FROM A TO ARBITRATION

EPISODE 25-JUST CAUSE PRINCIPLE: IS THE RULE CONSISTENTLY AND EQUITABLE ENFORCED?

THE OBLITERATOR OF DISCIPLINE

ARTICLE 16.1 OF THE JCAM

- JUST CAUSE PRINCIPLE
  - IS THE RULE CONSISTENTLY AND EQUITABLY ENFORCED? A RULE MUST BE APPLIED FAIRLY AND WITHOUT DISCRIMINATION. *CONSISTENT AND EQUITABLE ENFORCEMENT IS A CRITICAL FACTOR*. CONSISTENTLY OVERLOOKING EMPLOYEE INFRACTIONS AND THEN DISCIPLING WITHOUT WARNING IS IMPROPER. IF EMPLOYEES ARE CONSISTENTLY ALLOWED TO SMOKE IN AREAS DESIGNATED AS NO SMOKING AREAS, IT IS NOT APPROPRIATE SUDDENLY TO START DISCIPLINING THEM FOR THIS VIOLATION. IN SUCH CASES, MANAGEMENT LOSES ITS RIGHT TO DISCIPLINE FOR THAT INFRACTION, IN EFFECT, UNLESS IT FIRST PUTS EMPLOYEES (AND THE UNIONS) ON NOTICE OF ITS INTENT TO ENFORCE THAT REGULATION AGAIN. SINGLING OUT EMPLOYEES FOR DISCIPLINE IS USUALLY IMPROPER. IF SEVERAL SIMILARLY SITUATED EMPLOYEES COMMIT AN OFFENSE, IT WOULD NOT BE EQUITABLE TO DISCIPLINE ONLY ONE.

ELKOURI AND ELKOURI- HOW ARBITRATION WORKS

- STATES IN PART:
  - THUS TO INTERPRET THE AGREEMENT IN ACCORD WITH THE CLAIM OF THE COMPANY WOULD REDUCE TO A NULLITY THE FUNDAMENTAL PROVISION OF A LABOR MANAGEMENT AGREEMENT. THE SECURITY OF A WORKER IN HIS JOB

THIS IS SOME OF THE MOST POWERFUL LANGUAGE YOU CAN USE WHEN TALKING ABOUT JUST CAUSE AND IS SET IN PLACE TO SECURE OUR JOBS WHATEVER OUR COLOR, WHATEVER MY RELIGION, WHATEVER MY GENDER. I AM SECURE IN MY JOB BECAUSE OF JUST CAUSE. NO ONE CAN JUST COME UP ON A WHIM AND SAY LOOK HERE, YOU LOOK A CERTAIN WAY AND I'M GETTING RID OF YOU

WHEN HANDED DISCIPLINE, WHERE DO YOU GO?

- WHEN YOU ARE A NEW SHOP STEWARD THIS IS WHERE YOU START FOR ANY GRIEVANCES THAT CONCERN OR DEAL WITH DISCIPLINE.
- ARTICLE 16 COVERS THIS FIRST BECAUSE THIS IS THE BASIS OF DISCIPLINE AND HOW IT IS TO BE HANDLED.
- IF MANAGEMENT DOESN'T HAVE JUST CAUSE, THEN THEY CAN'T ISSUE DISCIPLINE.

HANDBOOK EL-921

- THIS IS THE SUPERVISOR'S GUIDE TO HANDLING GRIEVANCES
  - FOR EVERY DISCIPLINE CASE WE HANDLE, THIS HANDBOOK NEEDS TO BE USED IN YOUR TEMPLATE
  - LANGUAGE IN THE HANDBOOK UNDER DISCIPLINE- JUST CAUSE 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

IN ARTICLE 16 IT STATES THAT THE IMMEDIATE SUPERVISOR MUST USE BEFORE INITIATING DISCIPLINARY ACTION. THAT IS WHAT YOU WILL USE AND HIGHLIGHT IN EVERYONE OF YOUR CONTENTIONS

IS THE RULE CONSISTENTLY AND EQUITABLY ENFORCED?

