# FROM A TO ARBITRATION

## EPISODE 30- DEFEATING CCA DISCIPLINE

# CCA REMOVAL CASES

- ONE OF THE MOST DIFFICULT THINGS WE DEAL WITH IS DISCIPLINE FOR CCAS
- NOT ONLY BECAUSE IT DOESN'T HAVE TO BE PROGRESSIVE, BUT IT ALSO HAS TO DEAL WITH TINURE
- CCAS ARE EASY PICKING FOR ARBITRATORS BECAUSE THERE IS NO BANK OF GOOD WILL ESTABLISHED YET, IT'S A STRUGGLE AND IT'S A FIGHT FOR SHOP STEWARDS AND UNION ADVOCATES
- THE WIN- LOSE RATE FOR COREY IS ABOUT 50/50, EVEN WITH THROWING THE WHOLE BOOK AT 'EM
- WE HAVE TO BE CRAFTY IN OUR ARGUMENTS

# EXAMPLE OF A CCA CASE

- IN A CASE WHERE THE CCA HAD BOUGHT SNACKS WITH THE USPS VOYAGER GAS CARD, THE MANAGER SPOTTED THE CHARGE ON THE BILL AND BROUGHT IN THE CCA AND ASKED IF THEY HAD INDEED BOUGHT SNACKS WITH THE CARD. CCA SAID YES, AND MANAGEMENT INFORMED THE CCA THAT WAS NOT ALLOWED. SO THE CCA SAID THAT THEY WOULD RE-PAY THE MONEY TO THE POST OFFICE AND THE MANAGER INFORMED THE CCA THIS IS NOT HOW THAT WORKED AND THEY FIRED THE CCA
- WHEN THE CASE WENT TO ARBITRATION THE CCA WAS CRYING AND APOLOGETIC TO THE ARBITRATOR STATING THAT, AGAIN, THEY WOULD JUST REPAY THE MONEY AND THAT THEY HAD NO IDEA THAT SHE HAD VIOLATED ANY RULES OR LAWS OF THE POSTAL SERVICE
- ARBITRATOR STATED THAT IF YOU DIDN'T KNOW, YOU SHOULD HAVE KNOWN. THEY ALSO STATED THAT THE CCA HAD NO BANK OF GOOD WILL TO PROVE THAT THEY WERE INDEED A TRUSTED EMPLOYEE, AND UPHELD THE REMOVAL

# CCAS IN OUR UNION

- CCAS ARE COMING IN AT ALL AGES, RACES, CREDES AND RELIGIONS, THEY ARE RUNNING THE GAMBIT
- BUT THEY ALL DESERVE 100% OF OUR EFFORTS
- TAKE THEM UNDER YOUR WING AND BE PROTECTIVE OF THEM
- GIVE THEM ADVICE TO HELP THEM

# CCAS AND ATTENDANCE

- WORST CASES FOR CCAS ARE ATTENDANCE PROBLEMS, IF YOU HAVE A CCA WITH ATTENDANCE PROBLEMS YOU GOT A FIGHT ON YOUR HANDS
- ARBITRATORS WILL NOT TOLERATE IT. PERIOD
- WITH NO TINURE TO SHOW GOOD BEHAVIOR AND THEY ARE ALREADY CALLING OUT TO THE POINT THAT THEY ARE GETTING DISCIPLINED FOR IT; THE USPS AND ARBITRATORS WILL FIND THAT NOT ACCEPTABLE
- CCAS DISCIPLINE DOES NOT HAVE TO BE PROGRSSIVE BUT IT DOES HAVE TO BE CORRECTIVE. IF MANAGEMENT CAN SHOW THAT THEY HAVE BEEN CORRECTIVE AND OR PROGRESSIVE YOU WILL PROBABLY LOSE THAT CASE. BUT WE WILL ALWAYS GIVE IT OUR BEST SHOT TO DEFEND OUR BROTHERS AND SISTERS

