

FROM A TO ARBITRATION

EPISODE 31- CORRECTIVE RATHER THAN PUNITIVE. LET'S THINK OUTSIDE THE BOX



ARTICLE 16 OF THE JCAM

- THIS IS THE ARTICLE THAT DEALS WITH OUR LIVELIHOOD
- WE AS SHOP STEWARDS NEED TO MAKE SURE THAT OUR FELLOW CARRIERS HAVE A PLACE WHERE THEY WANT TO COME AND WORK AT
- THIS IS THE SHOP STEWARD'S RESPONSIBILITY TO MAKE SURE THAT MANAGEMENT FOLLOWS ALL OF ARTICLE 16 BY FILING GRIEVANCES WHEN THEY DO NOT

CORRECTIVE RATHER THAN PUNITIVE

- DISCIPLINE SHOULD BE PROGRESSIVE IN NATURE
- BUT WHAT IS THE DIFFERENCE OF MUST BE CORRECTIVE IN NATURE RATHER THAN PUNITIVE AND DISCIPLINE SHOULD BE PROGRESSIVE IN NATURE
- ARE THEY THE SAME THING, OR NOT?
- THEY ARE NOT ONE AND THE SAME

ELKOURI AND ELKOURI

THE BOOK ON HOW ARBITRATION WORKS

- FACTORS AND EVALUATING PENALTIES- NUMEROUS FACTORS MAY BE RELEVANT IN THE REVIEW OR EVALUATION OF PENALTIES ASSESSED BY MANAGEMENT FOR MISCONDUCT OF EMPLOYEES. THE MORE PROMINENT OF THESE FACTORS ARE CONSIDERED BRIEFLY BELOW:
 - NATURE OF THE OFFENSE- SUMMARY DISCHARGE VERSUS CORRECTIVE DISCIPLINE. IT IS SAID TO BE AXIOMATIC THAT THE DEGREE OF PENALTY SHOULD BE IN KEEPING WITH THE SERIOUSNESS OF THE OFFENSE. IN THIS REGARD ARBITRATOR W.P. MCCOY EXPLAINED; OFFENSES ARE OF TWO GENERAL CLASSES THOSE EXTREMELY SERIOUS OFFENSES SUCH AS STEALING, STRIKING A FOREMAN, PERSISTENT REFUSAL TO OBEY A LEGITIMATE ORDER ETC. WHICH USUALLY JUSTIFIES SUMMARY DISCHARGE WITHOUT THE NECESSITY OF PRIOR WARNINGS OR ATTEMPT AT CORRECTIVE DISCIPLINE.

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- THOSE LESS SERIOUS INFRACTIONS OF PLANT RULES OR OF PROPER CONDUCT SUCH AS TARDINESS, ABSENCE WITHOUT PERMISSION, CARELESS WORKMANSHIP, INSOLENT ETC. WHICH CALL NOT FOR DISCHARGE FOR THE FIRST OFFENSE AND USUALLY NOT EVEN FOR THE SECOND OR THIRD OFFENSE, BUT FOR SOME Milder PENALTY AIMED AT CORRECTION.
- AS TO THE LESS SERIOUS OFFENSES THE CONCEPT OF CORRECTIVE OR PROGRESSIVE DISCIPLINE HAS BEEN RECOGNIZED BY ARBITRATORS

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- ARBITRATOR M.S. RYDER FOR INSTANCE HAS STATED: FURTHER IF THE EMPLOYER SO CHOOSES, AND IT IS COMMON PRACTICE IN INDUSTRY THE EMPLOYER MAY ADOPT A CORRECTIVE APPROACH TOWARDS PENALTY. BY MAKING SECOND AND THIRD OFFENSES OF THE SAME NATURE OR OF ANOTHER NATURE CUMULATIVE IN THE TERMS OF THE DEGREE OF SEVERITY OF PENALTY IMPOSED FOR EACH OF THE SUBSEQUENT PROVEN OFFENSES SO AS TO DISSUADE ANY FURTHER COMMISSIONS
 - MEANING: PROGRESSIVE DISCIPLINE IS A MEANS TO CORRECT A SITUATION