- YOU CAN CATCH MANAGEMENT ON THIS JUST CAUSE PRINCIPLE IF YOU KNOW HOW TO DO THIS
- CONTACT YOUR BRANCH PRESIDENT, OTHER STEWARDS IN YOUR BRANCH, OR YOUR FORMAL A REPRESENTATIVE TO SEE IF THIS SITUATION HAS COME UP ANYWHERE ELSE AND SEE WHAT MANAGEMENT DID ABOUT IT.
- IF THEY DID ANYTHING OTHER THAN WHAT IS BEING PROPOSED THEN IT IS NOT CONSISTENT AND EQUALLY ENFORCED BY POSTAL MANAGEMENT

FOR INSTANCE/EXAMPLE

- A CCA IS DOING SUNDAY AMAZON DELIVERY, GETS CAUGHT OUTSIDE THE VEHICLE WHILE THE ENGINE WAS RUNNING. MANAGEMENT REMOVED THE CCA BECAUSE SHE LEFT THE ENGINE RUNNING TO KEEP THE VEHICLE COOL IN THE 100+ TEMPS.
- 2 OTHER CCAS WERE ALSO CAUGHT IN OTHER SITUATIONS AND DID NOT GET REMOVED
- THE NALC ARGUED THAT FACT AT ARBITRATION.
- WE HAVE TO ARGUE THIS AT INFORMAL A OR FORMAL A

THERE IS RULE, BUT.....

- EVEN IF MANAGEMENT HAS A RULE, AND IT IS AN AGREED UPON RULE BY BOTH THE NALC AND THE USPS, THEY STILL HAVE THE OBLIGATION TO TREAT INFRACTIONS WITH THE SAME DISCIPLINE WHILE STILL KEEPING ON A CASE BY CASE BASIS
- IF HALF THE CARRIERS IN YOUR STATION STICK (CASE UP) THEIR DPS DAILY FOR YEARS AND A NEW MANAGER COMES IN TRIES TO GIVE THOSE CARRIERS A LETTER OF WARNING FOR NOT FOLLOWING THE RULE THAT CLEARLY STATES THAT STICKING, OR CASING, DPS IS NOT ALLOWED, MANAGEMENT CAN'T DO IT. THEY MUST PUT ALL THE CARRIERS IN THE OFFICE ON NOTICE THAT FROM NOW ON OFFICE WIDE THERE WILL BE NO ONE ALLOWED TO STICK THEIR DPS.

GOTTA PUT ME ON NOTICE

- IF A NEW CARRIER TRANSFERS IN TO YOUR OFFICE AND HAS HABITS FROM ANOTHER OFFICE AND MANAGEMENT TRIES TO DISCIPLINE THE CARRIER, THEY CANT. SAME AS A NEW CCA
- THEY MUST PUT THAT CARRIER ON NOTICE THAT THIS PRACTICE IS NOT ALLOWED IN THIS OFFICE AND IF YOU DO VIOLATE THAT RULE THIS WILL BE THE CONSEQUENCE.
- IF EVERYBODY IS DOING IT AND THEY ARE DOING IT NOW, THEY CAN'T BE DISCIPLINED THEN. IF THE CARRIERS HAVE BEEN DOING IT FOREVER, MANAGEMENT HAS TO PUT ALL CARRIERS ON NOTICE THAT IT CAN NOT BE DONE IN THE FUTURE AND WHAT THE CONSEQUENCES ARE

DON'T LET MANAGEMENT ASSUME GUILT

- WE CAN'T LET MANAGEMENT THINK THAT YOU ARE GUILTY WHAT IS THE PUNISHMENT? THEY HAVE TO GO THROUGH THE PROCESS OF JUST CAUSE AND IF ANY OF THE ANSWERS ARE NO, THEY CAN NOT ISSUE THAT DISCIPLINE
- MAYBE THEY DID DO IT, PROBABLY THEY DID DO IT. MANAGEMENT CAN NOT ASSUME THAT SINCE THEY FEEL THE CARRIER IS GUILTY THEY ARE
- MAKE MANAGEMENT DO THE LEGWORK AND MAKE SURE WE ARE BRINGING UP EVERY ANGLE OF THE JUST CAUSE PRINCIPLES

