

# **FROM A TO ARBITRATION**

**EPISODE 20- ARTICLE 16.10 THE DISCIPLINE KILLER**



# GRIEVANCE KILLERS

- ARTICLE 16.10 VIOLATION
- WEINGARTEN RIGHTS VIOLATIONS
- DOING OUR DUE DILIGENCE AND ADDRESSING THESE VIOLATIONS  
AT INFORMAL A

# ALWAYS ON THE LOOK OUT

- MANAGEMENT VIOLATES ARTICLE 16.10 A LOT AND IT SLIPS BY STEWARDS/ADVOCATES
- WE NEED TO ADDRESS THIS IN EVERY DISCIPLINE CASE THAT HAS PRIOR DISCIPLINE IN IT, CHECKING ALL OF THE DATES ON ANY AND ALL DISCIPLINE IN THE FILE
- 16.10 IS A TWO-FOLD
  - 1) IF THE CARRIER IS SQUEAKY CLEAN FOR 2 YEARS THEY CAN'T USE ANYTHING PRIOR TO THAT TWO YEARS AGAINST THE CARRIER AND
  - 2) IF THE CARRIER HAS HAD DISCIPLINE WITHIN TWO YEARS BUT IT HAS BEEN RESCINDED AND REMOVED THEY CAN'T USE THAT AGAINST THE CARRIER

# DO MANAGERS LIE?

- FORMAL MANAGERS PUT OUTDATED OR RESCINDED DISCIPLINE INTO A FILE AND STATE THAT THEY DIDN'T CONSIDER USING THAT OR CITE THAT, BUT THEY ARE PUTTING INTO THE FILE. THEY ARE TRYING TO GET THE STEWARD TO NOT EITHER NOTICE IT, OR ARGUE THE FACT IT SHOULDN'T BE IN THERE. THEY ARE ONLY DOING IT TO TRY TO BE A PERSUASIVE VALUE TO THE ARBITRATOR.
- STEWARDS AT THE INFORMAL LEVEL MUST CHALLENGE EVERYTHING THAT MANAGEMENT DOES, BECAUSE THEY WILL TRY TO PUT THINGS IN THAT FILE THAT THEY HOPE YOU WONT CATCH.



# TRYING TO SNEAK IT IN THE FILE

- ALWAYS CHALLENGE EVERYTHING THAT MANAGEMENT DOES, ESPECIALLY WHEN IT COMES TO DISCIPLINE AND THEM USING PRIOR DISCIPLINE BECAUSE IT MAY OR MAY NOT BE TRUE
- MANAGEMENT MAY TRY TO PUT SOMETHING IN THEIR CONTENTIONS THAT THE CARRIER KNEW THERE WAS A RULE BECAUSE THEY RECEIVED A LETTER OF WARNING (LOW) IN 2015 FOR THIS SAME INFRACTION, THAT IS A VIOLATION OF 16.10 AND WE AS STEWARDS HAVE TO CATCH THAT EVERY TIME

# ELKOURI AND ELKOURI-HOW ARBITRATION WORKS

- COLLECTIVE AGREEMENT SOMETIMES LIMIT CONSIDERATION OF AN EMPLOYEES RECORD TO A SPECIFIC PERIOD. THE NEED FOR A TIME LIMIT IN THE CONSIDERATION OF PAST OFFENSES MAY ALSO BE RECOGNIZED EVEN WHERE THE AGREEMENT DOES NOT EXPRESSLY IMPOSE ONE. THUS ARBITRATOR JOHN LARKIN, WHILE EMPHASIZING THE NEED TO CONSIDER THE GRIEVANT'S PAST RECORD OBSERVED IN GENERAL WE SHOULD SAY THAT IN DISCHARGE CASES THAT PAST CONDUCT OF AN EMPLOYEE IN QUESTION IS OF CONCERN TO THE ARBITRATOR CALLED UPON TO REVIEW MANAGER'S DISCIPLINARY ACTION. IF THE EMPLOYEE HAS AN EXCELLENT RECORD IN THE COMPANY'S SERVICE THE UNION IS SURE TO EMPHASIZE THIS. NO ARBITRATOR CAN FAIL TO TAKE NOTE OF A GOOD RECORD. THE ABSENCE OF PRIOR WARNING NOTICE AND OTHER FACTORS THAT WHICH MAY PERTAIN TO THE EMPLOYEE'S FITNESS TO BE CONTINUED ON HIS JOB