# JCAM 16.10 APPENDIX B

- CCAS. APPENDIX B, 3. OTHER PROVISIONS, SECTION E – ARTICLE 16 OF THE 2019 NATIONAL AGREEMENT ADDRESSES ACCESS TO THE GRIEVANCE PROCEDURE FOR SEPARATED OR DISCIPLINED CCAS.
- 3. OTHER PROVISIONS E. ARTICLE 16 - DISCIPLINE PROCEDURE
  - CCAS MAY BE DISCIPLINED OR REMOVED WITHIN THE TERM OF THEIR APPOINTMENT FOR JUST CAUSE AND ANY SUCH DISCIPLINE OR REMOVAL WILL BE SUBJECT TO THE GRIEVANCE ARBITRATION PROCEDURE, PROVIDED THAT WITHIN THE IMMEDIATELY PRECEDING SIX MONTHS, THE EMPLOYEE HAS COMPLETED NINETY (90) WORK DAYS, OR HAS BEEN EMPLOYED FOR 120 CALENDAR DAYS (WHICHEVER COMES FIRST) OF THEIR INITIAL APPOINTMENT. A CCA WHO HAS PREVIOUSLY SATISFIED THE 90/120-DAY REQUIREMENT EITHER AS A CCA OR TRANSITIONAL EMPLOYEE (WITH AN APPOINTMENT MADE AFTER SEPTEMBER 29, 2007), WILL HAVE ACCESS TO THE GRIEVANCE PROCEDURE WITHOUT REGARD TO HIS/HER LENGTH OF SERVICE AS A CCA. FURTHER, WHILE IN ANY SUCH GRIEVANCE THE CONCEPT OF PROGRESSIVE DISCIPLINE WILL NOT APPLY, DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE.

# JCAM ARTICLE 16.1

- ARTICLE 16 DOES APPLY TO CCAS AND THIS IS WHERE WE WILL FOCUS 100% OF OUR EFFORT
- THEY HAVE TO HAVE JUST CAUSE TO REMOVE THEM WHICH IS COVERED UNDER EVERY SUBQUESTION OF ARTICLE 16, SO GO THROUGH EVERY QUESTION AND ANY THAT APPLY WE CAN UTILIZE
- EVEN THOUGH DISCIPLINE DOES NOT HAVE TO BE PROGRESSIVE, IT MOST CERTAINLY HAS TO BE CORRECTIVE. IT IS OUR JOB TO MAKE SURE THAT MANAGEMENT UPHOLDS ITS OBLIGATION TO DO THAT

# M-39 SECTION 115.1

- 115 DISCIPLINE
  - 115.1 BASIC PRINCIPLE
    - IN THE ADMINISTRATION OF DISCIPLINE, A BASIC PRINCIPLE MUST BE THAT DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE. NO EMPLOYEE MAY BE DISCIPLINED OR DISCHARGED EXCEPT FOR JUST CAUSE. THE DELIVERY MANAGER MUST MAKE EVERY EFFORT TO CORRECT A SITUATION BEFORE RESORTING TO DISCIPLINARY MEASURES.

# CORRECTIVE IN NATURE

- WHAT DID MANAGEMENT DO TO HELP THE CCA BEFORE THEY RESORTED TO DISCIPLINE?
- IT HAS TO HAPPEN BEFORE THEY ISSUE ANY DISCIPLINE SO AS STEWARDS, WE NEED TO FIND OUT WHAT THEY DID BEFORE THEY JUST ISSUED DISCIPLINE.
- IN OUR CONTENTIONS YOU MUST CONTEND THAT THERE IS NOTHING IN THE CASE FILE THAT MANAGEMENT EVER ATTEMPTED TO HELP CORRECT THE SITUATION BEFORE RESORTING TO DISCIPLINARY MEASURES. NOT AFTERWARDS, NOT DURING THE DISCIPLINARY PROCESS. NOT USING DISCIPLINE AS A CORECTIVE MEAUSER.

# JCAM ARTICLE 16.1

- VERY FIRST SENTENCE OF THE ARTICLE IS THIS:
  - 16.1 SECTION
    - 1. PRINCIPLES
      - IN THE ADMINISTRATION OF THIS ARTICLE, A BASIC PRINCIPLE SHALL BE THAT DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE.

