538.2 and dismissed the Request as untimely. AFGE sought reconsideration of the dismissal based on an envelope containing the Award and bearing a postmark date of October 5, 1990. Having considered this evidence, the Executive Director accepted the Request as timely-filed, but advised AFGE that this acceptance was contingent upon proof that the Respondent, Department of Public Works (DPW), had been served with AFGE's letter requesting reconsideration as required by Board Rule 501.12.

Despite the Respondent's contentions to the contrary, we find that AFGE has fully complied with the Executive Director's instructions and that service of the letter upon Respondent was timely accomplished.

Under the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-605.2(6), the Board is authorized to review grievance arbitration awards "only if the Arbitrator was without, or exceeded his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means...." AFGE asserted grounds for review under each criterion of our standard for review. DPW filed an Opposition to Arbitration Review Request on November 19, 1991. ^{1/}

The Board has reviewed the Arbitrator's Award, the pleadings of the parties, and applicable law and concludes that the grounds presented in AFGE's request for review of the Award do not present any statutory basis for review.

AFGE objects to the Award because it contends that the Arbitrator relied upon a March 31, 1989 memorandum which was discussed during the arbitration hearing but was never formally admitted into evidence. Based on our review of the Award, it is apparent that the Arbitrator relied on the complete record before him in deciding to mitigate the Grievant's suspension from 10 days to 5 days. Several memoranda were referred to by the Arbitrator in his Award. In particular, he noted that while "some confusion" may have initially remained in the Grievant about the propriety of her conduct in seeking official time to conduct union business, once she was issued a July 10, 1989 memorandum, that "confusion could no longer serve as an excuse." (Award at 16)

Moreover, AFGE has cited no law or public policy contravened by an arbitration award that merely refers to documents presented at the hearing but not introduced into the record.

AFGE raises other baseless arguments that pertain to the weight and probative value of evidence as assessed by the Arbitrator. We have held that "assessing what weight and significance such evidence should be afforded is surely within the domain of the Arbitrator." University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 37 DCR 5666, Slip Op. No. 248 at fn. 8, PERB Case No. 90-A-02 (1990).

^{1/} While a determination of whether AFGE had timely filed its Request remained pending, by letter dated October 1, 1991, the Executive Director advised DPW that it could nevertheless respond to the grounds for the Request within 15 days after service of that letter. The parties subsequently agreed to an extension of time to November 19, 1991, for DPW to file a Response.

Similarly, with respect to the Arbitrator sustaining the penalty, but reducing the length of the suspension, we find no basis for AFGE's contention that the Arbitrator exceeded his authority. 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. District of Columbia Metropolitan Police Department and Fraternal Order of Police, MPD Labor Committee, ___ DCR ___, Slip Op. No. 282, PERB Case No. 87-A-04 (1991).

We therefore find, that by only mitigating rather than setting aside the Grievant's suspension, the Arbitrator neither exceeded his jurisdiction nor was the Award rendered contrary to law and public policy. ^{3/}

Accordingly, AFGE has not shown a statutory basis for disturbing the Award and therefore its request that the Board review the Award must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Arbitration Review Request is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

February 28, 1992

^{3/} AFGE also contended that the Award was procured by fraud, collusion, etc. by the Arbitrator's reference to the March 31, 1989 memoranda. AFGE has provided no basis for finding that the apparent availability of and reference to the disputed document "has resulted in an Award procured by unlawful means similar to fraud or collusion." See University of the District of Columbia and University of the District of Columbia Faculty Association/NEA, 38 DCR 1580, Slip Op. No. 262, PERB Case No. 90-A-08 (1990). Consequently, we similarly find no basis for our review presented by this contention.