

FROM A TO ARBITRATION

**EPISODE 16- ARTICLE 16.6 INDEFINITE SUSPENSION-CRIME SITUATION.
UNCONFUSING THE CONFUSING. THE POWER OF NEXUS**



INDEFINITE SUSPENSION-CRIME SITUATIONS

- **ARTICLE 16.6.A. STATES:**
- **THE EMPLOYER MAY INDEFINITELY SUSPEND AN EMPLOYEE IN THOSE CASES WHERE THE EMPLOYER HAS REASONABLE CAUSE TO BELIEVE AN EMPLOYEE IS GUILTY OF A CRIME FOR WHICH A SENTENCE OF IMPRISONMENT CAN BE IMPOSED. IN SUCH CASES, THE EMPLOYER IS NOT REQUIRED TO GIVE THE EMPLOYEE THE FULL THIRTY (30) DAYS ADVANCE NOTICE OF INDEFINITE SUSPENSION, BUT SHALL GIVE SUCH LESSER NUMBER OF DAYS OF ADVANCE WRITTEN NOTICE AS UNDER THE CIRCUMSTANCES IS REASONABLE AND CAN BE JUSTIFIED. THE EMPLOYEE IS IMMEDIATELY REMOVED FROM A PAY STATUS AT THE END OF THE NOTICE PERIOD.**

ADVANCED WRITTEN NOTICE

- **SO UNDER ARTICLE 16.5 THE POSTAL SERVICE MUST, WITH A SUSPENSION OF MORE THAN 14 DAYS, OR OF DISCHARGE, PROVIDE AN ADVANCE WRITTEN NOTICE OF THE CHARGES AGAINST HIM/HER FOR A PERIOD OF THIRTY DAYS. HOWEVER ARTICLE 16.6 STATES THAT THEY DO NOT HAVE TO GIVE THE FULL THIRTY DAY ADVANCED NOTICE, BUT THEY DO STILL HAVE TO GIVE AN ADVANCED NOTICE.**
- **THIS IS CRITICAL BECAUSE MANAGEMENT WILL FAIL AT DOING THIS ON A REGULAR BASIS. THEY AUTOMATICALLY GO FOR ARTICLE 16.7 EMERGENCY PLACEMENT. THEY WILL PUT THE CARRIER OUT ON INDEFINITE SUSPENSION AND NOT GIVE YOU THE WRITTEN NOTICE. AND THEN MAIL THE CARRIER THE NOTICE . THAT IS A VIOLATION OF PROVISION 16.6. THEY STILL HAVE TO GIVE THE ADVANCED NOTICE.**

ARTICLE 16.6.B

- **THE JUST CAUSE OF AN INDEFINITE SUSPENSION IS GRIEVABLE. THE ARBITRATOR SHALL HAVE THE AUTHORITY TO REINSTATE AND MAKE THE EMPLOYEE WHOLE FOR THE ENTIRE PERIOD OF THE INDEFINITE SUSPENSION.**
- **THIS IS CRITICAL AS MANAGEMENT WILL ALWAYS TRY TO PUT THE CARRIER ON A 16.7. THE QUANTUM OF PROOF IS EASIER ON A 16.7 THAN A 16.6.**
- **MANAGEMENT STILL HAS TO HAVE JUST CAUSE, AND JUST CAUSE IS GRIEVABLE**

JCAM ARTICLE 16.6.C.

- **IF AFTER FURTHER INVESTIGATION OR AFTER RESOLUTION OF THE CRIMINAL CHARGES AGAINST THE EMPLOYEE, THE EMPLOYER DETERMINES TO RETURN EMPLOYEE TO A PAY STATUS, THE EMPLOYEE SHALL BE ENTITLED TO BACK PAY FOR THE PERIOD THAT THE INDEFINITE SUSPENSION EXCEEDED SEVENTY (70) DAYS, IF THE EMPLOYEE WAS OTHERWISE AVAILABLE FOR DUTY, AND WITHOUT PREJUDICE TO ANY GRIEVANCE FILED UNDER B ABOVE.**
- **SAY THE CARRIER HAS BEEN OUT FOR 8 MONTHS, THE POSTAL SERVICE BRINGS THE CARRIER BACK BEFORE THE ARBITRATION AND NOT PAY THEM THE FIRST 70 DAYS AND THAT HAS NO EFFECT ON THE GRIEVANCE THAT IS GOING FORWARD. THE ARBITRATOR HAS THE AUTHORITY TO GIVE THE CARRIER THAT MISSED PAY FOR THAT FIRST 70 DAYS IF WE FILE A GRIEVANCE UNDER ARTICLE 16.6.B.**