# JOINT CONTRACT ADMINISTRATION MANUAL

- THE JCAM IS A JOINT CONTRACT THAT WAS AGREED UPON BY THE UNION AND THE USPS
- BOTH UNION AND MANAGENMENT BOTH AGREE THAT THE BASIC CONCEPT OF ANY DISCIPLINE THAT IS ISSUED TO ANY EMPLOYEE MUST BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE
- THAT IS THE POWER THAT HAS BEEN AFFORDED TO CCAS THROUGH OUR CONTRACT

# JCAM PAGE 16-3

- EXAMPLES OF BEHAVIOR-
  - ARTICLE 16.1 STATES SEVERAL EXAMPLES OF MISCONDUCT WHICH MAY CONSTITUTE JUST CAUSE FOR DISCIPLINE. SOME MANAGERS HAVE MISTAKENLY BELIEVED THAT BECAUSE THESE BEHAVIORS ARE SPECIFICALLY LISTED IN THE CONTRACT, ANY DISCIPLINE OF EMPLOYEES FOR SUCH BEHAVIORS IS AUTOMATICALLY FOR JUST CAUSE. THE PARTIES AGREE THESE BEHAVIORS ARE INTENDED AS EXAMPLES ONLY. MANAGEMENT MUST STILL MEET THE REQUISITE BURDEN OF PROOF, E.G. PROVE THAT THE BEHAVIOR TOOK PLACE, THAT IT WAS INTENTIONAL, THAT THE DEGREE OF DISCIPLINE IMPOSED WAS CORRECTIVE RATHER THAN PUNITIVE, AND SO FORTH. PRINCIPLES OF JUST CAUSE APPLY TO THESE SPECIFIC EXAMPLES OF MISCONDUCT AS WELL AS TO ANY OTHER CONDUCT FOR WHICH MANAGEMENT ISSUES DISCIPLINE.

# HERE ARE SOME CITES TO USE

- COHEN C-00557
- JACOBS C-34761
- JACOBS C-34218
- JACOBS C-33500
    - ALL OF THESE SHOULD BE IN YOUR TEMPLATES
    - PUTTING IN CITES AT INFORMAL A AND FORMAL A SAVES THE ADVOCATE FROM HAVING TO SUBMIT NEW INFORMATION INTO THE FILE AND SAVES ON A LOT OF TIME

# ARBITRATOR COHEN C-00557 APWU CASE

- GRIEVANT' S SUPERVISOR WAS ASKED IF HE HAD CONSIDERED A LESSER PENALTY . HE REPLIED THAT HE HAD AND HAD DECIDED AGAINST IT ON THE GROUND THAT HE FELT IT WOULD "HAVE NO IMPACT" . THE ACTION OF THE SUPERVISOR IN THIS REGARD IS A VIOLATION OF ARTICLE 16, SECTION 1, OF THE NATIONAL AGREEMENT . THE FIRST SENTENCE OF THIS ARTICLE STATES : "IN THE ADMINISTRATION OF THIS ARTICLE, A BASIC PRINCIPLE SHALL BE THAT DISCIPLINE SHOULD BE CORRECTIVE IN NATURE, RATHER THAN PUNITIVE .“ IT HAS BEEN HELD MANY TIMES BY OTHER ARBITRATORS THAT, FOR DISCIPLINE TO BE CORRECTIVE, IT MUST BE PROGRESSIVE . THIS DIRECTIVE FROM THE NATIONAL AGREEMENT IS MANDATORY . IT IS NOT DISCRETIONARY . MANAGEMENT DOES NOT HAVE THE CHOICE AS TO WHETHER IT WILL ISSUE CORRECTIVE DISCIPLINE OR NOT . IT MUST ATTEMPT TO MAKE DISCIPLINE CORRECTIVE . HERE, GRIEVANT' S SUPERVISOR DECIDED FOR REASONS WHICH APPEARED TO HIM TO BE VALID THAT CORRECTIVE DISCIPLINE WOULD BE USELESS . HE DOES NOT , HOWEVER, HAVE THAT DISCRETION . HE MUST ATTEMPT TO ISSUE CORRECTIVE DISCIPLINE EVEN THOUGH HE BELIEVES THAT IT WILL BE OF NO USE .

