

FROM A TO ARBITRATION

EPIISODE 32- ARTICLE 17 AND OUR RIGHTS TO REQUEST INFORMATION





THE DEADLIEST ANIMALS

ARTICLE 17 THE DISCIPLINE KILLER

- KILLS MORE DISCIPLINE THAN ANY OTHER DUE PROCESS VIOLATION PUT TOGETHER
- MANAGEMENT NOT PROVIDING THE UNION WITH THE REQUESTED INFORMATION IS THE NUMBER ONE KILLER OF DISCIPLINE THAN ALL THE OTHERS PUT TOGETHER
- WEINGARTEN RIGHTS, THE FAILURE TO PERFORM ANY INVESTIGATION AT ALL, THOSE THINGS DO NOT COMPARE WITH MANagements FAILURE TO PROVIDE INFORMATION

ARTICLE 17 THE DISCIPLINE KILLER

- ARBITRATORS WILL NOT TOLERATE MANagements REFUSAL TO FURNISH THE UNION THEIR REQUESTED INFORMATION. THEY WONT EVEN CONSIDER THE MERITTS OF THE CASE WHEN THAT HAPPENS
- EVEN IN A CONTRACT CASE, WHEN THE BURDEN IS ON THE UNION, IF MANAGEMENT FAILS TO PROVIDE THE INFORMATION THAT THE UNION REQUESTS TO PROVE ITS BURDEN, ARBITRATORS WONT EVEN LOOK AT THE MERITTS OF THE CASE

FIRST THINGS FIRST

- THE FIRST THING THAT THE STEWARD DOES WHEN THE CARRIER HANDS THEM THE DISCIPLINE LETTER IS PUT IN AN INFORMATION REQUEST TO ASK FOR ANY AND ALL INFORMATION MANAGEMENT USED TO ISSUE THE LETTER CARRIER THIS DISCIPLINE
- IF THE ISSUE IS ATTENDANCE MANAGEMENT MAY GIVE YOU:
 - THE 3972 AND THE TACS CLOCK RINGS
 - THE INVESTIGATIVE INTERVIEW Q&A AND THE SUPERVISOR'S NOTES OF THE INVESTIGATIVE INTERVIEW
- THE STEWARD WILL THEN MAKE A NOTE THAT THIS IS ALL OF THE INFORMATION THAT WAS PROVIDED AND THAT MANAGEMENT USED AS THE SOLE BASIS TO ISSUE DISCIPLINE

REQUESTING INFORMATION

- WE HAVE 14 DAYS TO MEET AT INFORMAL A AND IT WILL PROBABLY TAKE 2-3 DAYS FOR THE STEWARD TO GET THAT INFORMATION. THEN WE ARE GOING TO FIND SOMETHING ELSE THAT WE NEED
- THE STEWARD WILL THEN PUT IN A SECOND REQUEST FOR THE INFORMATION THEY NEED TO PROVE THAT THIS IS INDEED WARRENTED DISCIPLINE. THINGS SUCH AS:
 - 3971S, ERMS KEY INDICATOR REPORT, ERMS CALL IN LOG, AND ANY OTHER DOCUMENT YOU MAY NEED

AND THE STEWARD GETS NOTHING

- AFTER THE STEWARD PUTS IN FOR THE INFORMATION, DAYS GO BY AND NOTHING IS PROVIDED BY MANAGEMENT TO THE UNION
- THE FIRST CONTENTION THAT THE STEWARD WILL NOW MAKE, AND THIS IS GOING TO BE 90% OF THE CONTENTION, IS THAT MANAGEMENT VIOLATED ARTICLE 17 & 31 WHEN THEY FAILED TO PROVIDE THE UNION WITH ITS REQUESTED DOCUMENTATION
- THE STEWARD WILL CONTEND WITH THE INFORMATION THAT WAS GIVEN, BUT WILL ALSO MAKE THE CONTENTION THAT MANAGEMENT FAILED TO PROVIDE THE DOCUMENTATION REQUESTED, AND THEREFORE COULD NOT PROPERLY DEFEND THE GRIEVANT DUE TO THAT

WHY YOU NEEDED THE DOCUMENT

- THE STEWARD WILL TAKE THAT INFORMATION REQUEST FORM, THE ONE THEY DIDN'T GET, AND IN THEIR CONTENTIONS, THEY WILL SAY, I REQUESTED THE 3971S AND THAT WAS NOT PROVIDED, AND THE REASON I REQUESTED THE 3971 BECAUSE THIS IS THE CONTROLLING DOCUMENT IN ATTENDANCE
- I REQUESTED THE ERMS CALL IN LOG AND THE REASON I REQUESTED THAT IS BECAUSE IT SHOWS IF INDEED THE CARRIER DID CALL IN ON THAT/THOSE DAYS
- I ALSO REQUESTED..... WHATEVER ELSE YOU REQUESTED AND TELL THE REASON WHY THAT DOCUMENT WAS IMPORTANT TO THE INVESTIGATION OF THE GRIEVANCE

