

# **FROM A TO ARBITRATION**

**EPISODE 27-JUST CAUSE PRINCIPLE- SEVERITY OF DISCIPLINE**



# JCAM SECTION 16.1 JUST CAUSE PRINCIPLE

- WAS THE SEVERITY OF THE DISCIPLINE REASONABLY RELATED TO THE INFRACTION ITSELF AND IN LINE WITH THAT USUALLY ADMINISTERED, AS WELL AS TO THE SERIOUSNESS OF THE EMPLOYEE'S PAST RECORD?
  - THE FOLLOWING IS AN EXAMPLE OF WHAT ARBITRATORS MAY CONSIDER AN INEQUITABLE DISCIPLINE: IF AN INSTALLATION CONSISTENTLY ISSUES FIVE-DAY SUSPENSIONS FOR A PARTICULAR OFFENSE IT WOULD BE EXTREMELY DIFFICULTY TO JUSTIFY WHY AN EMPLOYEE WITH A PAST RECORD SIMILAR TO THAT OF OTHER DISCIPLINED EMPLOYEES WAS ISSUED A 30-DAY SUSPENSION FOR THE SAME OFFENSE. THERE IS NO PRECISE DEFINITION OF WHAT ESTABLISHES A GOOD, FAIR, OR BAD RECORD. REASONABLE JUDGMENT MUST BE USED. AN EMPLOYEE'S RECORD OF PREVIOUS OFFENSES MAY NEVER BE USED TO ESTABLISH GUILT IN A CASE YOU PRESENTLY HAVE UNDER CONSIDERATION, BUT IT MAY BE USED TO DETERMINE THE APPROPRIATE DISCIPLINARY PENALTY.

# WHAT IS A TEMPLATE?

- SHOULD HAVE ALL THE INFORMATION YOU NEED TO START A GRIEVANCE BY JUST PUTTING IN YOUR NAMES AND DATES AND SPECIFICS TO YOUR SITUATION
- HAS THE ISSUE STATEMENT ALREADY WITH THE LANGUAGE YOU NEED IF GRIEVANCE GOES TO ARBITRATION
- HAS THE CITES AND PROVISIONS THAT YOU NEED TO BACK UP YOUR ISSUE STATEMENT
- HAS CONTENTIONS LAID OUT FOR YOU TO USE, ADD OR TAKE AWAY WHAT DOES/DOESN'T APPLY
- HAS A FORMATTED SHEET WHERE YOU CAN PUT IN THE PARTICULARS OF YOUR CASE FOR A REMEDY
- NEW STEWARDS CHECK WITH YOUR FORMAL A, BRANCH PRESIDENT OR BUSINESS AGENT FOR HELP

# EL-921 HANDBOOK TOP OF THE TEMPLATE

- AT THE TOP OF YOUR GRIEVANCE TEMPLATE FOR DISCIPLINE THIS IS WHAT YOU SHOULD HAVE:
- SUPERVISOR'S GUIDE TO HANDLING GRIEVANCES PAGE 26 STATES IN PART:
  - 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

# TOP OF THE TEMPLATE CONTINUED

- IF NO IS THE ANSWER TO ANY OF THE SUB-QUESTIONS THEN MANAGEMENT SHOULD NOT BE ISSUING THE DISCIPLINE
- WHEN WE ARE GOING THROUGH THE JUST CAUSE PRINCIPLES AND MANAGEMENT HAS VIOLATED JUST ONE OF THESE, THEN WE ARE GOING TO USE THIS LANGUAGE AGAINST THEM STATING THAT THEY WENT AGAINST THEIR OWN HANDBOOK AND INITIATED THE DISCIPLINE ANYWAY
- SAVES A LOT OF TIME WHEN YOU CAN JUST COPY AND PASTE AND FILL IN WHAT APPLIES TO THIS PARTICULAR GRIEVANCE

