

# **FROM A TO ARBITRATION**

**EPIISODE 8: VERA D. BUGG AND ATTENDANCE RELATED DISCIPLINE**



# OUR TRACK RECORD

- **THE NALC HAS SENT 3,998 DISCIPLINE RELATED CASES TO ARBITRATION**
- **913 OF THESE CASES HAVE BEEN SUSTAINED**
- **858 HAVE BEEN MODIFIED**
- **WE LOST 2,164 CASES**
- **ATTENDANCE RELATED DISCIPLINE IS NOT EASY TO WIN**

# HOW DO WE HELP OURSELVES?

- **WE NEED TO DO THE PRE-INVESTIGATIVE CONSULTATION WITH THE CARRIER- WE NEED TO SIT DOWN WITH THE CARRIER BEFORE THE SUPERVISOR DOES THEIR INTERVIEW WITH THE CARRIER**
- **EDUCATE THE CARRIER ABOUT WHAT IS GOING TO HAPPEN IN THE INVESTIGATIVE INTERVIEW WITH MANAGEMENT AND THAT EVERYTHING THAT IS SAID IN THESE MEETINGS IS CONFIDENTIAL AND THAT AT NO TIME EITHER THE STEWARD OR THE MANAGER SHOULD BE DISCUSSING THIS WITH ANYONE ON THE WORKROOM FLOOR**
- **ASK THE CARRIER IF THEY KNOW WHAT THE M-41, M-39, ELM OR JCAM IS? IF THEY SAY NO, MAKE SURE THAT THEY KNOW THAT MANAGEMENT WILL ASK THEM IF THEY DO AND TO TELL THE TRUTH**

# **PRE-INVESTIGATIVE CONSULTATION WITH THE CARRIER**

- **EDUCATE THE CARRIER THAT MANAGEMENT IS GOING TO ASK THEM IF THEY ARE AWARE THAT IT IS THEIR RESPONSIBILITY TO BE REGULAR IN ATTENDANCE.**
- **ASK THE CARRIER WHAT THAT MEANS TO THEM. AND WRITE DOWN THEIR ANSWER.**
- **DURING THE I.I. WITH THE SUPERVISOR WILL ASK THE CARRIER ARE YOU AWARE THAT YOU ARE TO BE REGULAR IN ATTENDANCE? THE CARRIER OR STEWARD SHOULD ASK THEM BACK, WHAT DOES THAT MEAN TO THEM? THEY WILL PROBABLY SAY:” YOU ARE TO BE HERE WHEN YOU ARE SCHEDULED.” IN OTHER WORDS, YOU ARE TO BE PERFECT IN ATTENDANCE. GET THAT ON THE RECORD. IF THAT IS WHAT THEY EXPECT WE WILL USE THAT IN OUR CONTENTIONS.**



# **PRE-INVESTIGATIVE CONSULTATION WITH THE CARRIER**

- **EDUCATE THE CARRIER THAT MANAGEMENT WILL ASK THEM ABOUT THEIR 3972S.**
- **THE CARRIER NEEDS TO KNOW WHAT THESE ARE AND HOW MANAGEMENT USES THEM**
- **TELL THE CARRIER TO MAKE SURE THAT THEY ANSWER TO EVERY DATE THAT MANAGEMENT BRINGS UP**
- **THE CARRIER SHOULD ALSO BE ASKING THE SUPERVISOR WHY THEY HAVE NOT BEEN GIVEN ANY ATTENDANCE REVIEWS IF THERE WAS A POSSIBLE PROBLEM SO THEY COULD HAVE FIXED THAT**

# WHY THE INVESTIGATIVE INTERVIEW?

- **ATTENDANCE CONTROL IS CONTACTING THE SUPERVISOR AND TELLING THEM THAT THE CARRIER IS NOT BEING REGULAR IN ATTENDANCE AND THE SUPERVISOR MUST TAKE ACTION**
- **THE SUPERVISOR WILL RESPOND THAT THEY WILL DO AN INVESTIGATIVE INTERVIEW AND THEY WILL GET BACK TO ATTENDANCE CONTROL BY THE END OF THE DAY**
- **ATTENDANCE CONTROL WILL BE EXPECTING AN ADVERSE ACTION TAKEN BY THE SUPERVISOR ON THEIR DESK BY THE END OF THE WEEK WHETHER IT IS WARRANTED OR NOT**

