

# FROM A TO ARBITRATION

EPISODE 7- THE CHARGE



# **THE IMPORTANCE OF THE CHARGE**

- **ALWAYS MAKE SURE THE DOCUMENTS IN THE FILE THAT MANAGEMENT USES AS CONTENTIONS PROVE THE CASE FOR THE CHARGE THEY STATE**
- **SCOUR OVER THE CHARGE**
- **EVERYTHING IN THAT NOTICE, EVERYTHING IN THAT CHARGE MUST BE CORRECT AND MUST BE TRUE**
- **IT IS OUR JOB TO MAKE SURE THAT EVERY WORD IS GONE OVER AND EVERY CLAIM IS DOUBLE CHECKED**
- **MANAGEMENT PRESENTS US WITH A CHARGE AND WE WILL DEFEND AGAINST THAT CHARGE**

# ARTICLE 16.3

- **PAGE 16.5 IN THE JCAM UNDER ARTICLE 16.3 STATES:**
  - **A LETTER OF WARNING IS A DISCIPLINARY NOTICE IN WRITING IDENTIFIED AS AN OFFICIAL DISCIPLINARY LETTER OF WARNING. WHICH SHALL INCLUDE AN EXPLANATION OF A DEFICIENCY OR MISCONDUCT TO BE CORRECTED**

# **ARTICLE 16.4**

## **ARTICLE 16.4 SUSPENSIONS FOR 14 DAYS OR LESS**

- IN THE CASE OF DISCIPLINE INVOLVING SUSPENSIONS OF 14 DAYS OR LESS THE EMPLOYEE AGAINST WHOM DISCIPLINARY ACTION IS SOUGHT TO BE INITIATED SHALL BE SERVED WITH A WRITTEN NOTICE OF THE CHARGES AGAINST THE EMPLOYEE. AND SHALL BE FURTHER INFORMED THAT HE/SHE WILL BE SUSPENDED.**



# ARTICLE 16.5

**JCAM PAGE 16.6 UNDER SECTION 16.5 IT STATES:**

- **SUSPENSIONS OF MORE THAN 14 DAYS OR DISCHARGE IT ALSO TALKS ABOUT THE CHARGE. IN THE CASE OF SUSPENSION OF MORE THAN 14 DAYS OR OF DISCHARGE ANY EMPLOYEE SHALL UNLESS OTHERWISE PROVIDED HERE IN BE INTITLED TO A ADVANCED WRITTEN NOTICE OF THE CHARGES AGAINST HIM/HER, AND SHALL REMAIN EITHER ON THE JOB OR ON THE CLOCK AT THE OPTION OFF THE EMPLOYER FOR 30 DAYS**

# THE IMPORTANCE OF THE CHARGE

- **JCAM PAGE 16.8 ARBITRATOR MITTENTHAL WROTE :**
  - **THE FACT THAT NO “ADVANCE WRITTEN NOTICE” IS REQUIRED DOES NOT MEAN THAT MANAGEMENT HAS NO NOTICE OBLIGATION WHATEVER. THE EMPLOYEE SUSPENDED PURSUANT TO SECTION 7 HAS THE RIGHT TO GRIEVE HIS SUSPENSION. HE CANNOT EFFECTIVELY GRIEVE UNLESS HE IS FORMALLY MADE AWARE OF THE CHARGE AGAINST HIM, THE REASON WHY MANAGEMENT HAS INVOKED SECTION 7. HE SURELY IS ENTITLED TO SUCH NOTICE WITHIN A REASONABLE PERIOD OF TIME FOLLOWING THE DATE OF HIS DISPLACEMENT . TO DENY HIM SUCH NOTICE IS TO DENY HIM HIS RIGHT UNDER THE GRIEVANCE PROCEDURE TO MOUNT A CREDIBLE CHALLENGE AGAINST MANAGEMENT’S ACTION.**

# **IF THE CHARGE IS INCORRECT**

- **IF THE CHARGE THAT MANAGEMENT IS STATING AGAINST THE CARRIER IS INCORRECT THEN THE STEWARD/UNION REPRESENTATIVE MUST FIND THAT AND DEFEND AND REFUTE THAT CHARGE.**
- **THE WAY WE DO THAT IS TO INTERVIEW THE CARRIER AND OR SUPERVISOR, GATHER INFORMATION AND GET DOCUMENTATION. ANYTHING WE NEED TO EITHER PROVE THAT CHARGE IS INCORRECT OR IS IMPROPERLY MADE.**

# WHAT ARE WE LOOKING FOR?

- **CHECK EVERYTHING IN THAT CHARGE THAT IS MADE BY MANAGEMENT:**
  - **AFTER THE INITIAL INVESTIGATIVE INTERVIEW, LOCAL MANAGEMENT WILL PUT TOGETHER A PACKET AND THEN SEND IT UP TO LABOR. SOMEONE WHO HAS NEVER EVEN BEEN TO YOUR OFFICE WILL NOW BE WRITING A CHARGE AGAINST THE CARRIER USING EVERY HANDBOOK AND MANUAL THEY CAN FIND. THIS IS AFTER THE FACT.**
  - **HOW CAN THE CARRIER ANSWER THE NEW CHARGES WHEN THEY HAVE ALREADY HAD THEIR DAY IN COURT? IF MANAGEMENT ADDS NEW CHARGES AFTER THE INTERVIEW THEN THE CARRIER HAD NO WAY TO DEFEND THEMSELVES AND THIS IS A VIOLATION OF THE JUST CAUSE PRINCIPLE**