CIGARS TO HELP WITH YOUR GRIEVANCE

- 27963- ARBITRATOR B. FRASER
  - I POINT OUT THAT THE SERVICE RELIES ON THE MOU REGARDING ARTICLE 16, IN PARTICULAR WHERE IT PROVIDES… TRANSITIONAL EMPLOYEE MAY OTHERWISE BE REMOVED FOR JUST CAUSE AND ANY SUCH REMOVAL WILL BE SUBJECT TO THE GRIEVANCE-ARBITRATION PROCEDURE…. FURTHER, IN ANY SUCH GRIEVANCE, THE CONCEPT OF PROGRESSIVE DISCIPLINE WILL NOT APPLY. THE ISSUE WILL BE WHETHER THE EMPLOYEE IS GUILTY OF THE CHARGE AGAINST HIM OR HER. WHERE THE EMPLOYEE IS FOUND GUILTY, THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO MODIFY THE DISCHARGE….

C-27963- ARBITRATOR B. FRASER CONTINUED

- AS NOTE ABOVE, FINDING THAT A GRIEVANT IS GUILTY OF THE COMMITTING THE ACTION FOR WHICH HE WAS CHARGED, IN THIS CASE USING HIS POV TO DRIVE TO HIS ROUTE WITHOUT AUTHORIZATION, IS NOT SYNONYMOUS WITH THERE BEING JUST CAUSE FOR THE IMPOSITION OF A PARTICULAR DISCIPLINE. SIX CONDITIONS MUST ALSO BE MET FOR THERE TO BE JUST CAUSE. SIMPLY PUT, THERE IS A CONTRADICTION IN THE MOU LANGUAGE. IN PARTICULAR, THE STATEMENT " THE ISSUE WILL BE WHETHER THE EMPLOYEE IS GUILTY OF THE CHARGE..." IS ONLY THE FIRST PART OF THE STANDARD. MEETING THE RELEVANT CONDITIONS IS A SECOND. ALTHOUGH THE CONDITION OF PROGRESSIVE DISCIPLINE IS NOT APPLICABLE HERE, THE OTHER FIVE CONDITIONS ARE IN PLAY AND NEED TO BE CONSIDERED

C-27963- ARBITRATOR B. FRASER CONTINUED

- THE CHARGE FOR WHICH THE GRIEVANT WAS TERMINATED WAS THE FAILURE TO FOLLOW INSTRUCTIONS, NAMELY, THE UNAUTHORIZED USE OF A PRIVATELY OWNED VEHICLE. THERE ARE THREE ISSUES TO CONSIDER. FIRST, I AM NOT CONVINCED THAT THE GRIEVANT WAS AWARE THAT IN ORDER TO OBTAIN AUTHORIZATION TO USE ONE'S POV TO TRAVEL TO A ROUTE A CARRIER IS REQUIRED TO HAVE A DRIVE-OUT AGREEMENT. THERE IS NO EVIDENCE THAT HE EVEN KNEW OF THE EXISTENCE OF A DRIVE-OUT AGREEMENT. HE WAS NOT ASKED. HE STATED THAT HE KNEW HE WAS NOT AUTHORIZED TO USE HIS POV, BUT ALSO STATED THAT HE DIDN'T KNOW THAT ONE HAD TO BE AUTHORIZED TO DRIVE TO A ROUTE. THERE WAS NO EVIDENCE THAT HE WAS SO INFORMED IN HIS TRAINING AS A BROOKLYN TE.