# MANAGEMENT RESPONSIBILITIES

- **THE ELM-511.42 STATES THAT IT IS MANAGERMENTS' RESPONSIBILITIES TO CONTROL UNSCHEDULED ABSENCES AND THAT POSTAL OFFICIALS:**
  - **A. INFORM EMPLOYEES OF LEAVE REGULATIONS**
  - **GIVING THE CARRIER A PIECE OF PAPER WITH EVERY REGULATION ABOUT ATTENDANCE ON IT, OR GIVING A STAND-UP IS NOT INFORMING THE EMPLOYEE OF LEAVE REGULATIONS. IT NEEDS TO BE DONE DURING AN OFFICIAL DISCUSSION WITH THAT CARRIER.**

# MANAGEMENTS RESPONSIBILITIES

- **B. DISCUSS ATTENDANCE RECORDS WITH INDIVIDUAL EMPLOYEES WHEN WARRANTED**
  - **IF MANAGEMENT HAS WAITED UNTIL THIS POINT TO TALK TO YOU ABOUT YOUR ATTENDANCE AND IS ISSUING DISCIPLINE, THEY FAILED THEIR OBLIGATION TO BE CORRECTIVE RATHER THAN PUNITIVE. MANAGEMENT SHOULD BE GIVING REGULAR ATTENDANCE REVIEWS WITH THE CARRIERS WAY BEFORE THIS POINT AND SHOULD BE DISCUSSING WAYS TO HELP THE CARRIER WITH THEIR ATTENDANCE**



# MANAGEMENTS RESPONSIBILITIES

- **C. MAINTAIN AND REVIEW PS FORM 3972, ABSENCE ANALYSIS, AND PS FOR 3971**
  - **THIS IS WHEN YOU SHOULD BE ASKING ABOUT ATTENDANCE REVIEWS**
  - **IF THE CARRIER FORGETS TO MENTION THAT NO REVIEWS HAVE BEEN DONE, OR WHY THEY DIDN'T DO THEM THEN THE STEWARD SHOULD BE BRINGING THIS UP AT EITHER THIS POINT OR AT THE END OF THE INTERVIEW**
  - **IF MANAGEMENT SAYS THEY DID GIVE THE CARRIER A REVIEW, ASK THE CARRIER IN FRONT OF THE SUPERVISOR WHETHER THIS TOOK PLACE OR NOT. IF NOT THEN THIS NEEDS TO BE PUT IN THE RECORD AS YOUR CONTENTIONS IN THE GRIEVANCE.**

# **THE INVESTIGATIVE INTERVIEW- THE CARRIERS' DAY IN COURT**

- **MANAGEMENT WILL OPEN THE INTERVIEW WITH ARE YOU AWARE OF ELM SECTION 511.43 THAT TALKS ABOUT EMPLOYEE RESPONSIBILITIES? THE CARRIER SAYS YES, CAUSE THEY JUST WANT TO GET OUT OF HERE AND GO BACK TO WORK. THIS IS WHY WE NEED TO HAVE THAT PRE-INTERVIEW WITH THE CARRIER. IF THEY DO SAY YES, THEN REMIND THEM OF THEIR ANSWERS IN THE PRE-INTERVIEW YOU JUST DID.**
- **MANAGEMENT WILL THEN ASK, ARE YOU AWARE OF YOUR REQUIREMENT TO BE REGULAR IN ATTENDANCE? THIS IS SOMETHING WE COVERED IN THE PRE-INTERVIEW. IF THE CARRIER FORGETS TO ASK, REMIND THEM OF THEIR RIGHT TO ASK WHAT DOES REGULAR MEAN TO YOU?**

# **THE INVESTIGATIVE INTERVIEW- THE CARRIERS' DAY IN COURT**

- **MAKE SURE THAT THE CARRIER ANSWERS HONESTLY AND THOROUGHLY. NOT JUST ,SICK, SICK, SICK.**
  - **YOU DO NOT KNOW WHAT THE CARRIER HAS BEEN GOING THROUGH IN THEIR PERSONAL LIFE. IF THERE IS ANY PROBLEMS GOING ON YOU MAKE SURE THAT ALL COMES OUT. REMIND THE CARRIER AND MANAGEMENT THAT EVERYTHING IS CONFIDENTIAL AND SHOULD NOT BE REPEATED. YOU TAKE CARE OF YOUR BROTHERS AND SISTERS, WE ARE ALL FAMILY.**
- **IF THEY GO BACK OVER 6 MONTHS AGO AND THE CARRIER CAN'T REMEMBER, MAKE SURE THEY, OR YOU, STATE THAT IT HAS BEEN A LENGTHY TIME IN BETWEEN WITHOUT EVEN A REVIEW OF ATTENDANCE**