JCAM ARTICLE 16.6.D.

- **THE EMPLOYER MAY TAKE ACTION TO DISCHARGE AN EMPLOYEE DURING THE PERIOD OF AN INDEFINITE SUSPENSION WHETHER OR NOT THE CRIMINAL CHARGES HAVE BEEN RESOLVED, AND WHETHER OR NOT SUCH CHARGES HAVE BEEN RESOLVED IN FAVOR OF THE EMPLOYEE, SUCH ACTION MUST BE FOR JUST CAUSE, AND IS SUBJECT TO THE REQUIREMENTS OF SECTION 5 OF THIS ARTICLE.**
- **IF A CARRIER GETS ARRESTED FOR GRAND THEFT AUTO. THERE IS VIDEO OF THE CARRIER RUNNING FROM COPS AND BEING SURROUNDED AND ARRESTED, AND THEY ARE ALL OVER THE NEWS. THE POSTAL SERVICE NOW SAYS THEY ARE GOING TO FIRE THE CARRIER BECAUSE THEY ARE NOW AN EMBARRASSMENT TO THE POSTAL SERVICE.**
- **UNION WILL CONTEND THAT AN ARREST OR CHARGE IN COURT HAS NOTHING TO DO WITH THE POSTAL SERVICE. THEY STILL HAVE TO HAVE TO MEET THE JUST CAUSE FOR THE TERMINATION.**

JCAM ARTICLE 16.6 STATES:

- **ARTICLE 16.6 WHICH DEALS WITH THE INDEFINITE SUSPENSIONS IN CRIME SITUATIONS, PROVIDES THE FOLLOWING:**
- **THE FULL THIRTY-DAY NOTICE IS NOT REQUIRED IN SUCH CASES. (SEE ALSO ARTICLE 16.5)**
 - **LETTER CARRIERS MUST BE GIVEN THIRTY DAYS ADVANCE WRITTEN NOTICE PRIOR TO SERVING A SUSPENSION OF MORE THAN FOURTEEN DAYS OR DISCHARGE DURING THE NOTICE PERIOD THEY MUST REMAIN EITHER ON THE JOB OR ON THE CLOCK AT THE OPTION OF THE POSTAL SERVICE. THE ONLY EXCEPTIONS ARE FOR CRIME OR EMERGENCY SITUATIONS AS PROVIDED FOR IN ARTICLE 16.6 AND 16.7.**
- **JUST CAUSE OF AN INDEFINITE SUSPENSION IS GRIEVABLE.**

WINNING THE CASE WITH LANGUAGE

- **JUST CAUSE OF AN INDEFINITE SUSPENSION IS GRIEVABLE. AN ARBITRATOR HAS THE AUTHORITY TO REINSTATE AND MAKE WHOLE ,**
- **IN C-03216 ARBITRATOR GARRETT WROTE:**
- **AN INDEFINITE SUSPENSION IS: REVIEWABLE IN ARBITRATION TO THE SAME EXTENT AS ANY OTHER SUSPENSION TO DETERMINE WHETHER JUST CAUSE FOR THE DISCIPLINARY ACTION HAS BEEN SHOWN.**
- **SUCH A REVIEW IN ARBITRATION NECESSARILY INVOLVES CONSIDERING IN AT LEAST (A) THE PRESENCE OR ABSENCE OF “REASONABLE CAUSE” TO BELIEVE THE EMPLOYEE GUILTY OF THE CRIME ALLEGED, **AND** (B) WHETHER SUCH A RELATIONSHIP EXISTS BETWEEN THE ALLEGED CRIME AND THE EMPLOYEE’S JOB IN THE USPS AS TO WARRANT THE SUSPENSION**

