

FROM A TO ARBITRATION

EPISODE 19-ARTICLE 16.8 REVIEW OF DISCIPLINE AND THE SWISS ARMY KNIFE



JCAM ARTICLE 16.8

- REVIEW OF DISCIPLINE

- IN **NO** CASE MAY A SUPERVISOR IMPOSE SUSPENSION OR DISCHARGE UPON AN EMPLOYEE UNLESS THE PROPOSED DISCIPLINARY ACTION BY THE SUPERVISOR HAS FIRST BEEN REVIEWED AND CONCURRED IN BY THE INSTALLATION HEAD OR DESIGNEE.
- IN POST OFFICES OF TWENTY (20) OR LESS EMPLOYEES, OR WHERE THERE IS NO HIGHER LEVEL SUPERVISOR THAN THE SUPERVISOR WHO PROPOSES TO INITIATE SUSPENSION OR DISCHARGE; THE PROPOSED DISCIPLINARY ACTION SHALL FIRST BE REVIEWED AND CONCURRED IN BY A HIGHER AUTHORITY OUTSIDE SUCH INSTALLATION OR POST OFFICE BEFORE ANY PROPOSED DISCIPLINARY ACTION IS TAKEN.

GETTING SOME HELP FROM ARTICLE 15.2

- THE WORD SUPERVISOR MEANS THE SUPERVISOR. NOT THE POSTMASTER, NOT THE MANAGER. THIS NEEDS TO HAVE A DISTINCTION THAT THEY ARE NOT ONE AND THE SAME.
- USE THE LANGUAGE IN ARTICLE 15.2 INFORMAL STEP A(A). IT STATES IN PART THAT ANY EMPLOYEE WHO FEELS AGGRIEVED MUST DISCUSS THE GRIEVANCE WITH THE EMPLOYEE'S IMMEDIATE SUPERVISOR WITHIN FOURTEEN DAYS.....THE IMMEDIATE SUPERVISOR NOT THE MANAGER.
- INFORMAL STEP A 15.2 B STATES IN PART : IN ANY SUCH DISCUSSION THE SUPERVISOR SHALL HAVE THE AUTHORITY TO RESOLVE THE GRIEVANCE. NOT MANAGEMENT, NOT THE POSTMASTER
- INFORMAL STEP A 15.2 (C) STATES IN PART: AT THE REQUEST OF THE UNION, THE SUPERVISOR SHALL PRINT HIS/HER NAME ON THE JOINT STEP A GRIEVANCE FORM.... AGAIN THE SUPERVISOR, NOT MANAGEMENT

WHO DOES WHAT?

- ARTICLE 16.1 UNDER THE JUST CAUSE PRINCIPLE LAST SENTENCE STATES: THESE CRITERIA ARE THE BASIC CONSIDERATIONS THAT THE SUPERVISOR MUST USE BEFORE INITIATING DISCIPLINARY ACTION.
- THE CONTRACT IS CLEAR WHEN THE SUPERVISOR NEEDS TO HANDLE THINGS. IT CLEARLY STATES WHO SHOULD AND SHOULD NOT BE DOING THINGS. THIS IS MADE CLEAR ALSO UNDER ARTICLE 16.8 WHICH STATES IN PART: IN NO CASE MAY A SUPERVISOR IMPOSE SUSPENSION OR DISCHARGE UPON AN EMPLOYEE UNLESS THE PROPOSED DISCIPLINARY ACTION BY THE SUPERVISOR HAS FIRST BEEN REVIEWED AND CONCURRED IN BY THE INSTALLATION HEAD OR DESIGNEE . IN POST OFFICES OF TWENTY (20) OR LESS EMPLOYEES, OR WHERE THERE IS NO HIGHER LEVEL SUPERVISOR THAN THE SUPERVISOR WHO PROPOSES TO INITIATE SUSPENSION OR DISCHARGE, THE PROPOSED DISCIPLINARY ACTION SHALL FIRST BE REVIEWED AND CONCURRED IN BY A HIGHER AUTHORITY OUTSIDE SUCH INSTALLATION OR POST OFFICE BEFORE ANY PROPOSED DISCIPLINARY ACTION IS TAKEN.

ARTICLE 16.8 LANGUAGE

- ONCE AGAIN STATING THAT IT MUST BE THE IMMEDIATE SUPERVISOR WHO NEEDS TO GET A HIGHER AUTHORITY ONLY TO REVIEW AND CONCUR
- REVIEW AND CONCURRENCE ONLY NEEDS TO BE FOR SUSPENSION OR DISCHARGE, IT DOES NOT NEED TO BE FOR A LETTER OF WARNING
- LOOK AT WHO ISSUED ANY DISCIPLINE. IF IT WAS NOT THE IMMEDIATE SUPERVISOR YOU NEED TO CONTEND THIS AS THE LANGUAGE OF THE CONTRACT SUPPORTS THIS. ASK WHAT THE UNUSUAL OR ABNORMAL CONDITION WAS THAT THE ISSUANCE OF DISCIPLINE DID NOT COME STRAIGHT FROM THE IMMEDIATE SUPERVISOR. GET IT ON THE RECORD. HAVING A 204B AND NOT WANTING THEM TO DECIDE DISCIPLINE IS NOT AN EXCUSE. IT IS CIRCUMVENTING THE CONTRACT.