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- HOWEVER, ARBITRATOR R.S. THOMPSON HAS CAUTIONED- IN INDUSTRIAL PRACTICE DISCIPLINE IS OFTEN PROGRESSIVE OR CORRECTIVE IN NATURE. WARNING IS TRIED BEFORE SUSPENSION. SUSPENSION BEFORE DISCHARGE. PENALTIES ARE DESIGNED TO CORRECT IF POSSIBLE. WHILE THEORIES AND PRACTICES OF PROGRESSIVE OR CORRECTIVE DISCIPLINE MAY BE IN WIDE USE, IT DOES NOT FOLLOW THAT EVERY COMPANY MUST IN THE ABSENCE OF CONTRACT PROVISIONS ADOPT SUCH VIEWS. EVERY BUSINESS IN THE INDUSTRY HAS ITS OWN PECULIAR CONDITIONS. AN ARBITRATOR SHOULD BE SLOW TO SUBSTITUTE HIS OWN JUDGMENT AS TO THE APPROPRIATENESS OF PENALTIES ON THE BASIS OF THEORIES WHICH SEEM TO HAVE WIDE APPEAL.
 - MANAGEMENT WILL USE THIS A LOT IN ARBITRATION THAT THE ARBITRATOR MUST NOT USE THEIR OWN JUDGEMENT

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- IN FACT, THERE APPEARS TO BE CONSIDERABLE DIVERSITY OF ARBITRAL THOUGHT AND RESPECT TO CORRECTIVE DISCIPLINE. WITHOUT ATTEMPTING TO DISTINGUISH OR RECONCILE ANY CASES WHICH APPEAR TO CONFLICT, THE AUTHORS MERELY NOTE SOME OF THE VARIOUS VIEWS OF ACTIONS BY ARBITRATORS CONCERNING CORRECTIVE DISCIPLINE. THERE ARE CASES IN WHICH MANAGEMENT WAS HELD OBLIGATED TO USE CORRECTIVE DISCIPLINE, ALTHOUGH THERE WAS NO INDICATION THAT MANAGEMENT HAD EVER PROVED IT'S USE EITHER BY THE AGREEMENT OR BY UNILATERAL INSTITUTING CORRECTIVE DISCIPLINE IN THE PAST.
- THIS DOES NOT PERTAIN TO US, AS IN THE FIRST SENTENCE OF ARTICLE 16 IT STATES MUST BE CORRECTIVE IN NATURE.

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- IT HAS BEEN SAID THAT THE FORMALIZATION OF A CORRECTIVE DISCIPLINE PROGRAM AS A MATTER FOR NEGOTIATIONS BY THE PARTIES, NOT FOR THE ARBITRATOR. IT IS ALSO HAS BEEN SAID THAT IT IS ONE THING TO DETERMINE WHETHER OR NOT A CONTRACT PERMITS DISCHARGING AN EMPLOYEE UNDER GIVEN CIRCUMSTANCES, BUT THAT IT IS ENTIRELY ANOTHER MATTER FOR AN ARBITRATOR TO CONCLUDE THAT AN EMPLOYEES DISCHARGE VIOLATED A CONTRACT BECAUSE OF SOMETHING NOT IN THE CONTRACT. THAT IS BECAUSE OF THE ABSENCE OF CORRECTIVE DISCIPLINE PROGRAM WHERE NONE IS SPECIFIED BY THE AGREEMENT. THERE ARE CASES IN WHICH DISCHARGE WAS UPSET WHERE THE COMPANY HAD A CORRECTIVE DISCIPLINE SYSTEM BUT FAILED TO ABIDE BY IT.