C-27963- ARBITRATOR B. FRASER CONTINUED

- THE WITNESSES FOR THE SERVICE TESTIFIED THAT NEW HIRES/TRAINEES ARE INSTRUCTED ON THE DOS AND DON'TS OF THE JOB, BUT NO ONE SPECIFICALLY STATED THAT THE DRIVE-OUT AGREEMENT WAS DISCUSSED IN THE BROOKLYN TRAINING. PEREZ TESTIFIED CREDIBLY THAT HE THOUGHT THE NON-DRIVING INFORMATION WAS RELATED TO THE POST SERVICE VEHICLES, NOT HIS POV, AND THAT THE "NON DRIVER" STAMPED ON HIS TE BADGE REFERRED TO POSTAL SERVICE VEHICLES. IN SHORT, I AM NOT CONVINCED THAT THE GRIEVANT WAS AWARE THAT THERE WAS A RULE WHICH HE VIOLATED ON MAY 3, 2008; HENCE HE WAS NOT AWARE OF DISOBEYING INSTRUCTIONS.

C-27963- ARBITRATOR B. FRASER CONTINUED

- SECOND, ASSUMING FOR THE SAKE OF ARGUMENT THAT HE WAS AWARE OF THE RULE REQUIRING HIM TO HAVE AUTHORIZATION TO USE HIS OWN POV, THERE IS NO EVIDENCE THAT ANYONE INFORMED THE GRIEVANT THAT THE PENALTY THE FIRST TIME HE WAS CAUGHT USING HIS POV TO TRAVEL TO HIS ROUTE WOULD BE TERMINATION. THIS PLACES THE SERIOUSNESS OF THE UNAUTHORIZED USE OF A POV ON A PAR WITH BEING DRUNK OF THE JOB OR STEALING FROM THE SERVICE, CONTRARY TO COMMON SENSE.

C-27963- ARBITRATOR B. FRASER CONTINUED

- THIRD, THE UNREBUTTED TESTIMONY OF THE STEWARDS LEAVES NO DOUBT THAT THE DRIVE-OUT REQUIREMENT WAS NOT ENFORCED CONSISTENTLY AND UNIFORMLY, IT IS SIGNIFICANT THAT EVEN WHEN RIVERA GAVE THE NAMES OF THREE LETTER CARRIERS THAT ROUTINELY WERE DRIVING THEIR POVS TO THEIR ROUTES BUT WITHOUT A DRIVE-OUT AGREEMENT, THERE WAS NO CHALLENGE TO HIS CLAIMS AND NO REBUTTAL.

C-27963- ARBITRATOR B. FRASER CONTINUED

- IN CONCLUSION, ALTHOUGH THERE IS NO QUESTION THAT PEREZ COMMITTED THE ACT OF USING HIS POV WHILE ON THE CLOCK WITHOUT AUTHORIZATION, THERE WERE TWO CONDITIONS OF JUST CAUSE THAT WERE NOT MET. FIRST THERE WAS NO EVIDENCE THAT HE KNEW ABOUT THE DRIVE-OUT AGREEMENT CONFERRING AUTHORIZATION TO DRIVE TO ONE'S ROUTE, OR THAT HE KNEW WHAT PENALTY WOULD BE IMPOSED, SHOULD HE DRIVE AN UNAUTHORIZED POV TO HIS ROUTE.
- SECOND, THERE WAS NO CHALLENGE TO THE TESTIMONY FROM THREE STEWARDS THAT THE RULE WAS NOT ENFORCED CONSISTENTLY AND UNIFORMLY. I FIND THAT THERE WAS NOT JUST CAUSE TO TERMINATE PEREZ FOR HIS ACTIONS ON MAY 3, 2008