# ELKOURI AND ELKOURI-HOW ARBITRATION WORKS

- BY THE SAME TOKEN IF THE EMPLOYEES PAST PERFORMANCE HAS BEEN ONE OF INCREASING DISREGARD OF HIS RESPONSIBILITY TO HIS JOB AND TO THE EMPLOYER WHO IS PAYING HIM NO ARBITRATOR CAN RIGHTLY SWEEP THIS SORT OF EVIDENCE UNDER THE RUG AND CONFINE HIMSELF OF THE TECHNICAL EVIDENCE PERTAINING TO A PARTICULAR INCIDENT ON A PARTICULAR DAY. TO DO SO WOULD NOT ADD TO THE CAUSE OF GOOD INDUSTRIAL RELATIONS. IT MIGHT DO IRRESPIRABLE HARM TO THE ARBITRATION PROCESS.

# ELKOURI AND ELKOURI-HOW ARBITRATION WORKS

- HOWEVER, THIS DOES NOT MEAN THAT WE'RE TO CONSIDER EVERYTHING THAT IS INTRODUCED TO HAVING EQUAL WEIGHT IN SIGNIFICANCE. WE SYMPATHIZE WITH THE POSITION OFTEN TAKEN BY UNIONS THAT THERE SHOULD BE SOME LIMITATION ON HOW FAR BACK IN THE RECORD ONE SHOULD BE PERMITTED TO GO IN THE MATTER OF DIGGING UP OLD SCORES. SUCH HISTORIC INCIDENTS SHOULD BE CLOSE ENOUGH IN THE RELATION TO THE PROBLEM INVOLVED IN THE IMMEDIATE CASE TO WARRANT THE CONSIDERATION
- IN OUR CASE THROUGH ARTICLE 16.10 WE'VE AGREED THAT TWO YEARS IS THE TIME LIMIT



# JCAM ARTICLE 16.10 LANGUAGE

- EMPLOYEE DISCIPLINE RECORDS
  - THE RECORDS OF A DISCIPLINARY ACTION AGAINST AN EMPLOYEE SHALL NOT BE CONSIDERED IN ANY SUBSEQUENT DISCIPLINARY ACTION OF THERE HAS BEEN NO DISCIPLINARY ACTION INITIATED AGAINST THE EMPLOYEE FOR A PERIOD OF TWO YEARS

# VIOLATIONS OF ARTICLE 16.10

- IF YOU GET A REQUEST FOR AN APPROPRIATE ACTION AND MANAGEMENT REQUESTS A 14 DAY SUSPENSION, AND THEY ARE CITING A LETTER OF WARNING FOR A 7 DAY SUSPENSION YOU NEED TO LOOK IN THAT FILE TO SEE THE 7 DAY SUSPENSION. IF YOU NOTICE THAT THE LETTER IN THE FILE IS OLDER THAN 2 YEARS, THEN MANAGEMENT HAS NOW VIOLATED ARTICLE 16.10.
- THEY CAN NOT CITE THAT LETTER OF WARNING AGAINST THE CARRIER REGARDLESS IF THE 7 DAY IS LEGITIMATE. BUT THEY CITED A LETTER THAT HAS BEEN RESCINDED OR REMOVED OR HAS EXPIRED AND BY DOING SO HAVE NOW VIOLATED ARTICLE 16.10 AND HAVE VIOLATED THE GRIEVANTS DUE PROCESS RIGHTS.

# IS IT TRULY PROGRESSIVE?

- IF THE NOTICE OF CHARGES HAS A LETTER OF WARNING A 7 DAY SUSPENSION AND NOW WE ARE DEALING WITH THE 14 DAY SUSPENSION, SAME THING. IF THE LETTER OF WARNING THAT THEY CITE IS OLDER THAN 2 YEARS THEY HAVE VIOLATED ARTICLE 16.10.
- IT DOESN'T MATTER IF MANAGEMENT BRINGS UP THE FACT THAT THE 7 DAY IS STILL LIVE, IF THEY SAY IT IS STILL PROGRESSIVE, THE LETTER OF WARNING MAY BE 2 YEARS OLD BUT THE 7 DAY IS STILL LIVE AND PROGRESSIVE. IT DOESN'T MATTER. THEY CITING DISCIPLINE THAT IS OUTSIDE OF THE TWO YEARS.