# ARBITRATOR JACOBS C-33500

- PUNITIVE VS CORRECTIVE- DISCIPLINE IT IS CLEAR THAT PROGRESSIVE DISCIPLINE IS NOT REQUIRED. THE UNION PROVIDED AN AWARD THAT INDICATED THAT PROGRESSIVE DISCIPLINE AND CORRECTIVE DISCIPLINE ARE THE SAME THING. I MUST RESPECTFULLY SOMEWHAT DIFFER FROM THAT CONCLUSION IN THIS CONTEXT. PERHAPS GENERALLY, PROGRESSIVE DISCIPLINE IS DESIGNED TO CORRECT ERRANT BEHAVIOR AND TO INSTILL A GREATER SENSE OF RESPONSIBILITY IN AN EMPLOYEE WHO HAS VIOLATED OR IGNORED APPLICABLE RULES. HERE THOUGH, THE PARTIES TO THE NATIONAL AGREEMENT HAVE SPECIFICALLY INDICATED THAT CCA'S ARE NOT ENTITLED TO PROGRESSIVE DISCIPLINE BUT THAT ANY DISCIPLINE MUST BE CORRECTIVE. THESE TWO STATEMENTS MUST THEREFORE MEAN THAT THE TWO ARE NOT THE SAME WHEN APPLIED TO CCA'S.

# ARBITRATOR JACOBS C-34761

- THERE WAS NO ACTUAL SHOWING OF PREJUDICE ON THIS RECORD, BUT IT MUST BE STATED CLEARLY THAT THE MANAGER FAILED TO COMPLY WITH THIS PROVISION OF THE NATIONAL AGREEMENT. AS ARBITRATOR ROBERTS NOTED, IN HIS DECISION CITED BY THE SERVICE, THERE WAS NO ACTUAL SHOWING OF PREJUDICE OR THAT ANYTHING WOULD HAVE BEEN DIFFERENT HAD THE UNION PRESIDENT BEEN ON THE SCENE THAT DAY. THE GRIEVANT CLEARLY CAUSED THE ACCIDENT AND WAS TICKETED BY POLICE FOR FAILURE TO STOP. THIS DETERMINATION SHOULD NOT IN ANY WAY BE TAKEN AS MINIMIZING THE CLEAR REQUIREMENT THAT PROMPT NOTIFICATION BE DONE AS REQUIRED BY ARTICLE 41 - WHICH MUST MEAN HERE THAT NOTIFICATION TO THE UNION COULD AND SHOULD HAVE BEEN DONE NO LATER THAN NOTIFICATION TO THE UPPER-LEVEL MANAGERS. THIS FAILURE COULD WELL HAVE CAUSED A FATAL ERROR IN THE SERVICE'S CASE HAD THE FACTS BEEN DIFFERENT. ON THIS RECORD THOUGH IT WAS NOT SHOWN TO BE THE CASE. THE NEXT TIME THOUGH IT MIGHT VERY WELL BE A DIFFERENT STORY.

# ARBITRATOR JACOBS C-34761

- THE CASES CITED BY THE PARTIES
  - EACH CASE MUST BE DECIDED ON ITS OWN UNIQUE FACTS. HOWEVER, THE CASES CITED WERE INSTRUCTIVE BUT SHOWS THAT AN ACCIDENT IN AND OF ITSELF DOES NOT AUTOMATICALLY RESULT IN REMOVAL. THE AUGUST DECISION CITED BY THE UNION SUPPORTED THIS VIEW. THERE IS ALSO THE NOTION THAT DISCIPLINE MUST BE CORRECTIVE UNLESS THERE IS EVIDENCE THAT THE GRIEVANT CANNOT OR REFUSES TO BE CORRECTED. THERE WAS NO EVIDENCE OF THAT HERE. WHAT HAPPENED WAS UNFORTUNATE AND THE RESULT OF INATTENTIVENESS BY THE GRIEVANT, BLIND SPOT OR NOT - BUT DID NOT DEMONSTRATE THAT SHE CANNOT BE CORRECTED THROUGH THE USE OF DISCIPLINE AND/OR RETRAINING.

