

FROM A TO ARBITRATION

**EPISODE 22: ARTICLE 16.1-GETTING READY FOR THE JUST CAUSE PRINCIPLES.
MAKING SURE IT'S THE "SUPERVISOR" THAT IS DOING THE WORK**



ARTICLE 16.1 JUST CAUSE PRINCIPLES

- **WE NEED TO ADDRESS THIS AT THE INFORMAL A STEP LEVEL**
- **IT IS IMPERATIVE THAT WE USE THIS ARTICLE IN EVERY DISCIPLINE CASE**
- **IF USED PROPERLY WE COULD BE WIPING OUT MOST OR ALL DISCIPLINE THAT MANAGEMENT USES TO GO AFTER OUR BROTHERS AND SISTERS**

THE VERY BEGINNING ARTICLE 16

- **SECTION 1- PRINCIPLES**

- **IN THE ADMINISTRATION OF THIS ARTICLE A BASIC PRINCIPLE **SHALL** BE THAT DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE.**

- **ALSO LOOK UNDER M-39 SECTION 115.1 THAT IS ALMOST IDENTICAL TO THE LANGUAGE IN ARTICLE 16.1. S STATES**

- **IN THE ADMINISTRATION OF DISCIPLINE, A BASIC PRINCIPLE **MUST** BE THAT DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE.**

ARTICLE 16.1 CONTINUED

- **NO EMPLOYEE MAY BE DISCIPLINED OR DISCHARGED EXCEPT FOR JUST CAUSE SUCH AS, BUT NOT LIMITED TO, INSUBORDINATION, PILFERAGE, INTOXICATION (DRUGS OR ALCOHOL), INCOMPETENCE, FAILURE TO PERFORM WORK AS REQUESTED, VIOLATION OF THE TERMS OF THIS AGREEMENT OR FAILURE TO OBSERVE SAFETY RULES AND REGULATIONS. THESE ARE ONLY EXAMPLES.**
- **ANY SUCH DISCIPLINE OR DISCHARGE SHALL BE SUBJECT TO THE GRIEVANCE-ARBITRATION PROCEDURE PROVIDED FOR IN THIS AGREEMENT, WHICH COULD RESULT IN REINSTATEMENT AND RESTITUTION, INCLUDING RESTITUTION, INCLUDING BACK PAY.**

JUST CAUSE PRINCIPLE

- **THE PRINCIPLE THAT ANY DISCIPLINE MUST BE FOR “ JUST CAUSE” ESTABLISHES A STANDARD THAT MUST APPLY TO ANY DISCIPLINE OR DISCHARGE OF AN EMPLOYEE. SIMPLY PUT, THE JUST CAUSE PROVISION REQUIRES A FAIR AND **PROVABLE** JUSTIFICATION FOR DISCIPLINE**
 - **MANAGEMENT HAS THE REQUISITE BURDEN OF PROOF, TO PROVE THAT THE BEHAVIOR TOOK PLACE**

NOT ALL THE SAME

- **JUST CAUSE IS A TERM OF ART CREATED BY LABOR ARBITRATORS. IT HAS NO PRECISE DEFINITION, IT CONTAINS NO RIGID RULES THAT APPLY IN THE SAME WAY IN EACH CASE OF DISCIPLINE OR DISCHARGE. HOWEVER, ARBITRATORS FREQUENTLY DIVIDE THE QUESTION OF JUST CAUSE INTO SIX SUB-QUESTIONS AND OFTEN APPLY THE FOLLOWING CRITERIA TO DETERMINE WHETHER THE ACTION WAS FOR JUST CAUSE. THESE CRITERIA ARE THE BASIC CONSIDERATIONS THAT THE SUPERVISOR MUST USE BEFORE INITIATING DISCIPLINARY ACTION.**

WHAT WE HAVE TO START DOING

- **ANYTIME MANAGEMENT STARTS TO INVESTIGATE A LETTER CARRIER AND IT IS ANYBODY OTHER THAN THE IMMEDIATE SUPERVISOR WE HAVE TO MAKE THAT ONE OF OUR CONTENTIONS**
- **ANYTIME ANYONE OTHER THAN A SUPERVISOR DOES THE INFORMAL STEP A, WE HAVE TO RAISE THAT AS A CONTENTION**
- **ANYTIME ANYONE OTHER THAN THE SUPERVISOR SITS IN ON AN INVESTIGATIVE INTERVIEW, WE HAVE TO RAISE THAT AS A CONTENTION**
- **THE CONTRACT IS CRYSTAL CLEAR ON THIS. IT STATES THAT THE SUPERVISOR MUST USE BEFORE INITIATING DISCIPLINARY ACTION. THE SUPERVISOR MUST BE THE ONE TO INITIATE THE GRIEVANCE, THE INTERVIEW, THEY ARE THE ONES WHO MUST USE THE ARTICLE AS CRITERIA FOR BASIC CONSIDERATIONS**