# CHECKING THE FACTS

- IF YOU GET DISCIPLINE AND IT CITES A LETTER OF WARNING AND A 7 DAY SUSPENSION THAT WE KNOW FOR A FACT THAT THE CARRIER NEVER RECEIVED, THEN MANAGEMENT IS LYING. THEY HAVE FALSIFIED THIS DISCIPLINE TO SUPPORT WHATEVER ACTION THEY ARE TAKING HERE IN THIS CASE. IF THEY HAVE A CERTIFIED TRACKING NUMBER ON THE SUPPOSED LETTER, LOOK UP THAT TRACKING NUMBER. WAS IT REALLY MAILED? AND IF SO WHO SIGNED FOR IT?
- IF THEY HAVE A SIGNATURE CONFORMATION NUMBER ON THAT DISCIPLINE THAT SOMEONE SHOULD HAVE SIGNED FOR, LOOK THAT UP ONLINE, WAS IT EVER SENT? AND AGAIN, WHO SIGNED FOR IT? IF ANYONE. PRINT A COPY OF THAT FROM ONLINE AND PUT THAT IN THE FILE



# ARTICLE 16.10 CONTINUED

- UPON THE EMPLOYEE'S WRITTEN REQUEST, ANY DISCIPLINARY NOTICE OR DECISION LETTER WILL BE REMOVED FROM THE EMPLOYEE'S OFFICIAL PERSONNEL FOLDER AFTER TWO YEARS IF THERE HAS BEEN NO DISCIPLINARY ACTION INITIATED AGAINST THE EMPLOYEE IN THAT TWO-YEAR PERIOD.
- (ADDITIONAL DISCIPLINE PROCEDURE PROVISIONS REGARDING CITY CARRIER ASSISTANT EMPLOYEES ARE FOUND IN APPENDIX B)
- THE PURPOSE OF ARTICLE 16.10 IS TO PROTECT EMPLOYEES FROM HAVING THEIR PAST RECORDS CONSIDERED WHEN THEY HAVE SHOWN OVER A TWO-YEAR PERIOD THAT THEY PERFORMED THEIR JOB WITHOUT INCURRING ANY FURTHER DISCIPLINARY ACTION

# WHAT THAT PART MEANS

- IF THE CARRIER KNOWS THAT THEY HAVE PRIOR DISCIPLINE THAT IS OVER TWO YEARS OLD THEY NEED TO WRITE A LETTER ASKING THAT THE DISCIPLINE BE REMOVED FROM THEIR PERSONNEL FOLDER
- A LOT OF PEOPLE THINK THAT THIS IS CITED DISCIPLINE AND REMOVAL. THAT IS NOT THE CASE. TALKS ABOUT PAST RECORDS. THAT MEANS IT CAN'T BE BROUGHT UP AT ANY POINT AND AT ANY TIME DURING THE INFORMAL A, FORMAL A OR B-TEAM LEVEL

# ARTICLE 16.10 CONTINUES

- ADDITIONAL INFORMATION ON THE RETENTION AND DISPOSAL OF DISCIPLINE RECORDS MAY BE FOUND IN HANDBOOK AS-353 (NATIONAL PRE-ARBITRATION, Q94N-4Q-C-96044119, MARCH 2, 2004, M-01511)
- THE STEP 4 SETTLEMENT H4N-5G-D 7167, JANUARY 5, 1989 (M-00889), PROVIDES THE FOLLOWING:
  - A NOTICE OF DISCIPLINE WHICH IS SUBSEQUENTLY FULLY RESCINDED, WHETHER BY SETTLEMENT, ARBITRATION AWARD, OR INDEPENDENT MANAGEMENT ACTION, SHALL BE DEEMED NOT TO HAVE BEEN “INITIATED” FOR PURPOSES OF ARTICLE 16 SECTION 10 AND MAY NOT BE CITED OR CONSIDERED IN ANY SUBSEQUENT DISCIPLINARY ACTION.