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- WHERE AN EMPLOYER WAS RELUCTANT TO SUSPEND THE EMPLOYEE AND USED COUNSELING AND WARNINGS INSTEAD HAS PRE-DISCHARGED THIS MEASURES THIS DEMONSTRATED A DESIRE TO HELP RATHER THAN HURT THE EMPLOYEE. AN ARBITRATOR SAID FOR WHICH THE EMPLOYER SHOULD NOT BE CRITICIZED. WHERE THERE WERE NO CIRCUMSTANCES TO SUGGEST THAT CORRECTIVE DISCIPLINE WOULD REHABILITATE THE GRIEVANT INTO A SATISFACTORY EMPLOYEE, DISCHARGE WITHOUT CORRECTIVE DISCIPLINE WAS UPHELD

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- IN ADOPTING A CORRECTIVE DISCIPLINE PROGRAM, A COMPANY WAS HELD NOT TO HAVE SURRENDERED IT'S RIGHT TO INVOKE SUMMARY DISCHARGE FOR SERIOUS OFFENSES WARRANTING SUCH ACTION. ALSO, THE MERE FACT THAT AN AGREEMENT SPECIFIED THE USE OF CORRECTIVE DISCIPLINE FOR SOME OFFENSES DID NOT NECESSARILY MEAN THAT IT MUST BE USED FOR ALL OFFENSES. IN SUSTAINING DISCHARGE ARBITRATORS SOMETIMES HAVE STRESSED THE FACT THAT CORRECTIVE DISCIPLINE HAVE BEEN USED WITHOUT AVAIL

DEFENSES TO DISCIPLINE

- ARTICLE 16.1 REQUIRES THAT DISCIPLINE BE “CORRECTIVE IN NATURE, RATHER THAN PUNITIVE.” ALMOST ALL ARBITRATORS HAVE READ THIS TO MEAN THAT FOR MOST TYPES OF MISCONDUCT DISCIPLINE MUST BE “PROGRESSIVE.” HOWEVER, MANAGEMENT MAY SKIP MINOR FORMS OF DISCIPLINE FOR CERTAIN OFFENSES WHICH ARE NORMALLY DISCHARGEABLE BY THEMSELVES (E.G., THEFT OF MAIL). WHEN MANAGEMENT FAILS TO FOLLOW THE PROGRESSIVE PATH, ARBITRATORS WILL USUALLY DISALLOW OR MODIFY DISCIPLINE.

DEFENSES TO DISCIPLINE

- CORRECTIVE RATHER THAN PUNITIVE THE REQUIREMENT THAT DISCIPLINE BE “CORRECTIVE” RATHER THAN “PUNITIVE” IS AN ESSENTIAL ELEMENT OF THE “JUST CAUSE” PRINCIPLE. IN SHORT, IT MEANS THAT FOR MOST OFFENSES MANAGEMENT MUST ISSUE DISCIPLINE IN A “PROGRESSIVE” FASHION, ISSUING LESSER DISCIPLINE (E.G., A LETTER OF WARNING) FOR A FIRST OFFENSE AND A PATTERN OF INCREASINGLY SEVERE DISCIPLINE FOR SUCCEEDING OFFENSES (E.G., SHORT SUSPENSION, LONG SUSPENSION, DISCHARGE). THE BASIS OF THIS PRINCIPLE OF “CORRECTIVE” OR “PROGRESSIVE” DISCIPLINE IS THAT IT IS ISSUED FOR THE PURPOSE OF CORRECTING OR IMPROVING EMPLOYEE BEHAVIOR AND NOT AS PUNISHMENT OR RETRIBUTION.