USING THE EL-921 HANDBOOK

- **THE SUPERVISOR'S GUIDE TO HANDLING GRIEVANCES**
- **THE DEFINITION OF JUST CAUSE VARIES FROM CASE TO CASE, BUT ARBITRATORS FREQUENTLY DIVIDE THE QUESTION OF JUST CAUSE INTO SIX SUB-QUESTIONS AND OFTEN APPLY THE FOLLOWING CRITERIA TO DETERMINE WHETHER THE ACTION WAS FOR JUST CAUSE. THESE CRITERIA ARE THE BASIC CONSIDERATIONS THAT THE SUPERVISOR USES BEFORE INITIATING DISCIPLINARY ACTION. DISCIPLINE SHOULD NOT BE ISSUED IF "NO" IS THE ANSWER TO ANY OF THE QUESTIONS**

CITES TO USE IN YOUR CONTENTIONS

- **ARBITRATOR GUDENBERG IN C-31861 STATES IN PART:**
 - **THE NOTICE OF REMOVAL SIGNED BY THE POSTMASTER DID NOT INCLUDE ANY SIGNATURE OF A CONCURRING OFFICIAL AND THERE WAS NO OTHER EVIDENCE PRESENTED OR INCLUDED IN THE RECORD OF ANY CONCURRING OFFICIAL. (ARTICLE 16.8-CONCURRENCE) DURING HIS TESTIMONY THE POSTMASTER SAID HE RAN THE OFFICE FLOOR IN THE A.M. AND WAS THE IMMEDIATE SUPERVISOR OF THE GRIEVANT SINCE WARREN WAS A SMALL POST OFFICE. THE RECORD SUPPORTED THE ALLEGATIONS OF THE UNION THAT THE POSTMASTER THEN HAD ANOTHER SUPERVISOR INDICATE THAT HE AND NOT THE POST MASTER WAS THE GRIEVANT'S IMMEDIATE SUPERVISOR**

GUDENBERG- C-31861 CONTINUED

- **WHILE IT IS ACCEPTED, THAT IN A SMALL OFFICE, BOTH THE SUPERVISOR AND POSTMASTER INTERACTS AND SUPERVISES AND MANAGES EMPLOYEES, WHEN CONSIDERING SEVERE DISCIPLINE, INCLUDING REMOVAL ACTION AGAINST AN EMPLOYEE, THE LANGUAGE OF ARTICLE 16 SECTION 8 NEGOTIATED BY THE PARTIES IN THE NATIONAL AGREEMENT MUST BE GIVEN ITS MEANING AND CONSIDERATION**

GUDENBERG- C-31861 CONTINUED

- **THE JOINT CONTRACT ADMINISTRATION MANUAL (JCAM) IN ITS DISCUSSION OF ARTICLE 15, INFORMAL STEP A INCLUDES THE FOLLOWING LANGUAGE:**
 - **“WHILE EITHER REPRESENTATIVE (AT INFORMAL STEP A) MAY CONSULT WITH HIGHER LEVELS OF MANAGEMENT OR THE UNION ON AN ISSUE IN DISPUTE, THIS SECTION ESTABLISHES THAT THE PARTIES TO THE INITIAL DISCUSSION OF A GRIEVANCE RETAIN INDEPENDENT AUTHORITY TO SETTLE THE DISPUTE.” THE UNION CLAIMS THIS LANGUAGE COULD NOT BE FOLLOWED IN THIS DISPUTE WHEN THE SUPERVISOR’S AUTHORITY WAS USURPED BY THE POSTMASTER AND NO MATTER THE TESTIMONY OF THE PARTIES THE REALITY OF THE ISSUANCE OF THE DISCIPLINE MADE THE INDEPENDENT AUTHORITY OF THE SUPERVISOR MEANINGLESS**

GUDENBERG- C-31861 CONTINUED

- **ANYTIME ANYONE OTHER THAN THAT IMMEDIATE SUPERVISOR DOES ANYTHING OR HANDLES ANY FORM OR ANY PART OF THE DISCIPLINARY PROCESS, MAKE THAT CONTENTION**
 - **THE SUPERVISOR'S AUTHORITY WAS USURPED BY THE POSTMASTER, OR WHOEVER-THE MPOO OR THE STATION MANAGER, AND NO MATTER THE TESTIMONY OF THE PARTIES THE REALITY OF THE ISSUANCE OF THE DISCIPLINE MADE THE INDEPENDENT AUTHORITY OF THE SUPERVISOR MEANINGLESS.**

GUDENBERG- C-31861 CONTINUED

- **WHILE IT IS OFTEN DIFFICULT TO MEET THE NECESSARY BURDEN TO PROVE A CLAIM, THERE IS LOGIC TO THE POSITION EXPRESSED BY THE UNION BASED ON THE RECORD AND EVIDENCE. WHILE THE RECORD OF THIS EMPLOYEE SINCE 2011 IS EXTREMELY PROBLEMATIC AND IT IS MOST DOUBTFUL THAT HE CAN BE REHABILITATED, THE DUE PROCESS ISSUE RAISED AND SUPPORTED REQUIRE THE SERVICE TO PROVIDE THIS EMPLOYEE WITH A LAST CHANCE OPPORTUNITY TO CONTINUE HIS EMPLOYMENT SUBJECT TO A NUMBER OF TERMS AND CONDITIONS BUT WITHOUT BACK PAY FOR THE PERIOD OF HIS REMOVAL WHICH SHALL BE CONSIDERED A LONG TERM DISCIPLINARY SUSPENSION**