ARTICLE 16.8 ADDITIONAL LANGUAGE

- CONCURRENCE IS A SPECIFIC CONTRACT REQUIREMENT TO THE ISSUANCE OF A SUSPENSION OR A DISCHARGE. IT IS NORMALLY THE RESPONSIBILITY OF THE IMMEDIATE SUPERVISOR TO INITIATE DISCIPLINARY ACTION. BEFORE A SUSPENSION OR REMOVAL MAY BE IMPOSED, HOWEVER, THE DISCIPLINE MUST BE REVIEWED AND CONCURRED WITH BY THE MANGER WHO IS A HIGHER LEVEL THAN THE INITIATING, OR ISSUING, SUPERVISOR. THIS ACT OF REVIEW AND CONCURRENCE MUST TAKE PACE PRIOR TO THE ISSUANCE OF THE DISCIPLINE. WHILE THERE IS NO CONTRACTUAL REQUIREMENT THAT THERE BE A WRITTEN RECORD OF CONCURRENCE MANAGEMENT SHOULD BE PREPARED TO IDENTIFY THE MANAGER WHO CONCURRED WITH A DISCIPLINARY ACTION SO HE/SHE MAY BE QUESTIONED IF THERE IS A CONCERN THAT APPROPRIATE CONCURRENCE DID NOT TAKE PLACE.

CATCHING 'EM AT THE LIE

- RUBBER STAMPING MEANS THAT THE SUPERVISOR REQUESTED DISCIPLINE ON A DATE AND THE CONCURRING OFFICIAL DATED THE CONCURRENCE WITH THE SAME DATE. DO NOT LET THAT SLIDE. THAT IS ONE OF YOUR CONTENTIONS. INTERVIEW THAT CONCURRING OFFICIAL AND IN YOUR QUESTIONS ASK ABOUT THE DATES AND WHAT DID THEY LOOK AT, OR REVIEW, IN THIS REQUEST. IF THEY ACTUALLY LOOKED AND REVIEWED THIS INFORMATION THEY SHOULD KNOW ABOUT THE CASE. ASK THE MANAGER IF THEY READ THE PERSONAL STATEMENT OF CARRIER JOHN DOE, AND IF THEY SAY THEY DID, WELL THERE IS NO JOHN DOE, I MEANT JANE DOE. YOU CAN CATCH THEM.
- IF THEY SAY THEY LOOKED AT THE FILE THAT THE SUPERVISOR SENT UP ASK THEM FOR SPECIFICS. WHAT DID YOU SEE IN THE CASE FILE THAT WARRANTED YOU TO AGREE TO THIS DISCIPLINE. JUST STOP. THEY HAVE TO BE ABLE TO ANSWER THAT QUESTION.

GETTING SOME HELP FROM ARTICLE 16.7

- EMERGENCY PLACEMENT AND THE FRONTLINE SUPERVISOR:
 - DO SUPERVISORS HAVE TO HAVE A CONCURRING OFFICIAL ON AN EMERGENCY PLACEMENT?
 - PAGE 16.8 OF THE JCAM UNDER WRITTEN NOTICE STATES IN PART:
 - THE EMPLOYEE SUSPENDED PURSUANT TO SECTION 7 HAS THE RIGHT TO GRIEVE HIS SUSPENSION.
 - PAGE 16.9 OF THE JCAM UNDER SEPARATE GRIEVANCES STATES IN PART:
 - IF, SUBSEQUENT TO AN EMERGENCY SUSPENSION MANAGEMENT SUSPENDS THE EMPLOYEE FOR MORE THAN THIRTY DAYS OR DISCHARGES THE EMPLOYEE, THE EMERGENCY ACTION TAKEN UNDER THIS SECTION SHOULD BE GRIEVED SEPARATELY FROM THE LATER DISCIPLINARY ACTION.