# ARTICLE 16.1 THINKING MAN/WOMAN'S PRINCIPLE

- EVEN IF YOU HAVE PROGRESSIVE DISCIPLINE. YOU HAVE A LOW AND A 7 DAY, AND MANAGEMENT IS CHOOSING TO GIVE THEM A 14 DAY, YOU HAVE TO ASK IF THE SEVERITY OF THE DISCIPLINE WAS REASONABLY RELATED TO THE INFRACTION ITSELF?
- MEANING IF THE 7 AND 14 DAY WAS FOR FAILURE TO FOLLOW INSTRUCTION TO CLOCK OUT ON TIME, IF THIS GRIEVANCE IS FOR ATTENDANCE, THAT IS NOT RELATED TO CLOCKING OUT ON TIME.
- GRIEVANCES MUST BE FOR THAT SPECIFIC INFRACTION AND RELATED TO THAT INFRACTION, AND IF NOT WE WILL BE ARGUING THIS ARTICLE IN OUR CONTENTIONS

# THINKING MAN/WOMAN'S PRINCIPLE

- IF MANAGEMENT TRIED TO DISCIPLINE A CARRIER FOR 14 DAY SUSPENSION AND THIS IS THE FIRST INFRACTION ON THIS PARTICULAR CHARGE THEN THE SHOP STEWARD HAS TO ARGUE THAT THIS IS TOO MUCH. IS THE SERIOUSNESS OF THE EMPLOYEE'S PAST RECORD WARRANT THIS PARTICULAR DISCIPLINE?
- IS THE DISCIPLINE REASONABLE TO WHAT THE CHARGE IS? IF NOT CONTEND IT UNDER THIS ARTICLE
- THIS ARTICLE OF THE JUST CAUSE PRINCIPLE MAKES THE STEWARD THINK ABOUT DISCIPLINE, THE SEVERITY OF THE DISCIPLINE, AND WHAT HAPPENED?

# EXAMPLES FOR USING THIS PRINCIPLE

- IF THE CARRIER SHOULD STEP OUT OF THE VEHICLE AND STEP INTO A HOLE THEY DIDN'T SEE AND SPRAINED THEIR ANKLE AND MANAGEMENT DISCIPLINES THEM FOR BEING UNSAFE. THE STEWARD WILL USE THIS QUESTION OF THE JUST CAUSE PRINCIPLE. ASKING YOURSELF WAS THE SEVERITY OF THE DISCIPLINE REASONABLY RELATED TO THE INFRACTION ITSELF? THERE WAS NOTHING THAT THE CARRIER COULD HAVE DONE TO AVOID WHAT HAPPENED.



# EXAMPLES CONTINUED

- IF THE CARRIER WAS WALKING AND SORTING MAIL WHILE ON A PARK AND LOOP, GOT THE MAIL READY AND PUTTING IT INTO THE MAIL SLOT AND A DOG ATTACKS FROM BEHIND, MANAGEMENT WILL TRY TO DISCIPLINE THEM FOR BEING UNSAFE. THERE WAS NOTHING THAT THE CARRIER COULD HAVE DONE TO PREVENT THIS ACCIDENT. THEY HAD THEIR DOG SPRAY AND THEIR BAG ON. THEY HAD THEIR HANDS FULL PUTTING THE MAIL IN THE BOX, ARM FULL OF FLATS, HAND FULL OF LETTERS AND THE DOG CAME OUT OF NOWHERE AND BITE THEM.
- IT WAS EXACTLY THAT, AN ACCIDENT. STEWARDS WILL BE USING THIS TO CONTEND THAT THE CARRIER COULD NOT HAVE PREVENTED THIS ACCIDENT AND THAT THE DISCIPLINE WAS NOT FOR JUST CAUSE AND THE SEVERITY WAS TOO HIGH

# EQUALLY ADMINISTERED

- SHOP STEWARDS HAVE TO FIND OUT IF OTHER CARRIERS HAVE HAD DOG BITES AND WHAT HAPPENED
- IF THEY ARE TRYING TO DISCIPLINE A REGULAR THAT THEY MAY NOT LIKE, OR PTF/CCA THIS TIME, BUT THERE WERE OTHER CARRIERS WHO DID NOT GET DISCIPLINE, THEN WE NEED TO CONTEND THAT
- THIS LANGUAGE PROTECTS CARRIERS FROM BEING WRONGFULLY DISCIPLINED WHEN MANAGEMENT HAS BEEN TOLD BY THE HIGHER UPS THAT NO MATTER WHAT THERE MUST BE DISCIPLINE