IF IT'S AN ACCIDENT

- YOU MAY WANT TO REQUEST THE 1769, THE ACCIDENT REPORT, 4565 VEHICLE REPAIR TAG ON THE VEHICLE, THE HISTORY OF THE REPAIRS TO THAT VEHICLE
- IF MANAGEMENT DID NOT PROVIDE THAT INFORMATION TO THE STEWARD, THEN THAT HAS TO BE DEALT WITH IN THE CONTENTIONS OF THE GRIEVANCE
- YOU CAN STATE THAT YOU REQUESTED THIS FORM, OR DOCUMENT AND THIS IS WHY IT AFFECTED MY ABILITY TO DEFEND THE GRIEVANT

EXAMPLE OF A CASE

- 6-DAY COUNT AND MANAGEMENT FAILED TO PROVIDE A HANDFUL OF DOCUMENTS TO THE STEWARD.
- AT ARBITRATION THE ADVOCATE WONT EVEN GET INTO THE MERITTS OF THE CASE
- THEY WILL ASK THE STEWARD WHAT THEY REQUESTED AND WHAT DID YOU NOT RECEIVE AND WHY DID THAT EFFECT YOU
- MANAGEMENT PROHIBITED US FROM MEETING OUR BURDEN IN A CONTRACT CASE
- IF MANAGEMENT DOES NOT PROVIDE THE INFORMATION THAT THEY UNION REQUESTS THAT WILL DEVISTATE DISCIPLINE. IT WILL KILL IT

JCAM ARTICLE 17.3 LANGUAGE

- 17.3 SECTION 3. RIGHTS OF STEWARDS
 - WHEN IT IS NECESSARY FOR A STEWARD TO LEAVE HIS/HER WORK AREA TO INVESTIGATE AND ADJUST GRIEVANCES OR TO INVESTIGATE A SPECIFIC PROBLEM TO DETERMINE WHETHER TO FILE A GRIEVANCE, THE STEWARD SHALL REQUEST PERMISSION FROM THE IMMEDIATE SUPERVISOR AND SUCH REQUEST SHALL NOT BE UNREASONABLY DENIED. IN THE EVENT THE DUTIES REQUIRE THE STEWARD LEAVE THE WORK AREA AND ENTER ANOTHER AREA WITHIN THE INSTALLATION OR POST OFFICE, THE STEWARD MUST ALSO RECEIVE PERMISSION FROM THE SUPERVISOR FROM THE OTHER AREA HE/SHE WISHES TO ENTER AND SUCH REQUEST SHALL NOT BE UNREASONABLY DENIED

JCAM ARTICLE 17.3 LANGUAGE CONTINUED

- THE STEWARD, CHIEF STEWARD OR OTHER UNION REPRESENTATIVE PROPERLY CERTIFIED IN ACCORDANCE WITH SECTION 2 ABOVE MAY REQUEST AND SHALL OBTAIN ACCESS THROUGH THE APPROPRIATE SUPERVISOR TO REVIEW THE DOCUMENTS, FILES AND OTHER RECORDS NECESSARY FOR PROCESSING A GRIEVANCE OR DETERMINING IF A GRIEVANCE EXISTS AND SHALL HAVE THE RIGHT TO INTERVIEW THE AGGRIEVED EMPLOYEE(S), SUPERVISORS AND WITNESSES DURING WORKING HOURS. SUCH REQUESTS SHALL NOT BE UNREASONABLY DENIED.

WHO INITIATES THE GRIEVANCE?

- THE SHOP STEWARD INITIATES THE GRIEVANCE FOR DISCIPLINE
- THE FORMAL A REPRESENTATIVE DOES NOT INITIATE A GRIEVANCE, UNLESS THE SUBJECT OF THE GRIEVANCE IS SAFETY RELATED
- SHOP STEWARDS HAVE 14 DAYS IN WHICH TO REQUEST INFORMATION AND DOCUMENTS, TO INTERVIEW WITNESSES, TO ASCERTAIN WHETHER A GRIEVANCE EXISTS, OR NOT
- 14 DAYS TO INVESTIGATE THE GRIEVANCE, TO WRITE CONTENTIONS, AND TO PREPARE FOR THE INFORMAL STEP A MEETING. THE MOST TIME THAT IS GIVEN TO ANY OF THE STEPS OF A GRIEVANCE.