MANAGEMENT WILL STATE THAT THEY DO NOT HAVE TO CONCUR AS IT IS IMMEDIATELY

ARBITRATOR LEWINTER C-05164 A&B

- AS TO THE QUESTION OF CONCURRENCE, HOWEVER, THE UNION MUST BE SUSTAINED. IN UNCONTESTED TESTIMONY, IT WAS DEMONSTRATED THAT THE EMPLOYER HAS A FORM WHICH IT USES WHEN REQUESTING DISCIPLINE TO BE ISSUED AND CONCURRENCE. THIS IS KNOWN AS FORM 278E. THOMAS PAWLOWSKI, THEN SUPERINTENDENT OF DELIVERY, TESTIFIED THAT HE FILED A FORM 278E TO REQUEST CONCURRENCE ON THE SUSPENSION. ACCORDING TO HIS TESTIMONY, MR. PAWLOWSKI, CALLED AREA MANAGER MIKE KIGIN AT THE OUTSET. HE BELIEVES MR. KIGIN CONCURRED IN THE DISCIPLINE. AS FOR THE REMOVAL, DELIVERY SUPERVISOR, A.W. ALMAND, WAS THE ISSUING SUPERVISOR. THERE WAS NO EVIDENCE HE USED A FORM 278E. HOWARD F. GOLBY, JR., STATION MANAGER, TESTIFIED THAT HE "CONCURRED".

ARBITRATOR LEWINTER C-05164 A&B

- CONCURRENCE BY A HIGHER OFFICIAL IS MANDATORY BEFORE THE EMPLOYER CAN ISSUE ANY SUSPENSION OR BEFORE IT CAN ISSUE A DISCHARGE. THE LANGUAGE IS AS FOLLOWS, IN ARTICLE 16, SECTION 8. REVIEW OF DISCIPLINE
 - a. IN NO CASE MAY A SUPERVISOR IMPOSE SUSPENSION OR DISCHARGE UPON AN EMPLOYEE UNLESS THE PROPOSED DISCIPLINARY ACTION BY THE SUPERVISOR HAS FIRST BEEN REVIEWED AND CONCURRED IN BY THE INSTALLATION HEAD OR DESIGNEE.
 - b. THE EMPLOYER ARGUES THAT THERE IS NOTHING IN THE AGREEMENT THAT THE CONCURRENCE MUST BE IN WRITING. THAT IS TRUE; HOWEVER, ONCE THE PARTIES ESTABLISH A CERTAIN FORMAL PROCEDURE TO FOLLOW IN DISCIPLINARY CASES, EVIDENCE BY THE LOCAL FORM, FORM 278E, FAILURE TO PROVIDE THE FORM ACCOMPANIED BY A CONTEST BY THE UNION ON THE FACT OF CONCURRENCE, RAISES AN INFERENCE THAT THERE WAS NO CONCURRENCE. THIS IS ESPECIALLY TRUE WHERE THE SUPERVISOR, SUCH AS MR. PAWLOWSKI, IN THE SUSPENSION CASE, TESTIFIED HE FILED THAT FORM. IN SUCH A CIRCUMSTANCE, IT IS UP TO THE EMPLOYER TO PROVE CONCURRENCE

WE NEED TO USE THIS CITE IF MANAGEMENT EVER STATES THAT THE 278E IS AN INTERNAL FORM AND IT DOESN'T HAVE TO BE IN WRITING.

ARBITRATOR LEWINTER C-05164 A&B

- CONCURRENCE IS NOT A MERE “RUBBER STAMP” ACTION BY UPPER LEVEL SUPERVISION. IT REQUIRES A DEGREE OF SPERATE ACTION BY THE CONCURRING SUPERIOR TO “REVIEW” THE DISCIPLINE. IN THIS CASE, THERE WAS NO EVIDENCE OF ANY REVIEW IN EITHER DISCIPLINE. IN THE CASE OF SUSPENSION, MR. PAWLOWSKI TESTIFIED HE CALLED THE CONCURRING SUPERIOR, AREA MANAGER KIGIN AND EXPLAINED THE PROBLEM. THIS WAS BEFORE THE INVESTIGATIVE MEMORANDUM WAS FILED BY THE POSTAL INSPECTORS. ACTING QUICKLY IN EMERGENCY SUSPENSION CASES IS NOT IMPROPER,
- BUT IT DOES NOT ELIMINATE THE NEED FOR CONCURRENCE.



ARBITRATOR LEWINTER C-05164 A&B

- THE EMPLOYER DID NOT PRESENT AREA MANAGER KIGIN. FROM THE EVIDENCE PRESENTED BY MR. PAWLOWSKI, HE MERELY TOLD HIM OF HIS SUSPICIONS AND THE DISCIPLINE WAS FORTHCOMING. THERE WAS NO EVIDENCE THAT MR. KIGIN EVEN ASKED HIM ANY QUESTIONS OR DID ANYTHING BUT TAKE HIS STATEMENT ON FACE VALUE. IT MAY NOT BE NECESSARY TO HAVE THE CONCURRENCE IN WRITING, BUT WITHOUT IT AND WITHOUT ANY EVIDENCE THAT THE FORM 278E FILED PAWLOWSKI WAS IN EXISTENCE, THERE IS A TOTAL LACK OF ANY REVIEW BY MR. KIGIN OR ANY SUPERIOR SOURCE