# THAT SHOULD BE SELF EXPLANATORY

- IF A CARRIER HAS A LETTER OF WARNING THAT HAS BEEN RESCINDED AND SPONGED 3 MONTHS AGO, MANAGEMENT CITES THAT LOW IN THE 7 DAY SUSPENSION, WHEN THE STEWARD LOOKS IT UP AND IT STATES THAT THIS LOW HAS BEEN SETTLED AT THE FORMAL A, THAT THIS LETTER OF WARNING IS TO BE REDUCED TO AN OFFICIAL DISCUSSION OR WILL BE FULLY RESCINDED AND REMOVED, MANAGEMENT HAS NOW VIOLATED ARTICLE 16.10.
- IT SOUNDS SELF EXPLANATORY BUT WE MISS THIS ALL THE TIME. WE SIMPLY JUST MISS IT.
- WHEN THIS SAYS "INITIATED" THAT MEANS IT WAS NEVER ISSUED, NEVER HAS BEEN WRITTEN UP.
- WHEN IT SAYS MAY NOT BE CITED THAT MEANS IT CAN NEVER BE BROUGHT UP IN ANY WAY SHAPE OR FORM



# HERE'S A CITE FOR YA

- THIS WORKS REALLY WELL WITH ACCIDENTS TOO, IN CASE YOU ARE DEALING WITH ACCIDENTS. THIS NEEDS TO BE PUT INTO EVERY SAFETY VIOLATIONS GRIEVANCE
- ARBITRATOR TALMADEGE C-32824 PAGE 9
  - THE SERVICE HAS A HISTORY OF EMPHASIZING THAT ACCIDENTS THEMSELVES ARE NOT THE APPROPRIATE BASIS FOR DISCIPLINE WITHOUT ESTABLISHING AN EMPLOYEES ACTION VIOLATED A POSTAL SERVICE SAFETY RULE OR REGULATION. AS NOTED IN THE APRIL 7, 1980 MEMO BY THE SENIOR ASSISTANT POSTMASTER GENERAL CARL C. ULSAKER WHO WROTE IN PERTINENT PART
    - ACCIDENTS OR COMPENSATION CLAIMS, EVEN WHEN IN A MANAGER'S VIEW EXCESSIVE E, ARE NOT IN THEMSELVES AN APPROPRIATE BASIS FOR DISCIPLINE. WHAT MUST BE CITED IN ANY SUCH DISCIPLINARY ACTION ARE THE ACTIONS OF AN EMPLOYEE IN A SPECIFIC SITUATION WHICH ARE VIOLATIONS OF A POSTAL A SERVICE SAFETY RULE OR REGULATION.

# ARBITRATOR TALMADEGE C-32824

- THE SERVICE DISCHARGED THE GRIEVANT FOR AN INCIDENT ON MARCH 12, 2016 WHEN THE GRIEVANT, AFTER LOCKING HER VEHICLE, STEPPED OUT OF THE CAR, TWISTED HER ANKLE AND FELL TO THE GROUND SKINNING HER KNEE AND ELBOW, THE REMOVAL NOTICE STATES, IN PART:
  - HOWEVER, ON MARCH 12, 2016 YOU FAILED TO PROPERLY PERFORM YOUR DUTIES IN A SAFE MANNER WHEN YOU FAILED TO PAY ATTENTION TO YOUR SURROUNDINGS AT 2201 HILL ST. AFTER PARKING CLOSE TO THE HANDICAP RAMP, YOU DISMOUNTED FROM YOUR LLV, YOU STEPPED ON THE CURBED PORTION OF THE HANDICAP RAMP, TWISTING YOUR LEFT ANKLE AND CAUSING YOU TO FALL TO THE GROUND. MANAGEMENT WILL NOT TOLERATE YOUR FAILURE TO PERFORM YOUR DUTIES IN A SAFE MANNER.