DEFENSES TO DISCIPLINE HANDBOOK

- MITIGATION DEFENSE NO. 3- CASE EXAMPLES C-02803
  - THE CORE OF THIS ISSUE IS THE ESTABLISHED PAST PRACTICE AT THE PITTSBURGH POST OFFICE OF SOMETIMES DISPOSING OF DELIVERABLE THIRD CLASS MAIL, HOWEVER, CONTRARY TO POSTAL REGULATIONS, AND HOWEVER, ILLEGAL IT MAY HAVE BEEN. THAT PRACTICE EXISTED, AND IT IS OF CRUCIAL CONSIDERATION IN THIS DISPUTE. WHEN SUCH A PRACTICE IS CONDONED IT IS SIMPLY NOT FAIR THAT ONE OR TWO EMPLOYEES BEAR THE ENTIRE BRUNT OF THE CORRECT, NECESSARY, AND ENTIRELY JUSTIFIABLE DETERMINATION OF MANAGEMENT TO BRING SUCH A PRACTICE TO A HALT. AN EMPLOYER HAS THE RIGHT TO ENFORCE REASONABLE REGULATIONS, AND THE POST SERVICE IN PARTICULAR HAS AN OBLIGATION TO SEE THAT THE MAIL IS DELIVERED. THAT IS THE REASON FOR ITS EXISTENCE.

DEFENSES TO DISCIPLINE HANDBOOK

- ANY EMPLOYER HAS AN OBLIGATION TO INFORM EMPLOYEES CLEARLY, WITHOUT EQUIVOCATION, AND WITHOUT THE POSSIBILITY OF MISUNDERSTANDING, WHEN RULES WHICH HAVE BEEN IGNORED ARE TO BE ENFORCED, AND WHEN WRONGFUL PRACTICES WHICH HAVE BEEN CONDONED ARE TO CEASE, WHILE THE POSTAL SERVICE HAS ENDEAVORED TO SHOW THAT IT MET THESE OBLIGATIONS IN THE PRESENT DISPUTE, THE PROOF FALLS SHORT OF MAKING THAT SHOWING.

ARBITRATOR C. WARNS C-02029

- THE ISSUE IN THE PRESENT CASE IS WHETHER THE TWO-DAY SUSPENSION IMPOSED UPON MR. PETER V. MORTELLARO WAS FOR "JUST CAUSE" WITHIN THE MEANING OF ARTICLE 16 OF THE NATIONAL AGREEMENT. THE BASIC FACTS ARE NOT IN DISPUTE. IN THE LATTER PART OF FEBRUARY, 1972, AN INCIDENT NOT RELEVANT TO THIS GRIEVANCE OCCURRED. THE GRIEVANT FOLLOWING THIS INCIDENT WAS ADVISED BY MR. SWALKOV, SUPERINTENDENT OF DELIVERY AND COLLECTION, THAT IN THE FUTURE HE WAS EXPECTED TO PERSONALLY RING OFF THE CLOCK AT THE END OF THE WORKING DAY AND TO ALSO RING OFF A MOTOR VEHICLE WHEN HE WAS NO LONGER USING IT. THIS INSTRUCTION WAS GIVEN ON OR ABOUT MARCH 1. 1972 AND REPEATED BY HIGHER SUPERVISION. ON MARCH 13, 1972 THE GRIEVANT FAILED TO RING OFF THE MOTOR VEHICLE ON THE TIME CLOCK AND AS A RESULT, THE TWO-DAY SUSPENSION WAS IMPOSED.

ARBITRATOR C. WARNS C-02029 CONT.

- IT IS BRIEFLY THE POSITION OF THE UNION THAT THE PUNISHMENT WAS TOO SEVERE FOR THE OFFENSE. THE UNION CONTENDED AND INTRODUCED EVIDENCE THAT OTHER EMPLOYEES HAVE FAILED TO RING OFF THE CLOCK UNDER THESE CIRCUMSTANCES WITHOUT DISCIPLINE. FURTHER, THERE WAS TESTIMONY FROM THE GRIEVANT HIMSELF THAT IN ALL OF HIS YEARS OF SERVICE HE HAD NEVER BEEN DISCIPLINED BEFORE AND THAT ON THE OCCASION IN QUESTION THERE WAS NO DELIBERATE INTENT TO IGNORE INSTRUCTIONS GIVEN BY MANAGEMENT. THE EMPLOYER'S RESPONSE IS THAT THIS IS A SERIOUS OFFENSE

ARBITRATOR C. WARNS C-02029 CONT.