M-39 SECTION 115

- WE SHOULD NEVER TAKE AWAY MANAGEMENT'S OBLIGATION TO MANAGE.
- MANAGEMENT HAS THAT OBLIGATION UNDER THE M-39 115
 - 115.2 USING PEOPLE EFFECTIVELY:
 - MANAGERS CAN ACCOMPLISH THEIR MISSION ONLY THROUGH THE EFFECTIVE USE OF PEOPLE. HOW SUCCESSFUL A MANAGER IS IN WORKING WITH PEOPLE WILL, TO A GREAT MEASURE, DETERMINE WHETHER OR NOT THE GOALS OF THE POSTAL SERVICE ARE ATTAINED. GETTING THE JOB DONE THROUGH PEOPLE IS NOT AN EASY TASK, AND CERTAIN BASIC THINGS ARE REQUIRED, SUCH AS:
 - A. LET THE EMPLOYEE KNOW WHAT IS EXPECTED OF HIM OR HER.
 - B. KNOW FULLY IF THE EMPLOYEE IS NOT ATTAINING EXPECTATIONS; DON'T GUESS — MAKE CERTAIN WITH DOCUMENTED EVIDENCE.
 - C. LET THE EMPLOYEE EXPLAIN HIS OR HER PROBLEM — LISTEN! IF GIVEN A CHANCE, THE EMPLOYEE WILL TELL YOU THE PROBLEM. DRAW IT OUT FROM THE EMPLOYEE IF NEEDED, BUT GET THE WHOLE STORY.

EXAMPLE #1 UNAUTHORIZED OVERTIME

- CARRIER WAS DISCIPLINED FOR UNAUTHORIZED OVERTIME. SPECIFICALLY, BECAUSE OF HOW THE CARRIER WAS FILLING OUT THE 3996. MANAGEMENT TOLD THE CARRIER THEY WERE NOT FILLING OUT THE 3996 PROPERLY, THE CARRIER CONTINUED TO FILL OUT THE 3996 THE SAME AS ALWAYS. MANAGEMENT KEPT TELLING THE CARRIER THEY WEREN'T DOING IT RIGHT, CARRIER FILLED IT OUT THE SAME WAY, AND MANAGEMENT FINALLY GAVE THE CARRIER A LETTER OF WARNING. CARRIER STILL FILLS IT OUT THE SAME WAY, SO THEY GOT A 7 DAY SUSPENSION. THEN A 14 DAY SUSPENSION.

UNAUTHORIZED OVERTIME

- SO, THE CASE GOES TO ARBITRATION AND COREY ASKED MANAGEMENT "IM LOOKING AT A LETTER OF WARNING, A 7-DAY AND A 14-DAY SUSPENSION ALL FOR THE SAME THING, THE CARRIER'S INABILITY TO FILL OUT A 3996 PROPERLY." MANAGEMENT SAYS, "THAT'S RIGHT". COREY SAYS, " LET ME ASK YOU THIS, AT WHAT POINT DID YOU SIT DOWN WITH THIS INDIVIDUAL AND INSTRUCTED THEM HOW YOU WANTED THEM TO FILL OUT THE 3996?" MANAGEMENT ANSWERS "WELL, WE DIDN'T." COREY SAYS " SO THIS YOUNG LADY HAS A LETTER OF WARNING, A 7-DAY AND A 14-DAY FOR HER INABILITY TO FILL OUT A 3996 PROPERLY. AND YET YOU'VE NEVER TOLD HER WHAT'S EXPECTED OF HER AS FAR AS FILLING OUT A 3996 PROPERLY?"

UNAUTHORIZED OVERTIME CONTINUED

- MANAGEMENT RESPONDS "NO"
- COREY: "THEN SHE'S ALWAYS GOING TO FILL OUT A 3996 IMPROPERLY BECAUSE YOU'VE NEVER TOLD HER HOW YOU WANT HER TO FILL IT OUT, OR HOW SHE SHOULD FILL IT OUT."
- THE ARBITRATOR RULED AGAINST THE UNION STATING THAT THE LETTER OF WARNING, THE 7 DAY AND THE 14-DAY SUSPENSION WAS CORRECTIVE, AND THE CARRIER REFUSED TO CORRECT HER BEHAVIOR.
- THE M-39 STATES THAT MANAGEMENT HAS THE OBLIGATION TO CORRECT AS MANY DEFICIENCIES AS POSSIBLE BEFORE RESORTING TO DISCIPLINE
- BY DOING IT THIS WAY MANAGEMENT IS TRYING TO DISCIPLINE THE CARRIER INTO SUBMISSION