ARBITRATOR LEWINTER C-05164 A&B

- THE REMOVAL IS SUBJECT TO THE SAME DEFECT. HERE, THERE IS NO FORM 278E TESTIFIED TO OR PRESENTED AT THE HEARING. THE ISSUING SUPERVISOR, MR. ALMAND, GAVE NO TESTIMONY THAT HE REQUESTED ANY CONCURRENCE. MR. GOLBY TESTIFIED THAT HE "CONCURRED" WITH THE REMOVAL. AT NO TIME, HOWEVER, DID MR. GOLBY TESTIFY THAT HE WAS REQUESTED TO GIVE THE FORMAL CONCURRENCE AS REQUIRED BY THE CONTRACT. MR. GOLBY'S TESTIMONY IS NO MORE EFFECTIVE THAN IF HE TESTIFIED THAT HE AGREED WITH THE REMOVAL AS A GENERAL THEORY. THERE IS NO LINK OF THE GOBY "CONCURRENCE" WITH THE DISCIPLINE ISSUED. CONCURRENCE IS A SPECIFIC AND FORMAL CONTRACT REQUIREMENT TO THE ISSUANCE OF A SUSPENSION OR A DISCHARGE. IT MUST OCCUR BEFORE THE ISSUANCE OF THE DISCIPLINE AND NOT AFTERWARDS.

ARBITRATOR LEWINTER C-05164 A&B

- THE REQUIREMENT IS NOT MET MERELY BECAUSE A SUPERIOR AGREES WITH THE DISCIPLINE. IT MUST BE DEMONSTRATED THAT HE WAS REQUESTED TO CONCUR, AND THAT HE REVIEWED THE MATTER IN LIGHT OF ALL THE CURRENT INFORMATION AT THE TIME OF CONCURRENCE, AND THAT HE THEN GAVE HIS CONSENT TO THE ISSUANCE OF THE DISCIPLINE. WHILE THE CONTRACT DOES NOT REQUIRE A WRITING TO ACCOMPLISH THIS, IT IS THE EMPLOYER'S BURDEN TO DEMONSTRATE THAT IT OCCURRED. WITHOUT A WRITING, IT NEEDS SUBSTANTIALLY MORE EVIDENCE THAN WAS PRESENTED AT THIS HEARING.

ARBITRATOR CARAWAY C-00908

- THIS PROVISION REQUIRES THAT THE IMMEDIATE SUPERVISOR RECOMMEND THE DISCIPLINARY ACTION TO BE TAKEN. IT THEN MUST BE REVIEWED AND CONCURRED IN BY THE INSTALLATION HEAD. IN THIS CASE MS. HAYES WAS THE IMMEDIATE SUPERVISOR WHILE POSTMASTER LATIOLAIS WAS THE CONCURRING OFFICIAL. THE TESTIMONY OF MS. HAYES WAS THAT SHE DID NOT INITIATE THE REMOVAL. THAT DECISION WAS MADE BY ME. LATIOLAIS. MS. HAYES AGREED TO THE DECISION. THIS IS THE REVERSE OF WHAT THE FIRST PARAGRAPH OF SECTION 6 REQUIRES. THE IMMEDIATE SUPERVISOR MUST INITIATE THE DISCIPLINARY ACTION AND THE POSTMASTER MUST REVIEW AND CONCUR. THEREFORE, THERE WAS NO INDEPENDENT REVIEW BY HIGHER AUTHORITY AS REQUIRED BY ARTICLE 16, SECTION 6.

ARBITRATOR CARAWAY C-00908

- THE POSTMASTER ASSUMED THE DECISION-MAKING ROLE THEREBY ELIMINATING THE IMMEDIATE SUPERVISOR FROM HER RESPONSIBILITY OF RECOMMENDING INITIALLY THE DISCIPLINARY ACTION. THIS IS IN VIOLATION OF ARTICLE 16, SECTION 6. BASED UPON ARBITRAL PRECEDENT AS DISCUSSED HEREIN AND THE STRONG LANGUAGE OF ARTICLE 16 SECTION 6, THE ARBITRATOR FINDS THAT THE GRIEVANT WAS NOT GIVEN "DUE PROCESS". THE NECESSITY OF STRICTLY FOLLOWING THIS PROCEDURE IS DEMONSTRATED BY THE USE OF THE PHRASE IN ARTICLE 16, SECTION 6, "IN NO CASE". THERE WERE NO EXCEPTIONS INTENDED TO BE MADE IN FOLLOWING THE INITIATING AND CONCURRENCE PROCESS. THE ARBITRATOR, THEREFORE, MUST SUSTAIN THE GRIEVANCE ON PROCEDURAL GROUNDS. HE IS, THEREFORE, PRECLUDED FROM CONSIDERING THE CASE ON ITS MERITS.