WHAT IS THIS???

- IF MANAGEMENT DOES NOT PROVIDE THE INFORMATION THAT THE SHOP STEWARD REQUESTS, THEN THEY MEET AT FORMAL A WITH THE IMMEDIATE SUPERVISOR AND THEN SEND IT UP TO THE FORMAL STEP A
- FORMAL A REPRESENTATIVES MEET AND GUESS WHAT SHOWS UP AT THE FORMAL STEP A MEETING? ALL OF THE INFORMATION THAT WAS REQUESTED AT INFORMAL STEP A. NOW THE FORMAL STEP A REPRESENTATIVE HAS A HANDFULL OF INFORMATION THAT THEY DIDN'T EVEN REQUEST AND NOW THEY HAVE TO EITHER GUESS, OR CALL THE INFORMAL A REPRESENTATIVE AND ASK WHY THEY WANTED/NEEDED THAT INFORMATION

JUST A LITTLE LATE

- NOW THE FORMAL A WILL HAVE TO TAKE THE TIME TO SORT THROUGH THE INFORMATION AND THEN DO THEIR CONTENTIONS OFF OF INFORMATION THAT WAS REQUESTED BY THE INFORMAL A REPRESENTATIVE
- MANAGEMENT IS GOING TO SAY THAT THEY FULFILLED THEIR OBLIGATION UNDER ARTICLES 17 & 31 OF THE JCAM BECAUSE THEY DID FURNISH THE UNION THE REQUESTED INFORMATION, IT WAS JUST A LITTLE LATER THAN THEY SHOULD HAVE, SO IT SHOULDN'T AFFECT THE DISCIPLINE/GRIEVANCE
- DO NOT EVER GO FOR THAT

THE CONTRACT IS CLEAR

- THE FORMAL A REPRESENTATIVE DID NOT INITIATE THE GRIEVANCE
- THE INFORMAL A REPRESENTATIVE INITIATED THE GRIEVANCE. IT IS THEIR NAME THAT IS SIGNED ON THE 8190 ON THE TOP PORTION
- WE CAN NOT LET MANAGEMENT GET AWAY WITH THAT
- THE FORMAL A REPRESENTATIVE SHOULD BE TELLING MANAGEMENT THAT THEY DID NOT FILE THIS GRIEVANCE AND THEY HAD 14 DAYS IN WHICH TO GET IT AND YOU FAILED TO DO SO AND THAT IS A VIOLATION OF ARTICLES 17 & 31 OF THE JCAM
- IT IS ONE OF THE BIGGEST DUE PROCESS VIOLATION YOU WILL GET
- DO NOT LET MANAGEMENT REMAND IT BACK DOWN TO THE INFORMAL LEVEL

JCAM ARTICLE 17

- STEWARD RIGHTS. ARTICLE 17, SECTIONS 3 AND 4 ESTABLISH SEVERAL STEWARD RIGHTS:
 - THE RIGHT TO INVESTIGATE AND ADJUST GRIEVANCES AND PROBLEMS THAT MAY BECOME GRIEVANCES;
 - THE RIGHT TO PAID TIME TO CONDUCT THOSE ACTIVITIES;
 - THE RIGHT TO OBTAIN MANAGEMENT INFORMATION;
 - SUPERSENIORITY CONCERNING BEING INVOLUNTARILY TRANSFERRED;
 - AN EMPLOYEE'S RIGHT TO STEWARD REPRESENTATION DURING AN INSPECTION SERVICE INTERROGATION

STEWARD RIGHTS

- STEWARD RIGHTS—ACTIVITIES INCLUDED.

A STEWARD MAY CONDUCT A BROAD RANGE OF ACTIVITIES RELATED TO THE INVESTIGATION AND ADJUSTMENT OF GRIEVANCES AND OF PROBLEMS THAT MAY BECOME GRIEVANCES. THESE ACTIVITIES INCLUDE THE RIGHT TO REVIEW RELEVANT DOCUMENTS, FILES AND RECORDS, AS WELL AS INTERVIEWING A POTENTIAL GRIEVANT, SUPERVISORS, AND WITNESSES. SPECIFIC SETTLEMENTS AND ARBITRATION DECISIONS HAVE ESTABLISHED THAT A STEWARD HAS THE RIGHT TO DO (AMONG OTHER THINGS) THE FOLLOWING:

- COMPLETE GRIEVANCE FORMS AND WRITE APPEALS ON THE CLOCK
- INTERVIEW WITNESSES, INCLUDING POSTAL PATRONS WHO ARE OFF POSTAL PREMISES

STEWARD RIGHTS CONTINUED

- INTERVIEW SUPERVISORS (STEP 4, H7N-3Q-C 31599, MAY 20, 1991, M-00988);
- INTERVIEW POSTAL INSPECTORS (MANAGEMENT LETTER, N8-N-0224, MARCH 10, 1981, M-00225);
- REVIEW RELEVANT DOCUMENTS (STEP 4, H4N-3W-C 27743, MAY 1, 1987, M-00837);
- REVIEW AN EMPLOYEE'S OFFICIAL PERSONNEL FOLDER WHEN RELEVANT (STEP 4, NC-E 2263, AUGUST 18, 1976, M-00104);
- WRITE THE UNION STATEMENT OF CORRECTIONS AND ADDITIONS TO THE FORMAL STEP A DECISION (STEP 4, A8-S-0309, DECEMBER 7, 1979, M-01145);
- INTERVIEW OFFICE OF INSPECTOR GENERAL [OIG] AGENTS. A STEWARD HAS THE RIGHT TO CONDUCT ALL SUCH ACTIVITIES ON THE CLOCK

WHAT TO DO IF DENIED

- IF ANY OF THESE THINGS ARE DENIED BY THE SUPERVISOR, MAKE SURE THAT YOU GET THAT IN WRITING
- ON THE INFORMATION REQUEST WHERE YOU WRITE THAT YOU WANT TO INTERVIEW A WITNESS THAT IS A CUSTOMER ON THE ROUTE AND MANAGEMENT SAYS NO, THEY DON'T WANT YOU BOTHERING THE CUSTOMERS, DO NOT ARGUE WITH THEM. JUST GET THEM TO SIGN OFF THAT YOUR REQUEST WAS DENIED BY MANAGEMENT AND IN YOUR CONTENTIONS YOU STATE THAT YOU WERE DENIED THIS RIGHT, AND MAKE SURE YOU LIST WHY IT WAS IMPORTANT TO INTERVIEW THIS PERSON AND HOW IT HAS NOW HINDERED YOU IN DEFENDING THE CARRIER
- THE SHOP STEWARD WILL NOW FILE AN ARTICLE 16,17 AND 31 ON THE MANAGER FOR NOT PROVIDING THE INFORMATION THAT WAS REQUESTED
- IF YOU ARE NOT GIVEN TIME ON THE CLOCK TO FILE THE GRIEVANCE, THEN YOU GO HOME AND DO THE GRIEVANCE. BUT, YOU WILL DOCUMENT EVERY MINUTE SPENT ON THAT GRIEVANCE AND IN THE GRIEVANCE ITSELF YOU MAKE THAT A CONTENTION AND ASKED TO BE PAID YOUR TIME THAT WAS SPENT DOING THAT GRIEVANCE IN THE REMEDY SECTION

STAND UP TO IT ITS YOUR RIGHT

- DO NOT BE AFRAID TO ASK FOR ANY INFORMATION YOU THINK YOU WILL NEED
- IF YOU HAVE TO INTERVIEW A DISTRICT MANAGER,OIG OR A POSTAL INSPECTOR, YOU HAVE THAT RIGHT
- DO NOT LET ANYONE TELL YOU THAT IT WON'T MAKE A DIFFERENCE TO THAT GRIEVANCE. IF YOU THINK THAT BY INTERVIEWING THEM IT COULD BRING INFORMATION THAT YOU NEED TO THE GREIVANCE, THEN BY ALL MEANS INTERVIEW EVERYONE
- IT IS OUR RIGHT AND OBLIGATION TO GET EVERY CLUE, EVERY PIECE OF THE PUZZLE OUT ON THE TABLE AND LOOK AT IT, INVESTIGATE IT
- BUT DON'T LET ANYONE BULLY YOU INTO THINKING YOU DON'T NEED THAT INFORMATION
- CALL YOUR FORMAL A REPRESENTATIVE OR YOUR BUSINESS AGENT TO HELP TO FORMULATE QUESTIONS