UNAUTHORIZED OVERTIME

- IT IS NOT THE CARRIER'S JOB TO MANAGE THEMSELVES. MANAGEMENT MUST INSTRUCT AND MANAGE THE CARRIER IN WHAT IS EXPECTED OF THEM
- THE CARRIER STATED ON THE STAND WHEN ASKED IF SHE KNEW HOW TO PROPERLY FILL OUT A 3996 THAT SHE DID NOT AND WAS NEVER INSTRUCTED ON HOW TO DO IT PROPERLY. MANAGEMENT KEPT TELLING THE CARRIER THEY WERE DOING IT WRONG, BUT NEVER TOLD THE CARRIER SPECIFICALLY WHAT THEY WERE DOING WRONG, SO THE CARRIER HAD NO IDEA ON HOW TO FIX IT

EXAMPLE #2

- CARRIER HAS BEEN DISCIPLINED FOR UNAUTHORIZED OVERTIME. CONTINUOUSLY DISCIPLINED FOR UNAUTHORIZED OVERTIME. WERE TALKING A LETTER OF WARNING, A 7-DAY SUSPENSION, A 14-DAY SUSPENSION.
- 10-20 OCCURANCES ON EACH FORM OF DISCIPLINE.
- 16 YEAR VETERAN CARRIER
- ONLY THING MANAGEMENT HAS DONE IS TO HAND OUT DISCIPLINE TO THIS CARRIER.
- FORMAL A REPRESENTATIVE ASKS THE MANAGEMENT COUNTERPART TO GO AND GET ALL OF THE 3999S THAT WERE DONE ON THIS CARRIER TO TRY TO CORRECT OR TO SEE IF ANYTHING IS GOING ON WITH HIM ON THE STREET AND WHY HE IS UNABLE TO ESTIMATE HIS TIME PROPERLY

EXAMPLE #2 CONTINUED

- MANAGEMENT REPLIES THAT THEY DO NOT HAVE ANY 3999S ON THE CARRIER
- NOW THE CARRIER WOULD REQUEST 3 HOURS AND THEY WOULD GIVE IT TO HIM. HE WOULD REQUEST 2 HOURS AND THEY WOULD GIVE IT TO HIM. BUT HE WAS TAKING 3 HOURS TO COMPLETE THE ROUTE WHEN HE WOULD REQUEST 2 HOURS. HE WOULD REQUEST 4 HOURS; THEY WOULD GIVE HIM 4 HOURS AND THEN HE WOULD TAKE 4 ½ .
- THERE IS A DISCONNECT IN THE OFFICE WHEN THE CARRIER IS ASKING FOR THE TIME AND ON THE STREET WHERE THE CARRIER IS TAKING THE TIME TO CARRY THE ROUTE

EXAMPLE #2 CONTINUED

- NOW WHEN A CARRIER DOES THIS, DOES MANAGEMENT HAVE ANY OBLIGATION TO HELP THE CARRIER TO SOLVE THIS PROBLEM? NOTHING? TO JUST DISCIPLINE THIS CARRIER RIGHT OUT OF A JOB?
- THE ANSWER HAS TO BE NO
- THERE IS AN OBLIGATION ON MANagements PART TO CORRECT THE PROBLEM THAT IS CONTINUING TO HAPPEN, TO FIGURE OUT WHAT IS GOING ON
- THAT IS CORRECTIVE DISCIPLINE. THAT IS THE ROOT OF WHAT IT MEANS. THEY HAVE NEVER DONE THE FIRST THING TO SEE WHAT IS GOING ON TO SEE IF THEY CAN CORRECT THE SITUATION