ARBITRATOR EISCHEN C-23828/ APWU 16.6

- ISSUES NO1(A)-1(F): ARTICLE 16.6 VIOLATION/COMPLIANCE
- WHEN THE RHETORICAL EXCESSES OF ARDENT ADVOCACY ARE STRIPPED AWAY, I DO NOT PERCEIVE ANY MEANINGFUL DISAGREEMENT BETWEEN THESE PARTIES WITH THE FUNDAMENTAL PROPOSITION THAT ARTICLE 16.6 REQUIRES TWO SEPARATE AND INDEPENDENT MANAGERIAL JUDGMENTS, EACH BASED ON SUBSTANTIVE REVIEW OF THE RECORD EVIDENCE, BEFORE A SUSPENSION OR DISCHARGE DISCIPLINARY ACTION MAY BE IMPOSED ON AN EMPLOYEE" THE FIRST BY THE INITIATING OFFICIAL WHO PROPOSES DISCIPLINE, AND THE SECOND BY A HIGHER AUTHORITY WHO MUST REVIEW AND CONCUR IN THE PROPOSED DISCIPLINE BEFORE IT IS IMPOSED UPON THE EMPLOYEE.

ARBITRATOR EISCHEN C-23828

- IT NECESSARILY FOLLOWS THAT THE REQUIREMENT OF TWO SEPARATE AND INDEPENDENT JUDGEMENTS, CONSTITUTES THE VERY HEART AND CORE OF ARTICLE 16.6, IS VIOLATED WHEN THE REVIEWING/CONCURRING OFFICIAL "COMMANDS" OR "DICTATES" THE DISCIPLINARY ACTION TO THE PROPOSING OFFICIAL, WHEN THE HIGHER AUTHORITY MERELY "RUBBER STAMPS" THE DISCIPLINARY ACTION PROPOSED BY THE EMPLOYEE'S SUPERVISOR AND/OR WHEN THE SEQUENTIAL STEPS OF A SEPARATE AND INDEPENDENT SUPERVISORY INITIATION FOLLOWED BY A SEPARATE AND INDEPENDENT HIGHER AUTHORITY REVIEW/CONCURRENCE, ARE MERGED INTO A SINGLE CONSOLIDATED JOINT DECISION BY THE TWO MANAGERS TO SUSPEND OR DISCHARGE THE EMPLOYEE.
- THIS MEANS THAT THEY BOTH CAN NOT DECIDE TOGETHER TO ISSUE DISCIPLINE. THEY MUST BE TWO SEPARATE THINGS

ARBITRATOR EISCHEN C-23828

- JUST AS THE AREA ARBITRATION DECISIONS RENDERED BY A LONG LINE OF PROMINENT ARBITRATORS HAVE CONSISTENTLY HELD, I NOW HOLD THAT A VIOLATION OF ARTICLE 16.6 OCCURS WHENEVER: (1) THE INITIATING OFFICIAL IS DEPRIVED OF FREEDOM TO MAKE HIS OWN INDEPENDENT DETERMINATION TO DISCIPLINE BY A "COMMAND DECISION" DICTATED FROM HIGHER AUTHORITY TO SUSPEND OR DISCHARGE; (2) THE INITIATING AND REVIEWING/CONCURRING OFFICIALS JOINTLY MAKE ONE CONSOLIDATED DISCIPLINARY ACTION DECISION, OR (3) THE HIGHER AUTHORITY DOES NOT REVIEW THE RECORD AND CONSIDER ALL OF THE AVAILABLE EVIDENCE BEFORE CONCURRING IN THE SUPERVISOR'S PROPOSED DISCIPLINE. IN EACH SUCH INSTANCE, BECAUSE THERE HAVE NOT BEEN TWO SEPARATE AND INDEPENDENT JUDGMENTS ON DISCIPLINE, THE EMPLOYEE IS DEPRIVED OF THE ESSENTIAL DUE PROCESS CHECK AND BALANCES PROTECTION THAT ARTICLE 16.6 IS INTENDED TO PROVIDE.

ARBITRATOR EISCHEN C-23828

- HOWEVER, SO LONG AS THE SINE QUA NON OF ARTICLE 16.6 SEPARATENESS AND INDEPENDENCE OF JUDGEMENT IN TWO-STAGE PROCESS, IS NOT VIOLATED BY “COMMAND” DECISIONS, JOINT DECISIONS AND /OR “RUBBER STAMPING”, ARTICLE 16.6 DOES NOT BAR THE LOWER LEVEL SUPERVISOR FROM CONSULTING, DISCUSSING, COMMUNICATING WITH OR JOINTLY CONFERRING WITH THE HIGHER REVIEWING AUTHORITY BEFORE DECIDING TO PROPOSE DISCIPLINE. INDEED, IT IS COMMON, AND IN MANY WAYS COMMENDABLE AND CONDUCIVE TO FULFILLMENT OF THE INTENT OF ARTICLE 16.6, FOR THE LOWER LEVEL AUTHORITY TO COMMUNICATE WITH THE HIGHER MANAGEMENT AND DISCUSS POLICIES, OPTIONS, AND OTHER FACTORS TO BE CONSIDERED, BEFORE DETERMINING WHETHER AND TO WHAT EXTENT, TO PROPOSE SUSPENSION OR DISCHARGE OF AN EMPLOYEE.