# DEEMS DESIRABLE AND RESTRICTED SICK LEAVE

- **ELM 513.361 STATES:**
  - **THREE DAYS OR LESS**
  - **FOR PERIODS OF ABSENCE OF 3 DAYS OR LESS, SUPERVISORS MAY ACCEPT THE EMPLOYEE'S STATEMENT EXPLAINING THE ABSENCE. MEDICAL DOCUMENTATION OR OTHER ACCEPTABLE EVIDENCE OF INCAPACITY FOR WORK OR NEED TO CARE FOR A FAMILY MEMBER IS REQUIRED ONLY WHEN THE EMPLOYEE IS ON RESTRICTED SICK LEAVE (513.39) OR WHEN THE SUPERVISOR DEEMS DOCUMENTATION DESIRABLE FOR THE PROTECTION OF THE INTERESTS OF THE POSTAL SERVICE. SUBSTANTIATION OF THE FAMILY RELATIONSHIP MUST BE PROVIDED IF REQUESTED.**
  - **DEEMS DESIRABLE IS NOT IN THIS LANGUAGE**



# DURING THE INVESTIGATIVE INTERVIEW

- **THE STEWARD IS TO WRITE DOWN EVERY WORD **VERBATIM** IN THE MEETING AND THEN ASK FOR THE SUPERVISORS' NOTES IN THE INFORMATION REQUEST TO COMPARE**
- **IF MANAGEMENT ASKS THE CARRIER TO BRING IN DOCUMENTATION, OR WHY THEY DIDN'T BRING IN DOCUMENTATION, FOR AN ABSENCE OF 3 DAYS OR LESS THAN WE MUST ASK IF THE CARRIER IS EITHER ON RESTRICTED SICK LEAVE, RSL, OR IF THEY ARE ON THE DEEMS DESIRABLE**
- **ASK THE CARRIER IF THEY WERE EVER NOTIFIED THAT THEY WERE ON EITHER THE RSL OR DEEMS**
- **KNOW THAT MANAGEMENT WILL BE DISHONEST MOST OF THE TIME**

# **WHEN WE GET THE DISCIPLINE LETTER**

- **THIS LETTER IS USUALLY WRITTEN BY LABOR AND THEY HAVE NO IDEA WHO THE CARRIER IS AND WHAT THE ACTUAL FACTS ARE**
- **PUT IN AN INFORMATION REQUEST FOR ALL INFORMATION THAT MANAGEMENT USED TO ISSUE THIS LETTER OF DISCIPLINE**
- **ONCE YOU RECEIVE THIS INFORMATION CHECK EVERY DATE AND DOUBLE CHECK WITH THE CARRIER THAT THIS INFORMATION IS EITHER TRUE OR NOT**

# **WHAT IF THE CARRIER'S LEAVE IS ATROCIOUS**

- **IF THE CARRIER'S SICK LEAVE IS ATROCIOUS WE NEED TO BRING UP THE FACT THAT MANAGEMENT SHOULD HAVE HAD AN OFFICIAL DISCUSSION WITH THE CARRIER PRIOR TO THIS POINT**
- **THEY SHOULD HAVE HELPED THE CARRIER TO IMPROVE THEIR SICK LEAVE USAGE WITH SUGGESTIONS**
- **THEY SHOULD HAVE INFORMED THE CARRIER THAT THERE WAS A POSSIBLE PROBLEM WITH THE AMOUNT OF USED SICK LEAVE IN A QUARTER**
- **THEY COULD HAVE USED THEIR PROVISION AND PUT THE CARRIER ON RESTRICTED LEAVE**
- **ARTICLE 16 STATES THAT THEY NEED TO BE CORRECTIVE RATHER THAN PUNITIVE. HOW DID THEY HELP THE CARRIER TO CORRECT THIS BEHAVIOR PRIOR TO THIS MEETING?**