# ARBITRATOR TALMADEGE C-32824

- MANAGEMENT HAS NOT POINTED TO A SPECIFIC SAFETY RULE OR REGULATION THAT THE GRIEVANT VIOLATED BY STEPPING OUT OF HER VEHICLE AND TWISTING HER ANKLE. MANAGEMENT STATED THAT THE GRIEVANT SHOULD HAVE BEEN MORE AWARE OF HER SURROUNDINGS. THEY SEEM TO BE SAYING THAT IF AN ACCIDENT OCCURRED, THIS IS PROOF THAT THE EMPLOYEE WAS CARELESS AND SHOULD BE SUBJECT TO DISCIPLINE. MANAGEMENT FAILED TO PROVE THAT THE GRIEVANT'S FALL WAS CAUSED BY OR RELATED TO ANY UNSAFE ACT ON HER PART WHICH EITHER VIOLATED A SAFETY RULE OR REGULATION OR EVEN AN INSTRUCTION. THERE WAS NO ASSERTION THAT THE GRIEVANT'S ACCIDENT WAS INTENTIONAL OR WILLFUL. THE GRIEVANT WAS NOT LISTENING TO MUSIC, FINGERING MAIL OR OTHERWISE FOUND TO BE DISTRACTED.



# ARBITRATOR TALMADEGE C-32824

- THE GRIEVANT'S REGULAR PARKING SPOT HAD BEEN OCCUPIED BY ANOTHER VEHICLE AND ALTHOUGH SHE PARKED CLOSE TO THE HANDICAP RAMP, THESE WERE APPROVED PARKING POINTS. IMMEDIATELY AFTER FALLING, THE GRIEVANT CALLED AND INFORMED HER SUPERVISOR. THE GRIEVANT DID HAVE HER ANKLE CHECKED AT THE EMERGENCY ROOM THE SAME DAY. HOWEVER, SHE DID NOT MISS ANY WORK AS A RESULT OF HER ACCIDENT. THIS WAS A MINOR INDUSTRIAL ACCIDENT AND NOT AN EGREGIOUS ACCIDENT AS MANAGEMENT HAS PORTRAYED IT. ALTHOUGH THE MANAGEMENT WITNESSES MENTIONED THAT THE GRIEVANT HAD LEFT THE SCENE OF THE ACCIDENT TO CONTINUE DELIVERING MAIL WHILE THE SUPERVISOR WAS DRIVING TO MEET HER WITH A DECLINATION LETTER, AND THERE WAS CONTESTED TESTIMONY ABOUT WHETHER THE SUPERVISOR HAD DIRECTED THE GRIEVANT TO WAIT, MANAGEMENT DID NOT CHARGE THE GRIEVANT WITH LEAVING THE SCENE OF THE ACCIDENT.



# ARBITRATOR TALMADEGE C-32824

- I ALSO FIND THAT THE CASE WAS FLAWED BY ITS RELIANCE UPON EXPIRED DISCIPLINARY ACTION IN SUPPORT OF THE REMOVAL. MANAGEMENT TESTIFIED THAT THE GRIEVANT'S ACCIDENTAL TWISTING OF HER ANKLE, ALTHOUGH AN UNSAFE ACT, WOULD NOT HAVE BEEN SUFFICIENT TO WARRANT A REMOVAL. BUT THAT THIS INCIDENT WAS CONSIDERED WITH HER PRIOR DISCIPLINARY RECORD AS PART OF PROGRESSIVE DISCIPLINE. THE EMPLOYER ARGUED ALTHOUGH THE SETTLED 7 DAY SUSPENSION WAS MISTAKENLY CITED IN THE REMOVAL, THERE WAS STILL PROGRESSIVE DISCIPLINE APPLIED BECAUSE THE GRIEVANT'S RECORD INCLUDED BOTH A LIVE SEVEN DAY AND FOURTEEN DAY SUSPENSION. NONETHELESS, IT IS DIFFICULT TO DISTINGUISH WHETHER MANAGEMENT RELIED UPON THE DISCIPLINE THAT SHOULD NOT HAVE BEEN CONSIDERED IN DECIDING TO ISSUE THE REMOVAL.