# ARBITRATOR JACOBS C-34761

- THE CASES CITED BY THE SERVICE DID NOT PROVIDE THE SUPPORT IT SOUGHT FOR THE REMOVAL. THE ROBERTS DECISION WAS REVIEWED, ESPECIALLY IN THE PORTION OF THE DECISIONS THAT SEEMS TO INDICATE THAT AN ARBITRATOR HAS NO AUTHORITY TO MODIFY THE PENALTY IRRESPECTIVE OF ANY MITIGATING CIRCUMSTANCES THAT MAY BE PRESENT. FRANKLY, THAT IS SIMPLY WRONG. ARBITRATORS CLEARLY HAVE AN INHERENT POWER TO MODIFY PENALTIES BASED ON THE OVERALL FACTS AND CIRCUMSTANCES AND ANY MITIGATING FACTORS THAT MAY BE PRESENT. IT IS A WELL-ESTABLISHED AND LONGSTANDING INHERENT POWER OF A LABOR ARBITRATOR TO FASHION REMEDIES BASED ON THE OVERALL RECORD AND TO MODIFY PENALTIES BASED ON THE FACTS OF EACH UNIQUE CASE.

# ARBITRATOR JACOBS C-34761

- THE JCAM LANGUAGE IN INTERPRETING ARTICLE 16 FULLY SUPPORTS THIS NOTION AS WELL. ONE OF THE MANDATED CONSIDERATIONS IS WHETHER THE PENALTY IMPOSED IS CORRECTIVE OR PUNITIVE. THAT VIRTUALLY BY DEFINITION, REQUIRES A REVIEW OF THE PENALTY AND THE EVIDENCE IN ANY INDIVIDUAL CASE. IT IS COMPLETELY POSSIBLE THAT AN EMPLOYEE COULD WELL BE FOUND TO HAVE COMMITTED AN INFRACTION AS CHARGED, BUT THAT THE PENALTY IMPOSED FOR IT DEEMED EXCESSIVE OR HARSH OR PUNITIVE, THUS REQUIRING THE ARBITRATOR TO EXERCISE THE INHERENT POWER GRANTED BY THE PARTIES' AGREEMENT TO MITIGATE THE PENALTY. FURTHER, TO BELABOR THE POINT THE AGREED UPON ISSUE AS STATED BY THE STEP B TEAMS POSTS THE QUESTION, "WHAT SHALL THE APPROPRIATE REMEDY BE?" THAT ALONE GIVES THE ARBITRATOR THE POWER TO MITIGATE THE PENALTY.

# ARBITRATOR JACOBS C-34761

- FINALLY, WHILE CITATIONS TO THE INHERENT POWER TO FASHION REMEDIES COULD GO ON FOR MANY PAGES, IT IS IMPORTANT TO NOTE THAT THE US SUPREME COURT IN THE TRILOGY CASES IN 1960 RECOGNIZED THIS AS ONE OF THE BASIC AND INHERENT POWERS OF ARBITRATORS. SEE, E.G., US STEELWORKERS V WARRIOR AND GULF, 363 U.S. 574 (1960).3 IT IS APPARENT FROM THE LANGUAGE OF ARTICLE 16 AND THE JCAM DISCUSSION OF JUST CAUSE THAT THESE MIRROR THE "7 TESTS" DISCUSSED BY ARBITRATOR CARROLL DAUGHERTY IN GRIEF BROS. COOPERAGE, 42 LA 555, 558 (1964). SEE ALSO, ENTERPRISE WIRE CO., 46 LA 359 (DAUGHERTY 1966). PROFESSOR DAUGHERTY NOTES THAT A NEGATIVE ANSWER TO ANY OF THESE QUESTIONS MAY WELL MEAN THAT THERE IS INSUFFICIENT CAUSE FOR THE DISCIPLINE IMPOSED. A FULL DISCUSSION OF THESE IN THIS REGARD IS UNNECESSARY, BUT THE LAST OF THEM IS CRUCIAL AND IS AS FOLLOWS: WAS THE DEGREE OF DISCIPLINE ADMINISTERED BY THE COMPANY IN A PARTICULAR CASE REASONABLY RELATED TO (A) THE SERIOUSNESS OF THE EMPLOYEE'S PROVEN OFFENSE AND (B) THE RECORD OF THE EMPLOYEE IN HIS SERVICE WITH THE COMPANY?