ARBITRATOR BRITTON C-01469

- **AS READ BY THE ARBITRATOR, BOTH STEP 1A AND B OF SECTION 2 OF ARTICLE 15 ENTITLED GRIEVANCE-ARBITRATION PROCEDURE, ARE COINED IN EXPRESS MANDATORY LANGUAGE. SPECIFICALLY, STEP 1A REQUIRES THAT ANY EMPLOYEE WHO FEELS AGGRIEVED “MUST” DISCUSS THE GRIEVANCE WITH HIS IMMEDIATE SUPERVISOR WITHIN A DESIGNATED TIME PERIOD. STEP 1B PROVIDES IN RELEVANT PART THAT IN ANY SUCH DISCUSSION “...THE SUPERVISOR SHALL HAVE AUTHORITY TO SETTLE THE GRIEVANCE.”**

ARBITRATOR BRITTON C-01469

- **PROPER COMPLIANCE BY MANAGEMENT WITH THESE TERMS OF THE AGREEMENT WAS, HOWEVER, SEEMINGLY NOT ACHIEVED, FOR THE RECORD INDICATES THAT WHILE THE APPROPRIATE REPRESENTATIVES MET AT STEP 1, SUBSTANTIAL DOUBT NEVERTHELESS EXISTS AS TO THE AUTHORITY OF THE SUPERVISOR TO SETTLE THE GRIEVANCE. IN THIS REGARD, THE TESTIMONY DEMONSTRATES, AS EVIDENCED BY THE ADMISSION OF THE POSTMASTER UNDER CROSS-EXAMINATION, THAT HE INITIATED THE SUSPENSION, THAT THE SUPERVISOR AT STEP 1 DID NOT HAVE THE AUTHORITY TO SETTLE THE GRIEVANCE WITHOUT CONSULTING HIM. THIS FAILURE OF MANAGEMENT TO COMPLY WITH THE PRESCRIBED LANGUAGE OF ARTICLE 15, SECTION 2 STEP 1A AND 1B OF THE AGREEMENT, WHICH CLEARLY BESTOWS UPON GRIEVANT'S SUPERVISOR THE AUTHORITY TO SETTLE THE GRIEVANCE, CANNOT PROPERLY BE VIEWED AS HARMLESS ERROR AND NON-PREJUDICIAL TO THE RIGHTS OF THE GRIEVANT.**

ARBITRATOR BRITTON C-01469

- **TO THE CONTRARY, IN THE CONSIDERED JUDGMENT OF THE ARBITRATOR, THIS FAILURE GOES TO THE VERY HEART OF THE GRIEVANCE PROCESS IN THAT THE GRIEVANT IS THEREBY DENIED THE CONTRACTUAL RIGHT TO HAVE HIS GRIEVANCE CONSIDERED INDEPENDENTLY AND OBJECTIVELY AT THE OUTSET OF THE GRIEVANCE PROCEDURE BY HIS SUPERVISOR WHO IS GENERALLY MOST FAMILIAR WITH HIS WORK RECORD. ANY REMOVAL OF THE SUPERVISOR'S AUTHORITY TO SETTLE THE GRIEVANCE, IT SEEMS TO THE ARBITRATOR, IS VIOLATIVE OF THE LETTER AND SPIRIT OF THE AGREEMENT AND RENDERS THE STEP 1 PROCEDURE LITTLE MORE THAN A CHARADE. ACCORDINGLY, THE ARBITRATOR FINDS THE ASSERTION BY THE EMPLOYER THAT THE GRIEVANT WAS NOT DENIED DUE PROCESS TO BE WITHOUT PERSUASIVE MERIT.**

WRAPPING IT UP....

- **IF YOU'VE GOT A POSTMASTER THAT DOES AN INVESTIGATIVE INTERVIEW, AND YOU HAVE A POSTMASTER THAT INITIATES THE DISCIPLINARY ACTION, AND THEN YOU HAVE THE SUPERVISOR MEETING AT THE INFORMAL STEP A, MAKE THAT CONTENTION**
- **THERE IS NO WAY POSSIBLE THAT THE SUPERVISOR IS GOING TO GO AGAINST THEIR MANAGER AND REDUCE OR RESCIND THE DISCIPLINE THAT WAS INITIATED BY THAT MANAGER**
- **MANAGEMENT WILL GIVE YOU EVERY EXCUSE IN THE BOOK AND ALWAYS GET IT ON THE RECORD WHY SOMEONE OTHER THAN THE SUPERVISOR IS MEETING WITH YOU TODAY**