- MANAGEMENT IS INSISTENT THAT EMPLOYEE RECORD THE TURNING IN OF VEHICLES AS REQUIRED FOR SEVERAL REASONS: WHO IS CURRENTLY RESPONSIBLE FOR THE USE OF THE VEHICLE IN RECORDED, THE EMPLOYER IS ABLE TO ASCERTAIN FOR LEGITIMATE BUSINESS REASONS HOW OFTEN THE VEHICLE IS IN USE, AND ADDITIONALLY, UTILIZING THE CLOCK FOR PURPOSES OF SHOWING THE USE OF THE VEHICLES GIVES MANAGEMENT CONTROL OVER THE EMPLOYEES WHEN THEY ARE ON AND OFF THE STREET. THE EMPLOYER AGREES THAT NO OTHER EMPLOYEE HAS BEEN DISCIPLINED FOR THIS OFFENSE BUT POINTS OUT THE SPECIAL CIRCUMSTANCES REGARDING MR. MORTELLERO.

ARBITRATOR C. WARNS C-02029 CONT.

- MANAGEMENT REFERS THE ARBITRATOR TO PART 442.161 WHICH READS AS FOLLOWS:
  - EMPLOYEES SHALL OBEY THE INSTRUCTION OF THEIR SUPERVISORS. IF AN EMPLOYEE FEELS THAT HE HAS REASON TO QUESTION THE PROPRIETY OF A SUPERVISOR'S ORDER, HE SHALL NEVERTHELESS CARRY OUT THE ORDER AND IMMEDIATELY FILE A PROTEST IN WRITING TO THE OFFICIAL IN CHARGE OF THE INSTALLATION, OR APPEAL THROUGH OFFICIAL CHANNELS.

  MANAGEMENT POINTS OUT THAT THE GRIEVANT HAD BEEN "COUNSELLED FOR THE SAME OFFENSE" ONLY TWO WEEKS PRIOR TO THE DAY ON WHICH THE INCIDENT OCCURRED WITHOUT ANY MITIGATING CIRCUMSTANCE. MANAGEMENT BELIEVES THAT THE SUSPENSION IS CONSISTENT WITH THE OFFENSE AND THAT THE GRIEVANCE SHOULD BE DENIED

ARBITRATOR C. WARNS C-02029 CONT.

- THERE IS A STRONG APPEAL TO AN ARGUMENT THAT WHEN THE GRIEVANT HAD BEEN TOLD TO RING OFF VEHICLES IN THE FUTURE, AND YET WITHING TWO WEEKS FILED TO CARRY OUT THE ORDER, RECEIVES A TWO DAY SUSPENSION, THE UNION DURING THE PROCESSING OF THIS COMPLAINT "PLED GUILTY" TO AN OFFENSE, BUT CONTENDS THAT THE PUNISHMENT IS TOO SEVERE "FOR SUCH A MINOR INFRACTION" AND THAT A ONE DAY SUSPENSION OR LETTER OF WARNING WOULD BE MORE APPROPRIATE, FOR THE ARBITRATOR TO REDUCE THE PENALTY UNDER THE FACTS WOULD BE AN UNWARRANTED INSTRUCTION INTO LEGITIMATE MANAGEMENT DECISION MAKING. IN THIS REGARD IT HAS BEEN STATED MANY TIMES THAT THE TASK OF THE ARBITRATOR IS NOT TO SUBSTITUTE HIS JUDGMENT FOR THAT OF THE UNION OR MANAGEMENT; HIS JOB IS TO DECIDE WHETHER THE CONTRACT HAS BEEN VIOLATED.

ARBITRATOR C. WARNS C-02029 CONT.