# ARBITRATOR JACOBS C-34761

- CLEARLY, AN ARBITRATOR HAS THE POWER TO MITIGATE THE PENALTY UNDER BOTH TRADITIONAL ARBITRATION CONCEPTS AS WELL AS UNDER THE NATIONAL AGREEMENT AND JCAM. HERE, THE PENALTY WAS DETERMINED TO BE BOTH UNDULY HARSH AND INCONSISTENT WITH THE CLEAR PROVISIONS OF THE JCAM AT 29-2 REGARDING MOTOR VEHICLE ACCIDENTS. THE PARTIES AGREED THAT THE MERE FACT OF AN ACCIDENT DOES NOT AUTOMATICALLY WARRANT SUSPENSION OR EVEN THE AUTOMATIC APPLICATION OF DISCIPLINE.

# ARBITRATOR JACOBS C-34761

- THE OTHER DISTINGUISHING FEATURE OF THE ROBERTS DECISION IS THAT THERE WAS EVIDENCE OF A PRIOR MV A WITH THAT SAME EMPLOYEE. LIKEWISE, IN THE AUGUST DECISION CITED BY THE SERVICE THE ARBITRATOR NOTED THAT THE GRIEVANT "KNEW" WHAT SHOULD HAVE BEEN DONE TO AVOID THE ACCIDENT. HERE THE ACCIDENT WAS THE RESULT OF NEGLIGENCE BUT WAS CLEARLY NOT THE RESULT OF INTENTIONAL OR SUCH GROSS NEGLIGENCE THAT REMOVAL MUST FOLLOW.

# CASE BY CASE BASIS

- IN THE OTHER CITES THAT MANAGEMENT TURNED IN TO THE ARBITRATOR IN THIS CASE THEY WERE TALKING ABOUT CARRIERS WHO HAD ACCIDENTS PRIOR TO HAVING THIS ACCIDENT AND THEREFORE SHOULD HAVE KNOWN THE PROCEDURES AND THE CONSEQUENCES OF GETTING INTO AN ACCIDENT. WITH CCAS YOU ARE PROBABLY DEALING WITH THEIR FIRST ACCIDENT AND THEREFORE THEY DO NOT KNOW ANY OF THE RULES AND CONSEQUENCES OF GETTING INTO AN ACCIDENT, AND WE HAVE TO MAKE THAT CONTENTION

# ARBITRATOR JACOBS C-34761

- THE REMAINING QUESTION IS WHAT TO DO HERE. IT WAS APPARENT FROM A REVIEW OF THE CASES CITED BY THE PARTIES THAT ARBITRATORS ARE NOT BLIND TO THE INFRACTIONS THAT HAVE OCCURRED. THEY HAVE ALSO APPLIED THE CONCEPT OF CORRECTIVE DISCIPLINE AND THE NEED TO SHOW THAT THE PENALTY FITS THE INFRACTION TO REDUCE, BUT NOT IN ALL CASES ELIMINATE, THE DISCIPLINE. EACH CASE MUST, OF COURSE, BE EXAMINED ON ITS OWN UNIQUE FACTS. THE CASES CITED WERE OF SOME VALUE IN THAT IT WAS APPARENT THAT IN MANY OF THOSE, THE ARBITRATORS REVIEWED THE PENALTIES AND MADE INDEPENDENT DETERMINATIONS OF THE APPROPRIATE PENALTY.

# ARBITRATOR JACOBS C-34761

- THE SERVICE ARGUED ESSENTIALLY THAT ONCE A VIOLATION HAS BEEN ESTABLISHED, IT IS VIRTUALLY INCUMBENT UPON THE ARBITRATOR TO FOLLOW THE DISCIPLINARY DECISION AND NOT DISTURB IT. INDEED, IT HAS BEEN SAID THAT LENIENCY IS THE PROVINCE OF THE EMPLOYER, NOT THE ARBITRATOR. AS NOTED BELOW, SOME DEFERENCE SHOULD BE GIVEN TO MANAGEMENT'S AUTHORITY TO METE OUT WHAT IT FEELS IS APPROPRIATE DISCIPLINE IN A GIVEN CASE. STILL THOUGH, THE NOTION OF JUST CAUSE REQUIRES A REVIEW OF THE PENALTY AND, UNDER THIS NATIONAL AGREEMENT, A REVIEW OF WHETHER THE DISCIPLINE IS CORRECTIVE VERSUS PUNITIVE. IT IS CLEAR FROM THE CASES THAT ARBITRATORS ROUTINELY REVIEW PENALTIES TO DETERMINE WHETHER THE DEGREE OF DISCIPLINE FITS THE INFRACTION.