# ARBITRATOR TALMADEGE C-32824

- AS NOTED BY ARBITRATOR BRAVERMAN IN USPS AND NALC, C11N4CD 13092009, (2013):
  - SUCH RELIANCE IS A VIOLATION OF THE STEP 4 SETTLEMENT M-00889 QUOTED IN JCAM AT 16-12 WHICH PROVIDED THAT SUCH DISCIPLINARY ACTIONS "SHALL BE DEEMED NOT TO HAVE BEEN "INITIATED" FOR PURPOSES OF ARTICLE 16.10 AND MAY NOT BE CITED OR CONSIDERED IN ANY SUBSEQUENT DISCIPLINARY ACTION". WHETHER THERE WAS OTHER DISCIPLINE WHICH SHOWED A PROGRESSION IS NOT RELEVANT. WHAT IS CRITICAL IS THAT THE EMPLOYER INAPPROPRIATELY RELIED UPON DISCIPLINE WHICH HAD BEEN REDUCED OR REMOVED. THE RELIANCE WAS IN VIOLATION OF THE NATIONAL AGREEMENT, AND RENDERED THE REMOVAL IMPROPER. AS A RESULT OF THE AFOREMENTIONED FINDING, I DO NOT NEED TO ADDRESS THE UNION'S ADDITIONAL ARGUMENTS. I FIND THAT THE SERVICE DID NOT HAVE JUST CAUSE TO ISSUE THE GRIEVANT THE NOTICE OF REMOVAL

# ARBITRATOR WOLITZ C-32393

- LOOK BACK ON ARBITRATOR WOLITZ CASE DEALING WITH THE CHARGE MUST BE PERFECT. IN THAT CASE THE CARRIER HAD 3 LIVE 14 DAY, A 7 DAY AND A LETTER OF WARNING, TERRIBLE RECORD. BUT, MANAGEMENT INCLUDED A 14 DAY THAT WAS RESCINDED AND DUE TO THAT THE ARBITRATOR BROUGHT THE CARRIER BACK SAYING THAT MANAGEMENT VIOLATED ARTICLE 16.10. THAT IS HOW POWERFUL ARTICLE 16.10 IS.

# DEFENSES TO DISCIPLINE HANDBOOK

- PAGE 26 UNDER IMPROPER CITATIONS OF PAST ELEMENTS
  - IT IS IMPROPER FOR MANAGEMENT TO CITE DISCUSSIONS AS PAST ELEMENTS IN SUPPORT ANOTHER DISCIPLINARY CHARGE
  - IT IS ALSO IMPROPER TO CITE DISCIPLINE WHICH HAS BEEN GRIEVED BUT NOT FINALLY SETTLED OR ADJUDICATED AS A PAST ELEMENT
  - WHEN THESE ARE CITED ARBITRATORS SOMETIMES ORDER THE PRESENT DISCIPLINE RESCINDED OR MODIFIED



# ARBITRATOR HOLLY C-01944

- THE EMPLOYERS CASE IS FURTHER FLAWED BY THE FACT THAT IT IS VIOLATIVE OF THE PORTION OF ARTICLE OF THE NATIONAL AGREEMENT WHICH PROVIDES, "...SUCH DISCUSSIONS MAY NOT BE CITED AS AN ELEMENT OF A PRIOR ADVERSE RECORD IN ANY SUBSEQUENT DISCIPLINARY ACTIONS AGAINST AN EMPLOYEE..." THE NOTICE OF REMOVAL CITES TWO SUCH DISCUSSIONS AS ELEMENTS OF THE GRIEVANT'S PAST RECORD. THESE PROCEDURAL DEFERS CANNOT BE OVERLOOKED AS BEING INSIGNIFICANT. THEY ARE OF SERIOUS CONCERN BECAUSE THEY ARE IN VIOLATION OF BOTH THE LETTER AND SPIRIT OF THE NATIONAL AGREEMENT, AND IMPORTANTLY THEY DEPRIVED THE GRIEVANT OF HIS RIGHT TO DUE PROCESS. IN THE ABSENCE OF DUE PROCESS THE GRIEVANCE MUST BE SUSTAINED WITHOUT ANY CONSIDERATION OF ITS SUBSTANTIVE MERITS.

# ARTICLE 16.10 CONTINUES

- LAST CHANCE AGREEMENTS (LCA) ARE NOT RECORDS OF DISCIPLINARY ACTION. LCAS ARE NOT COVERED BY THE PROVISIONS OF ARTICLE 16.10. IF AN LCA CONTAINS A REFERENCE TO A DISCIPLINARY RECORD THAT EXCEEDS THE LIMITATION IN ARTICLE 16.10, THE FOLLOWING INSTRUCTION FROM ARBITRATOR BRIGGS IN CASE D98N-4D-D-00114765, JANUARY 15, 2002 (C-22941), IS TO BE FOLLOWED: LCAS "...CAN LOGICALLY BE DIVIDED INTO DISCIPLINARY AND ADMINISTRATIVE CATEGORIES, AND ONLY THOSE ELEMENTS FALLING INTO THE FORMER CATEGORY ARE SUBJECT TO THE ARTICLE 16.10 TIME RESTRICTION."