- BUT IN THEIR CLOSING ARGUMENT THE UNION EMPHASIZED A PRINCIPLE THAT NEUTRALIZES THE OTHERWISE PERSUASIVE CHARACTER OF THE COMPANY'S ARGUMENTS. THIS PRINCIPLE IS BASIC TO THE LIMITATION OF "JUST CAUSE" FOUND IN THE AGREEMENT BEFORE ME. THE UNION REFERS THE ARBITRATOR TO A LETTER OF MARCH 29, 1972 ADDRESSED TO "ALL DELIVERY SUPERVISORS", WHICH READS AS FOLLOWS:
  - EXAMINATION OF VEHICLE CARDS HAS SHOWN THAT EMPLOYEES FAIL AT TIMES TO CLOCK IN OR CLOCK OUT THE VEHICLE THEY USE. ALL VEHICLE CARDS ARE TO BE REVIEWED CONSTANTLY AND CORRECTIVE ACTION TAKEN WHEN THESE FAILURE SHOW UP. REPEATED FAILURES WILL NOT BE TOLERATED. CORRECTIVE ACTION IS NOT MERELY WRITING IN THE TIME ON CARDS. YOU SHOULD TAKE ACTION TO ASSURE THAT THE EMPLOYEES WILL FOLLOW INSTRUCTIONS. YOU MUST GIVE THIS YOUR IMMEDIATE AND CONSTANT ATTENTION.

ARBITRATOR C. WARNS C-02029 CONT.

- THIS NOTIFICATION OF COMPANY POLICY WAS WRITTEN ON MARCH 29, 1972 AFTER THE FACT: THE DISCIPLINE WAS IMPOSED IN THIS CASE ON MARCH 13, 1972. THE CONTENTION IS THAT UNTIL THE LETTER WAS WRITTEN THE ONLY STANDARD OR CRITERION EVIDENT TO THE EMPLOYEES AS TO WHAT "PUNISHMENT" IF ANY WOULD RESULT IN THE EVENT OF A FAILURE TO RING OFF A VEHICLE WAS THE EXISTING PRACTICE. AND THE EXISTING PRACTICE WAS THAT THE MOST ANYONE HAD RECEIVED WAS A "CHEWING OUT" IN FRONT OF FELLOW EMPLOYEES

ARBITRATOR C. WARNS C-02029 CONT.

- EXCEPT IN THOSE CASES CLEARLY KNOWN TO BE IN THE BASIS FOR DISCIPLINE SUCH AS THEFT OR THE LIKE, I AGREE THAT EMPLOYEES SHOULD BE PUT UPON NOTICE THAT DISCIPLINE WILL FOLLOW FROM CERTAIN PROSCRIBED ACTIVITY. I DO NOT SAY THERE MUST BE A PUBLISHED RULE, IN WRITING, COVERING ALL OFFENSES TOGETHER WITH PREDETERMINED PUNISHMENT. ARTICLE 16 SETS FOR THE MORE SERIOUS RULES GOVERNING EMPLOYEE BEHAVIOR. BUT AS TO THOSE NOT COVERED BY ARTICLE 16 AGREED TO BY THE UNION, OR SOME OTHER PUBLISHED RULE OR DOCUMENT, THE ONLY TEST CONSISTENT WITH "JUST CAUSE" IS WHETHER THE EMPLOYEE AS A REASONABLE MAN OR WOMAN COULD BELIEVE THAT HE OR SHE WOULD RECEIVE TIME OFF OR BE DISCHARGED FOR THE OFFENSE.

ARBITRATOR C. WARNS C-02029 CONT.

- THIS IS NOT TO SAY THAT BECAUSE THE EMPLOYER HAS NEVER DISCIPLINED ANYONE OR PUBLISHED A RULE GOVERNING THE BEHAVIOR ON A PROSPECTIVE BASIS, THAT HE IS PROHIBITED FROM CHANGING HIS POLICY IN THE FUTURE. IT IS INHERENT IN THE RIGHTS OF MANAGEMENT AND THE REGULATION OF THE WORK FORCE, TO INSIST ON RESPONSIBLE BEHAVIOR BY EMPLOYEES, AND ALTHOUGH LAXITY MAY HAVE BEEN THE PRACTICE IN THE PAST, IT DOES NOT HAVE TO BE TOLERATED IN THE FUTURE. BUT MANAGEMENT CANNOT "TIGHTEN UP" BY IMPOSING DISCIPLINE ON ONE OFFENDING INDIVIDUAL WHERE THERE HAS BEEN NO RULE IN THE PAST AND NO PUNISHMENT IN THE PAST. ALL GOVERNED BY THE POLICY OR RULE MUST BE NOTIFIED AS TO MANAGEMENT'S SPECIFIC INTENTIONS

ARBITRATOR C. WARNS C-02029 CONT.