ARBITRATOR EISCHEN C-23828

- IN SHORT, SO LONG AS THE INITIATING OFFICIAL RETAINS INDEPENDENCE OF JUDGMENT AND IS NOT COMMANDED BY HIGHER AUTHORITY TO ISSUE THE DISCIPLINE, SUCH COMMUNICATIONS FOR ADVICE AND COUNSEL BETWEEN THE INITIATING OFFICIAL AND A HIGHER AUTHORITY ARE TO BE ENCOURAGED RATHER THAN CHILLED OR PROHIBITED. THE DETERMINING FACTOR UNDER ARTICLE 16.6 IS NOT WHETHER THE OFFICER IN CHARGE SEEKS ADVICE AND COUNSEL OUTSIDE HIS OFFICE BUT WHETHER, ONCE HAVING OBTAINED SUCH INFORMATION THE INITIATING OFFICIAL ACTS INDEPENDENTLY OR SURRENDERS THE INDEPENDENCE COMPLETELY TO THE PERSON FROM WHOM HE HAS SOUGHT SUCH ADVICE. IN THE FORMER CASE ARTICLE 16.6 IS NOT VIOLATED BUT, IN THE LATTER CASE, ARTICLE 16.6 IS VIOLATED

ARBITRATOR EISCHEN C-23828

- BY THE SAME TOKEN, IT IS NOT PER SE A VIOLATION OF ARTICLE 16.6 WHEN THE HIGHER LEVEL AUTHORITY RELIES IN THE REVIEWING/CONCURRING STEP UPON THE RECORD CONSIDERED BY THE LOWER LEVEL OFFICIAL IN PROPOSING THE DISCIPLINE. THE HIGHER AUTHORITY IS NOT REQUIRED BY ARTICLE 16.6 TO MAKE AN "INDEPENDENT INVESTIGATION". IN MY JUDGMENT, THE REQUIREMENTS OF ARTICLE 16.6 ARE MET WHEN THE HIGHER AUTHORITY MAKES A SUBSTANTIVE REVIEW OF A BASES THE DECISION TO CONCUR ON THE RECORD DEVELOPED BELOW
- THIS MEANS THAT THE CONCURRING OFFICIAL DOES NOT HAVE TO DO THEIR OWN INVESTIGATION, BUT THEY DO HAVE TO DO A THOROUGH REVIEW.

ARBITRATOR EISCHEN C-23828

- CONTRARY TO THE POSITION ADVANCED BY THE POSTAL SERVICE IN THIS CASE, HOWEVER, THAT PROCESS OF REVIEW AND CONCURRENCE CONTEMPLATED BY ARTICLE 16.6 IS NOT A MINISTERIAL FORMALITY OR A MERE TECHNICAL “LAYING ON OF HANDS” BY THE REVIEWING/CONCURRING OFFICIAL. THE REQUIREMENT OF A SEPERATE AND INDEPENDENT SECOND STEP OF REVIEW AND CONCURRENCE BY THE HIGHER AUTHORITY IS NOT MET BY JUST A DECLARATION OF AGREEMENT WITH THE FIRST STEP SUPERVISOR’S PROPOSED DISCIPLINARY ACTION. COMPLIANCE WITH ARTICLE 16.6 REQUIRES A SUBSTANTIVE REVIEW OF THE MATTER BY THE HIGHER AUTHORITY IN LIGHT OF ALL THE CURRENT INFORMATION AND THE HIGHER AUTHORITY’S CONCURRENCE WITH IMPOSITION OF THE DISCIPLINARY ACTION PROPOSED BY THE SUPERVISOR. SINCE THE 1995 AMENDMENTS, ARTICLE 16.6 SPECIFIES THAT THIS STATEMENT OF CONCURRENCE BY THE HIGHER AUTHORITY MUST BE SET FORTH IN WRITING

WHAT DOES THAT MEAN?

