

**CASE DIGEST:**     *AFGE, Local 2076*, 71 FLRA 1023 (2020) (Member DuBester concurring)

The Arbitrator found that the Union failed to establish any of the relevant factors for awarding attorney fees as established by the Merit Systems Protection Board in *Allen v. U.S. Postal Service (Allen)*. The Authority found that that the Union's contrary-to-law exception failed to raise any deficiencies in the Arbitrator's application of the *Allen* factors. Specifically, the Authority determined that the grievant was not substantially innocent of the only charge brought against her and the mere fact that the grievant's suspension was mitigated to five days did not demonstrate that the merits award warranted attorney fees under *Allen* factor five. The Authority also denied the Union's remaining exceptions because the Union failed to establish that the Arbitrator's findings were clearly erroneous and that the Arbitrator's finding regarding the timeliness of the Agency's reply did not draw its essence from the parties' agreement. Therefore, the Authority denied the Union's exceptions.

Member DuBester concurred. He agreed that the Union's exceptions should be denied, but reiterated his objection to the majority's reformulation of the standard used to evaluate the appropriateness of attorney fees under the fifth *Allen* factor.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.