JCAM ARTICLE 17 LANGUAGE

- RIGHT TO INFORMATION. THE NALC'S RIGHTS TO INFORMATION RELEVANT TO COLLECTIVE BARGAINING AND TO CONTRACT ADMINISTRATION ARE SET FORTH IN ARTICLE 31. THIS SECTION STATES STEWARDS' SPECIFIC RIGHTS TO REVIEW AND OBTAIN DOCUMENTS, FILES AND OTHER RECORDS, IN ADDITION TO THE RIGHT TO INTERVIEW A GRIEVANT, SUPERVISORS, AND WITNESSES. STEWARD REQUESTS TO REVIEW AND OBTAIN DOCUMENTS SHOULD STATE HOW THE REQUEST IS RELEVANT TO THE HANDLING OF A GRIEVANCE OR POTENTIAL GRIEVANCE. MANAGEMENT SHOULD RESPOND TO QUESTIONS AND TO REQUESTS FOR DOCUMENTS IN A COOPERATIVE AND TIMELY MANNER. WHEN A RELEVANT REQUEST IS MADE, MANAGEMENT SHOULD PROVIDE FOR REVIEW AND/OR PRODUCE THE REQUESTED DOCUMENTATION AS SOON AS IS REASONABLY POSSIBLE. A STEWARD HAS A RIGHT TO OBTAIN SUPERVISORS' PERSONAL NOTES OF DISCUSSIONS HELD WITH INDIVIDUAL EMPLOYEES IN ACCORDANCE WITH ARTICLE 16.2 IF THE NOTES HAVE BEEN MADE PART OF THE EMPLOYEE'S OFFICIAL PERSONNEL FOLDER OR IF THEY ARE NECESSARY TO PROCESSING A GRIEVANCE OR DETERMINING WHETHER A GRIEVANCE EXISTS

JCAM ARTICLE 15.2

- 15.2 INFORMAL STEP A SECTION 2 GRIEVANCE PROCEDURE—STEPS INFORMAL STEP A
 - ANY EMPLOYEE WHO FEELS AGGRIEVED MUST DISCUSS THE GRIEVANCE WITH THE EMPLOYEE'S IMMEDIATE SUPERVISOR WITHIN FOURTEEN (14) DAYS OF THE DATE ON WHICH THE EMPLOYEE OR THE UNION FIRST LEARNED OR MAY REASONABLY HAVE BEEN EXPECTED TO HAVE LEARNED OF ITS CAUSE. THIS CONSTITUTES THE INFORMAL STEP A FILING DATE. THE EMPLOYEE, IF HE OR SHE SO DESIRES, MAY BE ACCOMPANIED AND REPRESENTED BY THE EMPLOYEE'S STEWARD OR A UNION REPRESENTATIVE. **DURING THE MEETING, THE PARTIES ARE ENCOURAGED TO JOINTLY REVIEW ALL RELEVANT DOCUMENTS TO FACILITATE RESOLUTION OF THE DISPUTE.** THE UNION ALSO MAY INITIATE A GRIEVANCE AT INFORMAL STEP A WITHIN 14 DAYS OF THE DATE THE UNION FIRST BECAME AWARE OF (OR REASONABLY SHOULD HAVE BECOME AWARE OF) THE FACTS GIVING RISE TO THE GRIEVANCE. IN SUCH CASE THE PARTICIPATION OF AN INDIVIDUAL GRIEVANT IS NOT REQUIRED. AN INFORMAL STEP A UNION GRIEVANCE MAY INVOLVE A COMPLAINT AFFECTING MORE THAN ONE EMPLOYEE IN THE OFFICE.

RELEVANT TO WHO

- BIGGEST WORDS IN ARTICLE 15 AND 17 ARE RELEVANT.
- IF THE INFORMATION IS RELEVANT TO YOU AND YOU DON'T GET IT RAISE ABSOLUTE HECK ON THAT
- THE STEWARD'S CONTENTIONS SHOULD BE SMASHING THAT BY STATING THAT IT IS A VIOLATION OF ARTICLES 15, 17 AND 31 OF THE JCAM THAT MANAGEMENT FAILED TO PROVIDE THE UNION WITH THE DOCUMENTATION THAT THEY REQUESTED AT INFORMAL A, AND NOW THEY DO NOT HAVE THE PROPER DOCUMENTATION TO FACILITATE A PROPER RESOLUTION
- THAT'S A MOSQUITO RIGHT THERE