# CITES TO USE IN YOUR CONTENTIONS

- C-04401 ARBITRATOR E. WILLIAMS

- UNION WITNESSES TESTIFIED TO EIGHT SPECIFIC CASES OF DEVIATION IN WHICH NO MORE THAN A LETTER OF WARNING WAS ASSESSED. MANAGEMENT WITNESSES QUESTIONED ONLY ONE OF THEM AND CORROBORATED MOST OF THEM. INCLUDED WAS ONE INSTANCE OF DEVIATION TO GO TO THE BATHROOM. HOWEVER, THERE WAS NOT EVEN A FORMAL DISCUSSION OF THE DEVIATION. IN ANOTHER, THERE WAS AN EMPLOYEE WITH A TERRIBLE RECORD WHO DEVIATED AND WAS PLAYING VIDEO GAMES. YET, HIS ULTIMATE DISCIPLINE WAS A LETTER OF WARNING. IN FACT, MANAGEMENT WITNESSES AGREED THAT NO ONE EVER BEFORE HAD BEEN TERMINATED FOR DEVIATION

# C-04401 ARBITRATOR E. WILLIAMS CONTINUED

- IN GENERAL, POSTAL ARBITRATORS WOULD OVERTURN DISCIPLINE IF ONLY ONE EXAMPLE OF DISPARATE TREATMENT WAS PROVED ( IN FACT, SEVERAL WERE REFERENCED BY THE UNION). THUS, IT IS ABUNDANTLY CLEAR THAT THE DISPARATE TREATMENT IN THE SUBJECT CASE, STANDING ALONE, WOULD CALL FOR REINSTATING THE GRIEVANT WITH FULL BACK PAY
- THE ARBITRATOR IS SAYING THAT ANY VIOLATION OF THAT IS A FATAL FLAW

# CITES TO USE IN YOUR CONTENTION

- C-01760 ARBITRATOR RENTFRO
  - THE PARTIES HEREIN ARE WELL AWARE OF THE GENERAL RULE THAT DISPARATE TREATMENT—UNEQUAL DISCIPLINE FOR SIMILAR MISCONDUCT—IS NOT LOOKED UPON WITH FAVOR BY ANY ARBITRATOR. UNEQUAL DISCIPLINE IMPOSED, EVEN BY A WELL MEANING BY SOMEWHAT DISORGANIZED EMPLOYER, WILL CONSISTENTLY BE OVERTURNED AS DISCRIMINATORY WHEN APPEALED TO ARBITRATION.
  - THE FOLLOWING IS AN EXAMPLE OF WHAT ARBITRATORS MAY CONSIDER AN INEQUITABLE DECISION. IF AN INSTALLATION CONSISTENTLY ISSUES FIVE DAY SUSPENSIONS FOR A PARTICULAR OFFENSE IT WOULD BE EXTREMELY DIFFICULT TO JUSTIFY WHY AN EMPLOYEE WITH A PAST RECORD SIMILAR TO THAT OF OTHER DISCIPLINED EMPLOYEES WAS ISSUED A THIRTY DAY SUSPENSION FOR THE SAME OFFENSE.

# WHY USE CITES AND NOT JUST JCAM

- YOU WANT TO USE CITES WHEN YOU ARE DEALING WITH DISCIPLINE AS THEY ARE USUALLY NOT SETTLED IN THE OFFICE AND GO TO THE B-TEAM OR TO ARBITRATION
- ONCE YOU PUT OTHER ARBITRATOR'S LANGUAGE IN FRONT OF AN ARBITRATOR THEY TEND TO USE THOSE AS GUIDANCE AND LANGUAGE WHEN DECIDING THE CASE

# USING ARTICLE 16.10 TO HELP OUT

- THE PURPOSE OF ARTICLE 16.10 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
- THIS HELPS TO BATTLE MANAGEMENT TRYING TO USE PROGRESSIVE DISCIPLINE INCORRECTLY