EXAMPLE #2 CONTINUED

- THE CARRIER, FOR SOME REASON, JUST ISN'T GETTING IT.
- SO, WHAT DID MANAGEMENT DO TO HELP THEM TO CORRECT IT, TO GET TO THE BOTTOM OF IT?
- ALL SHOP STEWARDS IN THIS SITUATION NEED TO REQUEST THE PS FORM 3999, (INSPECTION OF LETTER CARRIER ROUTE), TO SEE WHAT HAPPENED OUT ON THE STREET TO GIVE THE STEWARD THAT KNOWLEDGE. MANAGEMENT SAYS THEY DON'T HAVE ANY
- SHOP STEWARDS WILL THEN ASK FOR THE PS FORM 4584, (OBSERVATION OF DRIVING PRACTICES), AND IF MANAGEMENT HAS SOME IN THE FILE FOR LIKE 3-4 MINUTES A PIECE, YOU ARE NOT GOING TO LEARN ANYTHING FROM WATCHING A CARRIER FOR 3-4 MINUTES. WE NEED TO SEE THE ONES FOR AN EXTENDED TIME THAT THEY WERE FOLLOWING THE CARRIER

EXAMPLE #2 CONTINUED

- MANAGEMENT NEEDS TO DETERMINE WHAT THE CARRIER WAS DOING ON THE STREET. WHERE THERE ANY TIME-WASTING PRACTICES, IS THE CARRIER LOITERING OUT THERE?
- WHAT ABOUT AN OFFICE COUNT? DID MANAGEMENT STAND BEHIND THE CARRIER AND SEE IF THERE WERE ANY PROBLEMS IN THE OFFICE?
- STEWARDS NEED TO KNOW THESE THINGS, BUT WE CAN'T IF MANAGEMENT DOESN'T DO THEIR JOB
- MANAGEMENT MUST MAKE EVERY EFFORT TO CORRECT A DEFICIENCY BEFORE THEY RESORT TO DISCIPLINE

EXAMPLE #2 CONTINUED

- IF MANAGEMENT HAS NOT DONE EVERYTHING THEY POSSIBLY CAN TO HELP THE CARRIER TO CORRECT THEIR BEHAVIOR, THEN THEY HAVE FAILED TO FOLLOW THE CONTRACTS
- MANAGEMENT CAN NOT DISCIPLINE A CARRIER INTO SUBMISSION AND PULVERIZE THEM WITH DISCIPLINE AND THEN SAY THAT THE CARRIER IS JUST NOT GETTING IT
- THE SHOP STEWARD HAS TO BE ASKING MANAGEMENT WHAT DID THEY DO, BESIDES JUST ISSUING DISCIPLINE TO HELP THE CARRIER CORRECT THE BEHAVIOR
- WE DO UNDERSTAND THAT MANAGEMENT NEEDS TO HAVE PROGRESSIVE DISCIPLINE TO HELP THE CARRIER TO UNDERSTAND THE SEVERITY OF THE INFRACTION, BUT THEY CAN'T JUST RESORT TO THE DISCIPLINE PROCEDURE WITHOUT FIRST DOING ITS OBLIGATION OF CORRECTIVE IN NATURE, RATHER THAN PUNITIVE

ARTICLES 17 AND 31 IN THE JCAM

- BOTH OF THESE ARTICLES DEAL WITH DISCIPLINE
- WHEN SHOP STEWARDS REQUEST INFORMATION YOU SHOULD BE GOING OVER ARTICLES 17 AND 31
- NEWER SHOP STEWARDS SHOULD BE LOOKING FOR GRIEVANCE STARTERS AND TEMPLATES AND USE THEM AS MUCH AS POSSIBLE
- BOTH OF THESE ARTICLES ARE DEFINITELY NEEDED IN YOUR TEMPLATE

ARTICLE 16 LANGUAGE IN THE JCAM

- 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. 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. 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 BACK PAY.