# THE JUST CAUSE PRINCIPLE

- **ALL DISCIPLINE MUST BE CORRECTIVE IN NATURE RATHER THAN PUNITIVE.**
- **THIS IS FOUND IN THE JCAM, DEFENSES TO DISCIPLINE AND EL-921**
- **THE DEFINITION CAME FROM ARBITRATOR CARROLL R. DAUGHERTY DECISION IN THE GRIEF BROTHERS COOPERAGE CORP. IN 1964 AND LATER DECISION, ENTERPRISE WIRE COMPANY IN 1966**
- **WE MUST USE ALL OF THE QUESTIONS IN JUST CAUSE TO MAKE SURE THAT THIS HAS BEEN CORRECTIVE AND NOT JUST GOING AFTER THE CARRIER FOR DISCIPLINE**
- **IS THERE A RULE? WAS THE CARRIER AWARE OF THE RULE? WAS THERE A THOROUGH INVESTIGATIVE INTERVIEW COMPLETED? GO THROUGH EVERY QUESTION AND MAKE SURE THEY DID THEIR JOB**

# WHEN WE GET THE CHARGE

- **WE NEED TO GO OVER EVERY WORD. GO OVER EVERY SENTENCE. WE SHOULD BE FACT CHECKING EVERYTHING IN THAT CHARGE. IT SHOULD BE 100% CORRECT!**
- **ASK THE CARRIER ABOUT EVERY DETAIL. EVEN THOUGH THE INVESTIGATIVE INTERVIEW MAY BE OVER WE HAVE TO NOW MAKE SURE EVERY CHARGE IS ANSWERED BY THE CARRIER. DID MANAGEMENT ASK YOU ABOUT THIS, ABOUT THAT? EVEN IF THE CARRIER ANSWERED YES, ASK THEM AGAIN. I.E. DO YOU KNOW WHAT THE M-39 IS? IF NO, THEN WHY DID YOU ANSWER YES WHEN THEY ASKED YOU IF YOU KNEW ABOUT M-39 665? SCOUR OVER THE DATES, PLACES, PEOPLE, QUESTIONS, ETC.**

# FINDING THE ANSWERS TO THE CHARGE

- **AS THE INFORMAL A REPRESENTATIVE YOU HAVE 14 DAYS TO PUT TOGETHER A CASE. THE FORMAL A REPRESENTATIVE ONLY HAS 7. YOU HAVE THE TIME AND SHOULD TAKE THAT TIME TO PUT TOGETHER THE BEST CASE POSSIBLE TO HELP THAT CARRIER REFUTE THAT CHARGE.**
- **MAKE SURE THAT THE CHARGE AT THE INFORMAL A IS THE SAME AS THE INVESTIGATIVE INTERVIEW. IF NOT THEN WE NEED TO FILE ON THAT AT THE LOWEST LEVEL POSSIBLE. IF YOU CATCH IT MAKE SURE THE FORMAL A REPRESENTATIVE IS MADE AWARE AS WELL. MAKE THAT CONTENTION!**
- **PUT IN THE INFORMATION REQUEST FOR ANY AND ALL DOCUMENTATION THAT WAS USED TO MAKE THIS CHARGE. THEN TAKE IT APART. DOES THEIR INFORMATION SUPPORT THEIR CHARGE?**

# REFUTING THE CHARGE

- **IN ARBITRATION THE ADVOCATE WILL BRING UP EVERY SINGLE CHARGE. WE NEED TO MAKE SURE THAT EVERY SINGLE CHARGE WAS PRESENTED TO THE CARRIER IN THE INVESTIGATIVE INTERVIEW SO THAT THE CARRIER CAN ANSWER EVERY SINGLE CHARGE. I.E. ATTENDANCE- THEY WILL BRING UP EVERY DATE. THE CARRIER SHOULD HAVE ANSWERED EVERY SINGLE DATE, WHY THEY WERE OUT AND IF THEY BROUGHT IN DOCUMENTATION, ETC.**
- **AS STEWARDS WE NEED TO GO OVER EVERY DATE, CHECK THE SCHEDULE, CHECK THE 3972S AND 3971S. A LOT OF TIMES THE CHARGE AND THE INFORMATION WE FIND WILL NOT ADD UP. WE NEED TO REFUTE THIS.**



# IN CLOSING

- **YOU MUST BE THOROUGH AND SCOUR THAT CHARGE AND ALL THE INFORMATION MANAGEMENT USED TO MAKE THIS CHARGE**
- **ALL THE INFORMATION AND DOCUMENTATION MUST PROVE THEIR CHARGE**
- **ARBITRATOR WOLITZ SAYS:**
  - **THEY DON'T HAVE JUST CAUSE IF THEIR CHARGE ISN'T 100% CORRECT.**

**LOOK UP EVERY SITE IN EVERY HANDBOOK AND MANUAL THAT THEY USE. FACT CHECK ALL OF IT!**