# **VERA D. BUGG**

- **WHO IS VERA D. BUGG AND WHY IS THIS SO IMPORTANT TO MANAGEMENT?**
- **VERA D. BUGG WAS AN EMPLOYEE AT THE USPS WHO WAS ABSENT FOR A LONG TIME. EMPLOYEED FOR ABOUT 2-3 YEARS AND MISSED APPROXIMATELY 60% OF HER WORK SCHEDULE AND WAS FIRED BECAUSE OF IT**
- **SET PRECEDENCE FOR FUTURE CASES FOR ATTENDANCE RELATED DISCIPLINE**



# **VERA D. BUGG CASE**

- **VERA D. BUGG- ARBITRATOR CUSHMAN IN CASE AB-S-6, 102-D**
- **THIS IS QUOTED IN CITE 727 BY ARBITRATOR GAMSER AND IS USUALLY PLAGIARIZED BY MANAGEMENT/LABOR FOR MOST CASES INVOLVING DISCIPLINARY ACTIONS FOR ATTENDANCE AND ABSCESSES**
- **ARBITRATOR GARRETT CITE 3231 ALSO MENTIONS VERA D. BUGG UNDER MANAGEMENT'S CONTENTIONS IN THE CASE BUT IN HIS CONCLUSIONS STATES THAT ALL DISCIPLINE MUST BE ON A CASE BY CASE BASIS AND MANAGEMENT MUST ESTABLISH JUST CAUSE FOR THE IMPOSITION OF DISCIPLINE**

# **IN OUR CONTENTIONS AT INFORMAL A**

- **THE CARRIER IS NOT REQUIRED TO BRING IN DOCUMENTATION IF THE ABSENCE IS 3 DAYS OR LESS IN ACCORDANCE WITH THE ELM 513.361 BECAUSE THE CARRIER WAS NEVER TOLD HE/SHE WAS ON RESTRICTED SICK LEAVE OR THEY WERE PLACED ON THE DEEMS DESIRABLE LIST**
  - **IF THE CARRIER WAS PLACED ON DEEMS DESIRABLE WITHOUT BEING NOTIFIED WE NEED TO GRIEVE THAT**
- **THE CARRIER WAS NEVER ASKED TO BRING IN DOCUMENTATION**
- **THE CARRIERS' PERSONAL STATEMENT WAS NOT ACCEPTABLE TO MANAGEMENT AS DOCUMENTATION**

# ATTENDANCE RELATED DISCIPLINE CONTENTIONS

- **MANAGEMENT WILL USUALLY STATE IN THE INVESTIGATIVE INTERVIEW THAT THE CARRIER HAS MISSED WORK FROM THIS DATE TO THIS DATE. OR HAS MISSED THIS MANY DAYS THIS YEAR. THIS SHOULD ALSO BE LISTED ON THE CARRIER'S LETTER OF CHARGE**
- **TAKE THOSE DATES AND DIVIDE THOSE DAYS BY THE MONTHS THEY ARE SIGHTING AND COME UP WITH THE PERCENTAGE. EXAMPLE: 3 DAYS OUT DIVIDED BY 90 DAYS IS 3% WHICH MEANS THAT THE CARRIER HAS A 97% RATE ON ACTUAL WORKING DAYS. MAKE THIS ONE OF YOUR CONTENTIONS IN THE GRIEVANCE**
- **POSTAL PERCENTAGES SAY THAT SSC, PRIORITY MAIL AND EXPRESS MAIL WHICH IS IN THE 90% RANGE IS ACCEPTABLE, BUT YET A CARRIER WHO IS 97% ON TIME DESERVES DISCIPLINE? MAKE THAT ARGUMENT**

# IN CONCLUSION

- **ATTENDANCE/SICK LEAVE IS MANAGEMENT'S CASE TO MAKE**
- **WE HAVE TO FIND EVERY PROVISION AND USE IT TO OUR ADVANTAGE TO MAKE SURE THAT WE HOLD LOCAL MANAGEMENT'S FEET TO THE FIRE**
- **WORK YOUR BUTT OFF FOR YOUR BROTHERS AND SISTERS BECAUSE THEY RELY ON YOU TO HELP THEM WHEN MANAGEMENT PUTS THEIR SITES ON THEM FOR WHATEVER REASON**
- **IF MANAGEMENT TRIES TO USE VERA D. BUGG LANGUAGE THEN WE HIT THEM WITH GARRETT. WE ARE NOT DEALING WITH SOMEONE WHO IS HERE 60% OF THE TIME, WE GOT 97% OF THE TIME**