WINNING THE CASE WITH LANGUAGE

- **REMEMBER IT HAS TO BE A AND B. NOT ONE OR THE OTHER, BUT BOTH!**
- **ALLEGED CRIME AND THE CARRIER'S JOB TO WARRANT THIS SUSPENSION. THERE HAS TO BE A NEXUS(THERE HAS TO BE A CONNECTION OR A LINK) BETWEEN THE TWO.**
- **IF THERE ARE ARTICLES ABOUT THE INCIDENT BUT DO NOT MENTION THE POSTAL SERVICE THEN THERE IS NO CONNECTION**
- **IF THE NEWSPERSON SAYS JOHN SMITH, WHO WORKS FOR THE POSTAL SERVICE, WAS PULLED FROM THE CAR... NOW THERE IS A CONNECTION**

ELKOURI AND ELKOURI

- **CONDUCT AWAY FROM PLANT: THE RIGHT OF MANAGEMENT TO DISCHARGE AN EMPLOYEE FOR CONDUCT AWAY FROM THE PLANT DEPENDS UPON THE EFFECT OF THAT CONDUCT UPON THE PLANT OPERATIONS. IN THIS REGARD ARBITRATOR LEWIS KESSELMAN EXPLAINED IN ONE CASE: THE ARBITRATOR FINDS NO BASIS IN THE CONTRACT WHERE AN AMERICAN INDUSTRIAL PRACTICE TO JUSTIFY DISCHARGE FOR MISCONDUCT AWAY FROM THE PLACE OF WORK UNLESS, BEHAVIOR HARMS COMPANIES REPUTATION OR PRODUCT. BEHAVIOR RENDERS EMPLOYEE UNABLE TO PERFORM HIS DUTIES OR APPEAR AT WORK. IN WHICH CASE THE DISCHARGE WILL BE BASED ON INEFFICIENCY OR EXCESSIVE ABSENTEEISM. BEHAVIOR LEADS TO REFUSAL, RELUCTANCE OR INABILITY OF OTHER EMPLOYEES TO WORK WITH HIM.**

ELKOURI AND ELKOURI CONT.

- **ARBITRATOR D. EMMET FERGUSON ALSO SPOKE OF THE EXTENT TO WHICH MANAGEMENT MAY CONSIDER CONDUCT AWAY FROM THE PLANT AS THE BASIS FOR DISCHARGE. WHILE IT IS TRUE THAT THE EMPLOYER DOES NOT BY VIRTUE OF THE EMPLOYMENT RELATIONSHIP BECOME THE GUARDIAN OF THE EMPLOYEES EVERY PERSONAL ACTION AND IS NOT EXERCISE PARENTAL CONTROL IT IS EQUALLY TRUE THAT THOSE AREAS HAVING TO WITH THE EMPLOYERS BUSINESS. THE EMPLOYEE HAS THE RIGHT TO TERMINATE THE RELATIONSHIP IF THE EMPLOYEES WRONGFUL ACTIONS INJURIOUSLY AFFECT THE BUSINESS. THE CONNECTION BETWEEN THE FACTS WHICH OCCUR AND THE EXTENT TO WHICH THE BUSINESS IS AFFECTED MUST BE REASONABLE AND DISCERNABLE. THEY MUST BE SUCH AS CAN LOGICALLY BE EXPECTED TO RESULT TO THE EMPLOYEES AFFAIRS. EACH CASE MUST BE MEASURED ON IT'S OWN MERITS. ANOTHER ARBITRATOR ALSO STRESSED THAT THE EFFECT THE EMPLOYEES OUTSIDE ACTIVITY ON THE EMPLOYERS BUSINESS MUST BE REASONABLY DISCERNABLE MERE SPECULATION AS TO ADVERSE EFFECT ON THE BUSINESS NOT SUFFICING.**