ARTICLE 16 LANGUAGE IN THE JCAM

- CORRECTIVE RATHER THAN PUNITIVE THE REQUIREMENT THAT DISCIPLINE BE CORRECTIVE RATHER THAN PUNITIVE IS AN ESSENTIAL ELEMENT OF THE JUST CAUSE PRINCIPLE. IN SHORT, IT MEANS THAT FOR MOST OFFENSES MANAGEMENT MUST ISSUE DISCIPLINE IN A PROGRESSIVE FASHION, ISSUING LESSER DISCIPLINE (E.G., A LETTER OF WARNING) FOR A FIRST OFFENSE AND A PATTERN OF INCREASINGLY SEVERE DISCIPLINE FOR SUCCEEDING OFFENSES (E.G., SHORT SUSPENSION, LONG SUSPENSION, DISCHARGE). THE BASIS OF THIS PRINCIPLE OF CORRECTIVE OR PROGRESSIVE DISCIPLINE IS THAT IT IS ISSUED FOR THE PURPOSE OF CORRECTING OR IMPROVING EMPLOYEE BEHAVIOR AND NOT AS PUNISHMENT OR RETRIBUTION.

ARTICLE 16 LANGUAGE IN THE JCAM

- 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.

M-39 MANAGEMENT OF DELIVERY SERVICES HANDBOOK

- 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.
- THIS IS MANAGEMENT'S OBLIGATION TO MANAGE, IN THEIR OWN HANDBOOK, AND TO MAKE EVERY EFFORT TO CORRECT THE BEHAVIOR BEFORE RESORTING TO DISCIPLINE AND IF THEY FAILED TO DO THIS, THE SHOP STEWARD NEEDS TO MAKE SURE THIS IS PUT INTO THE GRIEVANCE FILE

SCARE TACTICS THEY MIGHT USE

- IF A CARRIER HAS A VEHICLE ACCIDENT, WITH NOTHING ELSE ON THEIR RECORD, MANAGEMENT WILL ISSUE A 14-DAY SUSPENSION JUST TO SCARE THE CARRIER AND THE STEWARD INTO TAKING A LETTER OF WARNING INSTEAD THINKING THAT THEY ARE GETTING OFF THE HOOK
- THAT'S PUNITIVE. MANAGEMENT STILL HAS THE OBLIGATION TO HELP THE CARRIER TO CORRECT THE BEHAVIOR. SEND THEM TO DRIVERS' TRAINING TO BE RE-TRAINED AND THEN MONITOR THE CARRIER'S PROGRESS

ARBITRATOR COHEN C-00557

- 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 .

SHOP STEWARDS- BUILDING THE CASE

- THE SHOP STEWARD MUST DIG INTO THE FACTS AND WHEN THERE ARE FACTS MISSING, THEY NEED TO KEEP DIGGING AND CONTEND THAT THEY WERE MISSING
- REQUEST ANY ALL INFORMATION THAT WAS USED BY MANAGEMENT TO ISSUE THIS DISCIPLINE AND DIG INTO IT
- INTERVIEW EVERYONE INVOLVED IN THE GRIEVANCE
- WAS THE CARRIER MADE AWARE OF THE PROBLEM? DID MANAGEMENT TRY TO HELP THEM CORRECT IT?
WAS THE CARRIER AWARE THERE WAS A RULE?

CONTENTIONS TO MAKE

- MANAGEMENT HAS ISSUED A 14-DAY SUSPENSION, THE CARRIER HAS NO LIVE/ACTIVE DISCIPLINE IN THEIR FILE. MANAGEMENT'S ACTIONS ARE PUNITIVE RATHER THAN CORRECTIVE
- MANAGEMENT DID NOT HAVE ANY 3999 DOCUMENTATION TO DEMONSTRATE THAT THEY WERE HELPING THE CARRIER WITH THEIR BEHAVIOR
- MANAGEMENT DID NOT DO ANY OFFICE EFFICIENCY COUNTS ON THE CARRIER TO SEE IF THE CARRIER WAS POSSIBLE DOING SOMETHING INCORRECTLY
- MANAGEMENT'S DISCIPLINE WAS NOT PROGRESSIVE OR CORRECTIVE
- IN C-00557 ARBITRATOR COHEN STATED: (FINISH IT OFF WITH THE LANGUAGE CITED IN THIS TRAINING)