# WHAT C-22941 SAYS...

- IF YOU READ THIS DECISION, IT BASICALLY STATES THAT THE LCA IS NOT DISCIPLINE. IT'S BASICALLY AN AGREEMENT TO BRING A CARRIER BACK. SO IT DOESN'T FALL UNDER DISCIPLINE IN ACCORDANCE OF ARTICLE 16.10.
- WHAT DOES FALL UNDER ARTICLE 16.10 IS IF IN THAT LAST CHANCE AGREEMENT THEY REFERENCE OR CITE DISCIPLINE THAT FALLS UNDER 16.10

# THIS IS MASSIVE

- ARTICLE 16.10 IS A MASSIVE ARTICLE FOR US. WE'VE GOT TO DO A MUCH BETTER JOB OF EXPLOITING MANAGERMENTS ACTIONS AS THEY VIOLATE ARTICLE 16.10.



# CONTENTIONS

- WE NEED TO MAKE SURE THAT WHEN WE GET A REQUEST FOR APPROPRIATE ACTION AND IF THERE IS PRIOR DISCIPLINE IN THERE WE NEED TO ALWAYS ASK FOR THAT PRIOR DISCIPLINE IF IT IS NOT IN THE FILE TO SEE WHEN THAT DISCIPLINE WAS INITIATED AND IF IT MATCHES UP WITH ARTICLE 16.10 WE NEED TO CONTEND THAT
- IF THE FILE CONTAINS A 7 DAY SUSPENSION YOU NEED TO ASK THE CARRIER IF THEY KNEW ABOUT THIS. IF THEY SAY THEY HAVE NEVER SEEN THAT LETTER OR WARNING, THEN CONTEND THAT
- IF MANAGEMENT TRIES TO PUT DISCIPLINE INTO THE FILE THAT IS OVER 2 YEARS AGO, OR
- IF MANAGEMENT TRIES TO PUT DISCIPLINE THAT HAS BEEN EXPUNGED OR THROWN OUT, CONTEND THAT

# CONTENTIONS

- IF THERE IS A PREVIOUS DISCIPLINE THAT THE CARRIER NEVER RECEIVED, GET THE CARRIER TO WRITE A STATEMENT THAT THEY NEVER RECEIVED, NOR HAVE EVER SEEN OR HEARD ABOUT, THIS DISCIPLINE AND CONTEND THAT.
- IF THERE WAS A TRACKING NUMBER, CERTIFIED AND OR SIGNATURE CONFORMATION NUMBER AND YOU LOOKED IT UP AND IT NEVER WAS SENT, PUT THAT IN YOUR FILE AND CONTEND THAT MANAGEMENT FALSIFIED THIS DISCIPLINE TO SUPPORT THIS DISCIPLINE THEY ARE NOW SAYING IS PROGRESSIVE
- IF MANAGEMENT BRINGS UP AT THE FORMAL A LEVEL THE FACT THAT THE CARRIER HAD DISCIPLINE IN 2015 AND THEY PUT ANY PART OF THAT INTO THEIR CONTENTION STATING THE CARRIER KNOWS THE RULE, THEY HAD A LOW IN 2015 FOR IT, YOU NEED TO CONTEND THAT IT IS A VIOLATION OF ARTICLE 16.10

# CONTENTIONS

- MAKE SURE THAT ANYTIME MANAGEMENT CITES DISCIPLINE, EITHER THROUGH REQUEST FOR APPROPRIATE ACTION AND THE ACTUAL NOTICE ITSELF THEY REFER TO IT IN THE INFORMAL A CONTENTIONS, IF THEY REFER TO IT IN THE FORMAL A CONTENTIONS MAKE SURE THAT WE CONTEND THAT THEY HAVE VIOLATED ARTICLE 16.10, AND SHOW HOW
- IF THEY PUT 20 DISCIPLINES IN THE FILE, YOU NEED TO GO THROUGH EVERY PIECE OF PAPER AND SCOUR DATES, TIMES AND PLACES AND IF THEY AREN'T CORRECT CONTEND THAT