- REQUEST FOR APPROPRIATE ACTION AND IT HAS THE SUPERVISOR REQUESTING DISCIPLINE AND THERE IS NO CONCURRING OFFICIALS SIGNATURE ON THAT SHOWING THAT THEY CONCURRED AND YOU GET THE NOTICE OF REMOVAL OR SUSPENSION AND IT'S WRITTEN OUT AND YOU SEE THE REQUESTING INITIATING SUPERVISORS SIGNATURE AND THEN IT SAYS CONCURRING OFFICIAL AND IT HAS A NAME THEN THEY HAVE VIOLATED THE C-23828 NATIONAL ARBITRATORS DECISION BECAUSE THEY DIDN'T CONCUR AND REVIEW ON THE INFORMATION THEY HAD AT THE TIME, THEY JUST REVIEWED THE INFORMATION THEY HAD ON THE LETTER. THAT IS A LAYING ON OF THE HANDS. WHAT COULD THEY HAVE POSSIBLY REVIEWED? ALL THAT WAS THERE WAS THE LETTER. BASICALLY JUST AGREEING WITH THE DISCIPLINE.

ARBITRATOR EISCHEN C-23828 CONTINUED

- ISSUE NO.2- THE REMEDY FOR PROVEN VIOLATIONS OF ARTICLE 16.6
- IN MY CONSIDERED JUDGEMENT, THOSE RELATIVELY FEW AREA ARBITRATION DECISIONS WHICH HAVE ENGRAFTED ONTO THE CONDITION PRECEDENT LANGUAGE OF ARTICLE 16.6 AN ADDITIONAL REQUIREMENT OF PROOF OF "ACTUAL HARM", NOTWITHSTANDING PERSUASIVE PROOF OF A "COMMAND DECISION", A "JOINT DECISION" OR THAT THE REVIEWING/CONCURRING OFFICIAL MERELY "RUBBER STAMPED" THE PROPOSED DISCIPLINARY ACTION, ARE JUST PLAIN WRONG.
- UNDER DIFFERENT CONTRACT LANGUAGE, ARBITRATORS MIGHT PROPERLY OVERLOOK PROCEDURAL DEFECTS IN ADMINISTRATION OF DISCIPLINE WHICH DO NOT UNDULY COMPROMISE THE RIGHTS OF AN EMPLOYEE WHOSE SUSPENSION OR DISCHARGE IS OTHERWISE JUSTIFIED ON THE RECORD. HOWEVER, THE PRECISE TERMINOLOGY OF ARTICLE 16.6 PRECLUDES RECOURSE TO THAT "HARMLESS ERROR" ARGUMENT. IF THIS PLAIN LANGUAGE OF ARTICLE 16.6 OCCASIONALLY PRODUCES A MANIFESTLY UNFAIR RESULT, AS UNDOUBTEDLY IT HAS IN SOME CASES, THE PROPER RECOURSE IS RENEGOTIATION AT THE BARGAINING TABLE, NOT ARBITRAL LEGISLATION OF "ACTUAL HARM" OR "HARMLESS ERROR" RULES WHICH ARE AT ODDS WITH THE EXPRESS WORDING OF ARTICLE 16.6

ARBITRATOR EISCHEN C-23828 CONTINUED

- AWARD OF THE NATIONAL ARBITRATOR CASE NO.E95R-4E-D 0127978
- HAVING BEEN DESIGNATED NATIONAL ARBITRATOR IN ACCORDANCE WITH ARTICLE 15 SECTION 5.C. OF THE NATIONAL AGREEMENT BETWEEN THE ABOVE-NAMED PARTIES, AND HAVING BEEN DULY SWORN AND HAVING DULY HEARD THE PROOFS AND ALLEGATIONS OF THE PARTIES, I HERBY AWARD AS FOLLOWS:
 - ISSUE NO. 1- ARTICLE 16.6 REVIEW OF DISCIPLINE OF THE EXTENSION OF THE 1995-1999 USPS-NRLCA NATIONAL AGREEMENT:
 - A) IS NOT VIOLATED IF THE LOWER LEVEL SUPERVISOR CONSULTS, DISCUSSES, COMMUNICATES WITH OR JOINTLY CONFERS WITH THE HIGHER REVIEWING AUTHORITY BEFORE DECIDING TO PROPOSE DISCIPLINE;

WHAT DOES THAT MEAN?

- WHEN YOU GET A CITE, WHEN AN ARBITRATOR SAYS THAT THIS DUE PROCESS VIOLATION DIDN'T ACTUAL HARM TO THE CASE SHE IS SAYING THAT THIS VIOLATION OF 16.8 THAT IS NOT ONE OF DOMINIUM'S THIS IS NOT ONE THAT WE HAVE TO SHOW ACTUAL HARM
- IF THE ONLY ARGUMENT WE HAVE IS DUE PROCESS VIOLATIONS AND THE RECORD SHOWS THAT THE CARRIER WAS GUILTY, AND VERY GUILTY, THEY HAVE GOT TO BE SUBSTANTIVE, THEY'VE GOT TO BE OVERWHELMING. SOME ARBITRATORS MIGHT JUST FLIP OFF JUST A HANDFUL OF DUE PROCESS VIOLATIONS, THEY'RE JUST GONNA SHUN THOSE IF THEY ARE DOMINIUM'S, THEY DIDN'T HARM ANYONE, DIDN'T HARM THE GRIEVANT, HE'S GUILTY ANY THEY WILL OVERLOOK THAT. AND WE WILL LOSE. BUT SHE IS SAYING THAT THIS 16.8 VIOLATION IS NOT LIKE THAT. IF THERE IS FOUND TO BE A VIOLATION OF 16.8 IT DAMNS MANAGERMENTS ACTION.