MANAGEMENT'S CASE FILE

- **MANAGEMENT WILL USE THE ELM SECTION 665.16 STATES IN PART:**
- **BEHAVIOR AND PERSONAL HABITS; EMPLOYEES ARE EXPECTED TO CONDUCT THEMSELVES DURING AND OUTSIDE OF WORKING HOURS IN A MANNER THAT REFLECTS FAVORABLY UPON THE POSTAL SERVICE. ALTHOUGH IT IS NOT THE POLICY OF THE POSTAL SERVICE TO INTERFERE WITH THE PRIVATE LIVES OF EMPLOYEES, IT DOES REQUIRE THAT POSTAL EMPLOYEES BE HONEST, RELIABLE, TRUSTWORTHY, COURTEOUS AND OF GOOD CHARACTER AND REPUTATION. THE FEDERAL STANDARDS OF ETHICAL CONDUCT REFERENCED IN 662.1, ALSO CONTAIN REGULATIONS GOVERNING THE OFF-DUTY BEHAVIOR OF POSTAL EMPLOYEES. EMPLOYEES MUST NOT ENGAGE IN CRIMINAL, DISHONEST, NOTORIOUSLY DISGRACEFUL, IMMORAL OR OTHER CONDUCT PREJUDICIAL TO THE POSTAL SERVICE. **CONVICTION** FOR A VIOLATION OF ANY CRIMINAL STATUTE MAY BE GROUNDS FOR DISCIPLINARY ACTION AGAINST AN EMPLOYEE, INCLUDING REMOVAL OF THE EMPLOYEE, IN ADDITION TO ANY OTHER PENALTY IMPOSED PURSUANT TO STATUTE.**

USING ARBITRATOR DUDA LANGUAGE

- **ARBITRATOR N. DUDA IN C-014086 A&B STATES IN PART:**
- **THE DISCIPLINE OF REMOVAL: THE SERVICE HAS NOT SHOWN ANY RULES OR REGULATIONS REQUIRING IT TO REMOVE GRIEVANT. DDM115.1 SAYS A POSTAL EMPLOYEE WHO VIOLATES THE SECTION IS SUBJECT TO “ADMINISTRATIVE DISCIPLINE” BUT DOES NOT SPECIFY THE LEVEL. ELM 661.53 ONLY SAYS THERE “MAY BE GROUNDS FOR DISCIPLINARY ACTION” IF AN EMPLOYEE IS CONVICTED “OF A VIOLATION OF ANY CRIMINAL STATUTE” FOR THE SPECIFIED CONDUCT. NO EVIDENCE WAS PROVIDED THAT GRIEVANT WAS CONVICTED OR INDICATED FOR VIOLATING A CRIMINAL STATUTE. THUS THE SUPERVISION AND MANAGEMENT WERE NOT REQUIRED TO IMPOSE DISCHARGE. DOING SO WAS A DISCRETIONARY ACT SUBJECT TO REVIEW BY THE ARBITRATOR FOR REASONABILITY AND COMPLIANCE WAS THE AGREEMENT.**

MAKING YOUR CONTENTIONS

- **IF MANAGEMENT PLACED THE CARRIER ON A 16.7 RATHER THAN A 16.6 BECAUSE IT WAS EASIER TO PROVE, WE HAVE TO CONTEND THAT.**
- **IF MANAGEMENT DOESN'T PRODUCE ANY NEWS ARTICLE OR VIDEO ABOUT THE CARRIER STATING THAT THEY WORK FOR THE POST OFFICE, THEN THERE IS NO CONNECTION (NEXUS)**
- **MANAGEMENT CAN NOT SPECULATE THAT THE CARRIER'S CUSTOMERS HAVE SEEN THE NEWS OR HAVE READ THE NEWSPAPER.**
- **IT HAS TO BE REASONABLE IT HAS TO BE DISCERNABLE AND CAN NOT BE JUST SPECULATION**
- **665.16 STATES CONVICTION. IF THE CARRIER HASN'T BEEN CONVICTED THEN THEY CAN'T USE IT**