# ARBITRATOR JACOBS C-34218

- ONE OF THE BASIC TENETS OF DISCIPLINE IN THE NATIONAL AGREEMENT UNDER ARTICLE 16 AND THE JCAM IS THAT THE DISCIPLINE MUST BE CORRECTIVE AND NOT PUNITIVE. HERE THERE WAS SOME MERIT TO THE UNION'S ARGUMENTS. THE SERVICE ARGUED THAT ROLLAWAYS ARE SO SERIOUS THAT THEY MUST BE REGARDED AS CARDINAL OFFENSES, WARRANTING REMOVAL FOR A FIRST OFFENSE IRRESPECTIVE OF AN EMPLOYEE'S PRIOR HISTORY, LENGTH OF SERVICE OR DISCIPLINARY RECORD. THE SERVICE FURTHER ARGUED THAT THE PRIOR POLICIES RELIED UPON BY THE UNION ARE NOW OUTDATED AND THAT MORE RECENT PRONOUNCEMENTS HAVE OVERRIDDEN THOSE AND THAT THE NEWER POLICIES CALL FOR VERY SEVERE DISCIPLINE, INCLUDING REMOVAL, FOR TRUCK ROLLAWAYS, EVEN WHERE THERE IS NO BODILY HARM.

# ARBITRATOR JACOBS C-34218

- THE SERVICE ALSO ASSERTED THAT THERE CERTAINLY COULD HAVE BEEN HERE, ESPECIALLY IF THE GRIEVANT HAD BEEN DRIVING A DIFFERENT VEHICLE, REQUIRING HER TO WALK IN FRONT OF THE VEHICLE TO WORK THE KEYPAD TO GET THE DOOR OPEN. IT WAS MERELY FORTUNATE THAT SHE WAS NOT PINNED BY THE TRUCK AS IT ROLLED FORWARD. THE SERVICE ARGUED THAT THE ONLY WAY TO PREVENT THIS IS TO ISSUE A REMOVAL. THE EVIDENCE BOTH DID NOT SUPPORT THAT THERE IS SOME NEW POLICY THAT CALLS FOR REMOVAL NO MATTER WHAT NOR WAS THERE EVIDENCE THAT THE GRIEVANT IS SOMEHOW INCORRIGIBLE AND COULD NOT CORRECT HER BEHAVIOR. IN FACT, AS NOTED, THE EVIDENCE WAS TO THE CONTRARY ON BOTH COUNTS. THE POLICIES DO NOT APPEAR TO HAVE BEEN PROMULGATED OR PUBLISHED TO THE KNOWLEDGE OF THE UNION OR THE EMPLOYEES. THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH THAT THE POLICY RELIED UPON BY THE SERVICE IN SUPPORT OF THIS REMOVAL WAS MADE KNOWN TO THE GRIEVANT OR THE UNION.

# WRITING YOUR ISSUE STATEMENTS

- WHENEVER YOU WRITE AN ISSUE STATEMENT-
  - YOUR REMEDY HAS TO REFLECT YOUR ISSUE. IF YOU HAVE AN ISSUE STATEMENT OF ARTICLE 16, 17, 19, 31 ETC.. YOUR REMEDY MUST COVER ARTICLE 16, 17, 19 31 ETC..
  - IF YOU HAVE AN ISSUE, THERE SHOULD BE A MIRROR THAT YOUR REMEDY COVERS
  - AT THE END OF EVERY REMEDY, YOU MUST PUT IN WORDING THAT STATES THAT THE B-TEAM OR ARBITRATOR HAS THE RIGHT TO ISSUE THE REMEDY. YOU CAN USE, 'WHAT SHALL THE APPROPRIATE REMEDY BE?' OR 'WHATEVER REMEDY IS APPROPRIATE FOR THE B-TEAM OR ARBITRATOR' OR 'WHATEVER IS DEEMED APPROPRIATE BY THE B-TEAM OR ARBITRATOR'
  - THIS GIVES THEM THE RIGHT TO COME UP WITH AND ISSUE ANY REMEDY THEY DEEM NECESSARY