DOCUMENTATION

- MAKE SURE THAT YOU HAVE ALL OF YOUR STUFF WELL DOCUMENTED
- IF THE STEWARD REQUESTED THE INFORMATION AND DID NOT GET IT, THE INFORMATION REQUEST STILL NEEDS TO BE IN THE CASE FILE WITH A SIDE NOTE THAT THEY DID NOT RECEIVE THIS INFORMATION
- WHEN YOU ARE TURNING IN YOUR INFORMATION REQUESTS MAKE SURE THAT YOU EITHER TURN IN TWO OR MAKE A COPY OF THE ONE THAT IS SIGNED. KEEP A COPY NO MATTER WHAT
- THE STEWARD IS ONLY OBLIGATED TO TURN IN ONE INFORMATION REQUEST FORM. SOME STEWARDS WILL KEEP HANDING IN A REQUEST FOR THE SAME INFORMATION OVER AND OVER, BUT YOU DON'T HAVE TO CONTRACTUALLY. IT MAY LOOK BETTER AT A HIGHER LEVEL THAT YOU TURNED IN 6 INFORMATION REQUESTS AND STILL DID NOT GET THE INFORMATION REQUESTED THOUGH, BUT IT IS UP TO THE STEWARD

INFORMATION REQUESTS

- AN INFORMATION REQUEST CAN BE ANYTHING THAT YOU HAVE USED TO REQUEST INFORMATION FROM MANAGEMENT FOR
- A TEXT MESSAGE, A HANDWRITTEN NOTE, AN EMAIL
- ANYTHING CAN BE USED
- IT DOES NOT NEED TO BE AN OFFICIAL FORM THAT IS USED BY THE NALC, EVEN THOUGH THAT DOES LOOK MORE PROFESSIONAL, AND IF MANAGEMENT STATES THAT THEY CAN NOT USE THAT OR THAT THEY NEED AN OFFICIAL FORM, THEN FILE A GRIEVANCE ON THAT BECAUSE THEY ARE STALLING AND TRYING TO THROW YOU OFF TRACK

DEALING WITH THE DEPARTMENT OF LABOR

- IF YOU SUBMIT A REQUEST TO INTERVIEW AN MPOO, A CUSTOMER AND REQUEST DOCUMENTATION YOU FEEL IS RELEVANT.
- IN ABOUT 3 DAYS YOU GET A LETTER FROM LABOR, AND IT'S A RELEVANCY LETTER. THE LETTER SAYS WE NEED TO SEE THE RELEVANCY OF THE INFORMATION THAT YOU'RE REQUESTING. THEY MAY ALSO SAY THAT YOU NOW OWE THEM \$\$\$ FOR THE PAGES OF DOCUMENTS THAT YOU REQUESTED
- THIS IS CALLED A RELEVANCY LETTER

ARBITRATOR MITTENTHAL C-10363

- WHAT IS SIGNIFICANT IN THIS CASE WAS THE POSTAL SERVICE ARGUMENT THAT NALC FAILED TO SHOW THAT THE INFORMATION REQUESTED WAS "RELEVANT OR NECESSARY FOR COLLECTIVE BARGAINING AND/OR CONTRACT ADMINISTRATION" MY DECISION NOTED THAT NALC HAD EXPLAINED IN STEP 4 THAT THIS INFORMATION WAS TO BE USED FOR "TELEPHONE SURVEYS" OF ITS MEMBERS. THOSE SURVEYS, ACCORDING TO THE BERNSTEIN AWARD, WERE TO BE CONDUCTED AMONG "SPECIFIC SUBGROUPS OF THE BARGAINING UNIT - WOMEN, BLACKS, VETERANS, ETC. - TO ASCERTAIN THEIR PARTICULARIZED NEEDS AND DESIRES SO THAT THEY CAN PROPERLY BE REPRESENTED IN THE UNION'S BARGAINING PROPOSALS." ON THE BASIS OF NALC'S CLAIM THAT SUCH INFORMATION WAS "NECESSARY" FOR COLLECTIVE BARGAINING, BERNSTEIN HAD HELD, AND I EXPRESSLY AGREED: ...THIS IS A SUFFICIENT SHOWING TO COMPLY WITH THE [ARTICLE 31, SECTION 2] MANDATE THAT THE DATA SOUGHT MUST BE "RELEVANT INFORMATION NECESSARY FOR COLLECTIVE BARGAINING."

ARBITRATOR MITTENTHAL C-10363

- THE ARBITRATOR CANNOT BE MADE THE JUDGE OF THE UNION'S BARGAINING NEEDS. THE DECISION AS TO WHAT DATA IS NEEDED TO PREPARE THE UNION'S BARGAINING PROPOSALS IS ONE THAT ONLY THE UNION CAN MAKE. IF IT ASSERTS THAT IT NEEDS THIS DATA FOR THAT PURPOSE, AND THERE IS NO REASON TO CONCLUDE THAT THE ASSERTION IS NOT TRUTHFUL, THAT IS ENOUGH TO SATISFY THE MANDATE OF ARTICLE 31, SECTION 2. THESE FINDINGS SHOULD BE KEPT IN MIND IN EVALUATING THE "RELEVANCY" ARGUMENTS MADE IN THE INSTANT CASE.