ARBITRATOR EISCHEN C-23828 CONTINUED

- ISSUE NO. 2
 - A) PROVEN VIOLATIONS OF ARTICLE 16.6 AS SET FORTH IN ISSUES 1B, 1C, OR 1E ARE FATAL. SUCH SUBSTANTIVE VIOLATION INVALIDATE THE DISCIPLINARY ACTION AND REQUIRE A REMEDY OF REINSTATEMENT WITH “MAKE-WHOLE” DAMAGES.
 - SO IF WE CAN FIND ANY VIOLATION OF ARTICLE 16.8 AT ANY POINT IT IS FATAL TO MANAGERMENTS CASE. WE HAVE TO PUT THIS ARBITRATION DECISION IN THE FILE.
 - NO NEED TO GET TO THE MERITS OF THE CASE, MANAGEMENT’S CASE IS FATALLY FLAWED

ARBITRATOR EISCHEN C-23828 CONTINUED

- B) IS VIOLATED IF THERE IS A "COMMAND DECISION" FROM HIGHER AUTHORITY TO IMPOSE A SUSPENSION OR DISCHARGE;
- C) IS VIOLATED IF THERE IS A JOINT DECISION BY THE INITIATING AND REVIEWING OFFICIALS TO IMPOSE A SUSPENSION OR DISCHARGE'
- D) IS NOT VIOLATED IF THE HIGHER LEVEL AUTHORITY DOES NOT CONDUCT AN INDEPENDENT INVESTIGATION AND RELIES UPON THE RECORD SUBMITTED BY THE SUPERVISOR WHEN REVIEWING AND CONCURRING WITH THE PROPOSED DISCIPLINE;
- E) IS VIOLATED IF THERE IS A FAILURE OF EITHER THE INITIATING OR REVIEWING OFFICIAL OF A SUSPENSION OR DISCHARGE;
- F) IS VIOLATED IF THERE IS NO EVIDENCE OF WRITTEN REVIEW AND CONCURRENCE PRIOR TO THE IMPOSITION OF A SUSPENSION OR DISCHARGE.

CONTENTIONS ON THE GRIEVANCE

- IF YOU GET A FILE WITH NO CONCURRENCE YOU NEED TO BRING THAT UP IN YOUR CONTENTIONS. THERE IS NO CONTRACTUAL REQUIREMENTS THAT THERE BE A WRITTEN RECORD OF CONCURRENCE THEY STILL HAVE TO NAME THE CONCURRING OFFICIAL.
- WHEN THE FORMAL A GETS THE FILE AND THERE IS NO CONCURRENCE, AND YOU PUT THAT IN YOUR CONTENTIONS, THEY ARE NOT GOING TO BRING IT UP, BUT WHEN IT HITS THE B-TEAM AND ABOVE THEY WILL TRY TO BRING IN THEIR CONCURRING OFFICIAL AND WE CAN NOW REBUT HAVING THAT OFFICIAL TESTIFY. BECAUSE MANAGEMENT NEVER RAISED, OR REBUTTED, THAT ISSUE.

CONTENTIONS CONTINUED

- IN THIS CASE THE POSTMASTER HAS ISSUED DISCIPLINE WITH THE CONCURRENCE OF THE MPOO, NOT THE IMMEDIATE SUPERVISOR AS IT CLEARLY STATES IN ARTICLE 16
- IF SUPERVISOR SO AND SO STATES IN A MEETING THAT THEY REALLY HATE TO SEE THIS CARRIER BE LET LOOSE BUT IT IS OUT OF THEIR HANDS AND UPPER MANAGEMENT/LABOR SAYS THIS HAS TO HAPPEN
- YOU HAVE TO SHOW THAT THERE WAS A SUBSTANDARD REVIEW OF THE RECORD DEVELOPED BELOW, AND BY MERELY SIGNING A REMOVAL OR SUSPENSION IS NOT THAT

IN CLOSING....

- HEY, THIS HAS BEEN A REAL EPISODE RIGHT HERE BABY. HOLY SMOKES.
- THERE'S A LOT OF THINGS IN 16.8 THAT WE NEED TO GET INTO AND FIND AND INVESTIGATE AT THE INFORMAL A LEVEL AS SHOP STEWARDS
- AND THERE IS STILL MORE TO IT
- GET YOUR CORE GROUP OF PEOPLE YOU TRUST AND ALWAYS GET HELP WHEN IT COMES TO CASES LIKE THIS.