# ARTICLE 16.10 CONTINUED

- THERE IS NO PRECISE DEFINITION OF WHAT ESTABLISHES A GOOD, FAIR, OR BAD RECORD. REASONABLE JUDGEMENT MUST BE USED. AN EMPLOYEE'S RECORD OF PREVIOUS OFFENSES MAY NEVER BE USED TO ESTABLISH GUILT IN A CASE YOU PRESENTLY HAVE UNDER CONSIDERATION. BUT IT MAY BE USED TO DETERMINE THE APPROPRIATE DISCIPLINARY PENALTY.
- IF DISCIPLINE HAS BEEN RESCINDED AND EXPUNGED ARTICLE 16.10 WILL TRUMP THAT LANGUAGE RIGHT THERE. IF MANAGEMENT TRIES TO SAY, HEY LOOK, THIS DISCIPLINE HAS BEEN RESCINDED AND EXPUNGED BUT THE CARRIER HAS BEEN DISCIPLINED FOR THIS IN THE PAST, SO THE CARRIER IS WELL AWARE OF WHAT THEY'RE SUPPOSED TO DO, THEY CAN'T USE PAST DISCIPLINE THAT IS NO LONGER LIVE AGAINST THE CARRIER



# EXAMPLES OF PROGRESSIVE DISCIPLINE

- IF THE CARRIER HAS A LETTER OF WARNING AND A 7 DAY SUSPENSION FOR SIMILAR INFRACTIONS AND MANAGEMENT USES THAT AS THE SOLE DETERMINATION TO SELL A 14 DAY SUSPENSION, STATING THAT THE CARRIER HAS ALREADY BEEN TOLD IN THE PAST AND DISCIPLINED FOR IT AND THIS IS WARRANTED.
- NO. THAT'S NOT WHAT THAT IS TALKING ABOUT.

# CASE BY CASE BASIS

- WHAT THIS IS TALKING ABOUT IS YOU CANT CONVICT THE CARRIER BECAUSE THEY HAVE HAD AN ISSUE WITH THIS IN THE PAST.
- MANAGEMENT STILL MUST HAVE JUST CAUSE AND THEY STILL HAVE TO PROVE THAT THE CARRIER WAS GUILTY OF THIS NEW INFRACTION ALONE
- IF MANAGEMENT DOES PROVE THAT THE CARRIER IS GUILTY OF THIS INFRACTION, AND HAVE MET THE JUST CAUSE PRINCIPLES, THEN YES, THE CARRIER WILL GET A 14 DAY SUSPENSION

# CONTENTIONS

- LABOR HAS COME DOWN AND SAID YOU NEED TO DISCIPLINE THIS CARRIER.
- MANAGEMENT WILL HANG ON TO THEIR POSITION NO MATTER WHAT THE STEWARD HAS TO SAY, NO MATTER WHAT THE STEWARD SHOWS THEM IN WRITING, AND MANAGEMENT WILL SINK WITH THE SHIP BEFORE THEY CHANGE THEIR POSITION ON THIS DISCIPLINE
- IT IS OUR JOB TO PROVE THAT MANAGEMENT WAS NOT REASONABLE EVEN THOUGH WE PROVED THE CASE AT A LOWER LEVEL AND STEWARDS SHOULD ALSO CONTEND THAT THE WHOLE GRIEVANCE PROCESS IS TO SETTLE GRIEVANCES AT THE LOWEST LEVEL AND MANAGEMENT FAILED TO DO SO.

# CONTENTIONS CONTINUED

- IF SOMEONE OTHER THAN THE SUPERVISOR IS INITIATING THE GRIEVANCE WE NEED TO MAKE THAT POINT
- IF MANAGEMENT CAN NOT PROVE THAT THE CARRIER IS AT FAULT FOR THIS INFRACTION AND IS RELYING SOLELY ON THE FACT THAT THE CARRIER HAS BEEN FOUND GUILTY OF THE SAME INFRACTION IN THE PAST THEN THEY CAN NOT JUST GO AFTER A 14 DAY SUSPENSION WITHOUT THE BURDEN OF PROOF OF JUST CAUSE
- CONTACT YOUR FORMAL A, BRANCH PRESIDENT, OTHER STEWARDS TO GET INFORMATION ON PAST SETTLEMENTS AND TEMPLATES TO USE FOR YOUR GRIEVANCES