ARBITRATOR MITTENTHAL C-10363

- NO DOUBT SOME TYPE OF INVESTIGATION PRECEDES THE SUBMISSION OF A GRIEVANCE. INFORMATION IS DEVELOPED AND A DECISION IS MADE BY APWU AS TO WHETHER OR NOT A GRIEVANCE IS WARRANTED. IF THERE SEEMS TO BE NO MERIT IN A PARTICULAR COMPLAINT, PRESUMABLY NO GRIEVANCE WOULD BE FILED. IT IS FOR THE APWU ALONE TO "DETERMINE IF A GRIEVANCE EXISTS...", TO "DETERMINE WHETHER TO FILE...A GRIEVANCE..." IF THE INFORMATION IT SEEKS HAS ANY "RELEVANCY" TO THAT DETERMINATION, HOWEVER SLIGHT, ITS REQUEST FOR THIS INFORMATION SHOULD BE GRANTED. ASSUME FOR THE MOMENT THAT THE EI/QWL MINUTES WERE NOT "RELEVANT" TO THE WORK JURISDICTION GRIEVANCE FILED FIVE WEEKS AFTER APWU INITIALLY REQUESTED THESE MINUTES.

ARBITRATOR MITTENTHAL C-10363

- THAT ASSUMPTION CANNOT CONTROL THE DISPOSITION OF THE PRESENT CASE. WHETHER A PIECE OF INFORMATION IS "RELEVANT" TO THE MERITS OF A GIVEN CLAIM IS ONE THING; WHETHER SUCH INFORMATION IS "RELEVANT" TO APWU'S DETERMINATION TO PURSUE (OR NOT PURSUE) THAT CLAIM THROUGH THE FILING OF A GRIEVANCE IS QUITE ANOTHER. THE LATTER QUESTION ALLOWS "RELEVANCY" A FAR BROADER REACH AND SHOULD HAVE PERMITTED THE APWU, FOR THE REASONS ALREADY EXPRESSED, TO RECEIVE THE APPROPRIATE EI/QWL MINUTES. THE POSTAL SERVICE VIEW THAT APWU'S REQUEST FOR THESE MINUTES WAS A MERE "FISHING EXPEDITION" IS NOT PERSUASIVE.

ARBITRATOR AUGUST C-33968

- ACCORDING TO THE UNION, THE SERVICE DID NOT HAVE 'JUST CAUSE" TO ISSUE THE EP AND FURTHER ARGUED THAT MANAGEMENT HAS SINCE INVESTIGATED THE INCIDENT AND STILL THE GRIEVANT REMAINS IN AN EMERGENCY PLACEMENT STATUS AFTER SEVEN (7) MONTHS. THE UNION FURTHER ALLEGES A DUE PROCESS VIOLATION BY MANAGEMENT BASED ON THEIR FAILURE TO PROVIDE REQUESTED INFORMATION RELEVANT TO THE GRIEVANCE.

ARBITRATOR AUGUST C-33968

- THE CASE FILE DEMONSTRATED THAT ON AUGUST 24, 2018, THE UNION REQUESTED INFORMATION FROM MANAGEMENT WHICH WAS RELEVANT TO THE INSTANT GRIEVANCE. THE INFORMATION REQUESTED WAS OBVIOUSLY RELATED TO THE GRIEVANT'S DEFENSE. ALBEIT THE GRIEVANT WAS A SHORT-TERM EMPLOYEE, SHE IS STILL ENTITLED TO A DEFENSE BY THE UNION. THE UNION REQUESTED THE FOLLOWING INFORMATION:
 - • COPY OF VEHICLE ACCIDENT REPORT ON 8/15/2018 BY K. AUGUST.
 - • COPY OF MAINTENANCE RECORD OF VEHICLE IN ACCIDENT ON 8/15/2018 BY K. AUGUST.
 - • COPY OF INVESTIGATIVE INTERVIEW CONDUCTED ON K. AUGUST.
 - • COPY OF DRIVING TRAINING RECORD.