# CONTENTIONS

- THE CONTRACT STATES THAT CCAS DO NOT RECEIVE PROGRESSIVE DISCIPLINE BUT IT DOES STATE THAT ANY DISCIPLINE MUST BE CORRECTIVE IN NATURE RATHER THAN PUNITIVE
- CORRECTIVE ACTIONS ARE TO BE HANDLED BEFORE THE DISCIPLINE IS INITIATED FOR CCAS
- USE THE LANGUAGE IN ARTICLE 16 OF THE JCAM
- USE THE LANGUAGE OF THE M-39 115
- GET AND USE A TEMPLATE AND MAKE SURE ALL OF THESE ARTICLES AND ARGUMENTS ARE IN THERE
- CONTEND THAT CORRECTIVE RATHER THAN PUNITIVE IS SO IMPORTANT THAT EVEN MANAGEMENT PUT IT IN THEIR OWN HANDBOOK, THE M-39

# CONTENTIONS

- MANAGEMENT HAS ISSUED THIS DISCIPLINE TO THIS CCA FOR UNAUTHORIZED OVERTIME AND THERE IS NOTHING IN THE CASE FILE TO SUPPORT THAT MANAGEMENT EVER WENT OUT TO DO STREET OBSERVATIONS OF THIS CCA TO SEE WHAT WAS GOING ON
- THERE WAS NOTHING IN THE CASE FILE TO SAY THAT THEY EVER DID AN OFFICE COUNT OR AN EFFICIENCY COUNT
- THERE IS NOTHING IN THE CASE FILE TO SUPPORT THAT MANAGEMENT EVER RODE ALONG WITH THE CCA TO SEE IF THEY COULD HELP AND FIX SOME KIND OF TRANSGRESSION OR SOMETHING THEY ARE DOING TO HELP THE CCA TO CORRECT THIS BEHAVIOR
- THERE IS NOTHING IN THE CASE FILE TO SUPPORT THAT MANAGEMENT DID ANYTHING TO HELP CORRECT THIS SITUATION BEFORE THEY RESORTED TO DISCIPLINARY MEASURES

# CONTENTIONS

- IF APPLICABLE, ARGUE ARTICLE 41.3.B. IF THE UNION WAS NOT NOTIFIED OF THE ACCIDENT AND SHOW WHAT COULD HAVE GONE DIFFERENTLY IF THE UNION COULD HAVE BEEN PRESENT AT THE TIME OF THE ACCIDENT
- WHY DID IT HURT US AND WHY DID IT HURT THE CARRIER WITH NOT HAVING THE UNION OUT AT THE SCENE
- ALWAYS USE THE 6 QUESTIONS OF JUST CAUSE PRINCIPLES IN EVERY CCA DISCIPLINE CASE. MAKE SURE THAT YOU ANSWER EACH QUESTION IN YOUR CONTENTIONS. IN YOUR INTERVIEW OF MANAGEMENT, THEY SHOULD ALSO BE ANSWERING EACH OF THESE QUESTIONS AND THE SHOP STEWARD SHOULD GET DOCUMENTATION AND INFORMATION TO SUPPORT EACH AND EVERY ONE
- THE BIGGEST ONE IS THE SEVERITY OF THE DISCIPLINE SHOULD EQUAL THE VIOLATION

# CONTENTIONS

- IF DURING THE INVESTIGATIVE INTERVIEW MANAGEMENT STATES THAT THERE IS A POLICY ABOUT THIS, ASK TO SEE THE POLICY. IF THERE IS NO POLICY MAKE SURE YOU PUT THAT IN YOUR CONTENTIONS
- IF DURING THE INVESTIGATIVE INTERVIEW MANAGEMENT ASKS THE CARRIER IF THEY ARE AWARE OF THE RULE, REGULATION OR POLICY ON THE SUBJECT, STOP THE CARRIER FROM JUST STATING YES. ASK THE CARRIER IF THEY KNOW WHAT THE JCAM IS OR THE M-39. IF THEY STATE NO THEY HAVE NO IDEA, MAKE SURE YOU PUT THAT IN YOUR CONTENTIONS.