- THE UNION THEN HAS THE OPPORTUNITY TO CHALLENGE THE NEW RULE OR POLICY ON ITS FACE, AS TO ITS COMPATIBILITY WITH “JUST CAUSE” OR IN ITS LATER SPECIFIC APPLICATION. BUT AN ANALOGY TO PROCEDURAL DUE PROCESS DEMANDS THAT THOSE WHO WILL BE PUNISHED KNOW IN ADVANCE THE PROBABLE CONSEQUENCES OF THEIR ACT. I AM AWARE OF COURSE THAT MANAGEMENT BASES THE DISCIPLINE IN THIS CASE ON “INSUBORDINATION”, A PUBLISHED AND KNOWN OFFENSE.

ARBITRATOR C. WARNS C-02029 CONT.

- BUT THE WORD "INSUBORDINATION" CARRIERS WITH IT THE CONCEPT OF AN EMPLOYEE WHO WITH CALLOUSED INDIFFERENCE DELIBERATELY FAILS TO CARRY OUT A KNOWN AND PROPER ORDER. MR. MORTELLARO IS AN INTELLIGENT, LONG SERVICE EMPLOYEE WITH A GOOD RECORD. I THINK HE TREATED THIS ORDER TO CLOCK OUT THE VEHICLES WITH THE SAME LEVEL OF SERIOUSNESS AS HIS FELLOW EMPLOYEES-THAT IF HE FAILED TO CARRY IT OUT THE MOST HE WOULD SUFFER WOULD BE ANOTHER "CHEWING OUT" AND BE EMBARRASSED IN FRONT OF FELLOW EMPLOYEES.

ARBITRATOR C. WARNS C-02029 CONT.

- HE WAS NOT "INSUBORDINATE" IN THE USUAL SENSE. HE DID NOT "QUESTION" THE ORDER, AND REFUSE TO CARRY IT OUT RATHER THEN "GRIEVING". HE JUST DID NOT TAKE IT AS SERIOUSLY AS THE EMPLOYER WOULD HAVE THE RIGHT TO EXPECT UNDER THE APPROPRIATE CIRCUMSTANCES
- I DO NOT HAVE THE AUTHORITY NOR AM I COMPETENT TO SAY WHAT THE PUNISHMENT SHOULD BE IF ANY IN THIS CASE. ALL THAT I SAY HERE IS THAT FOR THE REASONS STATED, THE TWO DAY SUSPENSION WAS NOT FOR JUST CAUSE. MR. MORTELLARO SHALL BE REIMBURSED FOR HIS LOST PAY, AND THE RECORD OF THIS DISCIPLINE REMOVED FROM HIS PERSONNEL RECORD

CONTENTIONS

- ALL DISCIPLINE TEMPLATES SHOULD START OUT WITH THE EL-921 PROVISIONS AND THIS SHOULD BE YOUR FIRST CONTENTION
- GET STATEMENTS OR DOCUMENTS FROM OTHER OFFICES, OTHER GRIEVANCES, SIMILAR SITUATIONS AND CONTEND THAT THIS DISCIPLINE IS NOT CONSISTENT AND OR EQUALLY ENFORCED IF THE DISCIPLINE IS NOT CONSISTENT OR EQUAL TO WHAT THE OTHERS HAVE BEEN
- THE CARRIER MUST KNOW THE CONSEQUENCES THEY WILL RECEIVE IF THEY BREAK A RULE. IF THEY DO NOT, THEN WE MUST CONTEND THAT.
- QUESTION THE SUPERVISOR AND THE CARRIER TO MAKE SURE THAT THIS HAS BEEN ADDRESSED AND IS BEING DELT WITH EQUALLY WITH ALL CARRIERS