ARBITRATOR AUGUST C-33968

- THE INFORMATION LISTED APPEARS TO BE THE MINIMUM INFORMATION REQUIRED TO MOUNT A DEFENSE FOR THE GRIEVANT. CERTAINLY, A COPY OF THE ACCIDENT REPORT, EMPLOYEE'S DRIVER'S TRAINING RECORD WITH THE POSTAL SERVICE, AND A COPY OF THE INVESTIGATIVE INTERVIEW WOULD BE NECESSARY TO ESTABLISH WHETHER OR NOT, PRIOR TO THE ACCIDENT, THE GRIEVANT WAS PROPERLY TRAINED ON THE VEHICLE, WHETHER ANYTHING ESTABLISHED BY THE ACCIDENT REPORT DEMONSTRATED THAT THE GRIEVANT WAS NEGLIGENT, OR WHETHER THE GRIEVANT, DURING THE INVESTIGATIVE INTERVIEW SAID ANYTHING TO SHED LIGHT ON HER ACTIONS ON THAT DAY. THIS INFORMATION WAS NOT PROVIDED TO THE UNION UNTIL THE DAY OF THE FORMAL A MEETING WHICH CERTAINLY, AT BEST, WOULD HINDER THE UNION'S ABILITY TO PREPARE FOR THE FORMAL A AND ESTABLISH ITS' CONTENTIONS BASED ON THE EVIDENCE AVAILABLE. HOWEVER, THE BIGGEST ISSUE FOR MANAGEMENT IN THIS CASE IS THE FAILURE TO PROVIDE SOME OF THE INFORMATION AT ALL.

WE USE THIS LANGUAGE BECAUSE.....

- IF MANAGEMENT SAYS TO THE SHOP STEWARD, WHY ARE YOU REQUESTING MY INTERVIEW NOTES, YOU WERE IN THE MEETING, JUST USE YOURS. NO. WE ARE ASKING FOR THEIR NOTES TO COMPARE BETWEEN THEIR NOTES AND OURS. THEY MAY HAVE MISSED SOMETHING THAT WAS SAID, OR THEY COULD HAVE ADDED OR DELETED QUESTIONS AND ANSWERS
- IF MANAGEMENT REFUSES TO GIVE THE STEWARD THE INFORMATION THAT THEY REQUESTED, AFTER THE INFORMAL A MEETING THE STEWARD SHOULD BE FILING AN ARTICLE 15, 17 & 31
- FORMAL A REPRESENTATIVES: IF YOU RECEIVE THE INFORMATION THAT THE INFORMAL A REPRESENTATIVE REQUESTED YOU NEED TO SAY SOMETHING. YOU WERE NOT THE STEWARD WHO FILED THE GRIEVANCE. YOU ARE NOT THE STEWARD WHO REQUESTED THAT INFORMATION. THIS DOES NOT FULFILL MANAGERMENTS RIGHT TO GET THE INFORMATION TO THE UNION AND THIS SHOULD GO INTO YOUR CONTENTIONS

ARBITRATOR AUGUST C-34816

- THE UNION RAISED CONTRACTUAL ISSUES IN ADDITION TO THE ISSUE OF "JUST CAUSE" FOR THE DISCIPLINARY ACTION IN THIS CASE. THE FIRST ISSUE WAS WHETHER OR NOT MANAGEMENT VIOLATED ARTICLES 15, 17 AND/OR 31 OF THE NATIONAL AGREEMENT WHEN THE SERVICE FAILED TO PROVIDE THE INFORMATION REQUESTED BY THE UNION STEWARD, IN VIOLATION OF PREVIOUS STEP B TEAM DECISIONS AND ARBITRATION DECISION G11N-4G-C 15151845/124-205-15 WHICH DIRECTED MANAGEMENT TO CEASE AND DESIST FAILING TO PROVIDE INFORMATION RELEVANT TO A GRIEVANCE. THE UNION FURTHER ALLEGED THAT MANAGEMENT VIOLATED ARTICLES 15.2 AND 15.3 WHEN THEY, IN FACT, FAILED TO MEET AT THE INFORMAL A LEVEL OF THE GRIEVANCE PROCESS IN VIOLATION OF PRIOR STEP B AND ARBITRATION DECISIONS INCLUDED IN THE GRIEVANCE FILE. THESE ISSUES WERE RAISED IN ADDITION TO THE UNION'S ARGUMENTS THAT THE NOTICE OF REMOVAL DATED AUGUST 19, 2019, WAS ISSUED WITHOUT "JUST CAUSE"

ARBITRATOR AUGUST C-34816

- CENTRAL TO THE UNION'S CASE IS THE PROCEDURAL DUE PROCESS VIOLATION ALLEGED WHEN MANAGEMENT WITHHELD INFORMATION THAT THE UNION DEEMED NECESSARY TO MOUNT A DEFENSE FOR THE GRIEVANT. THE UNION RELIED ON THE ARBITRAL OPINION OF ARBITRATOR WILLIAM E. RENFRO IN CASE NUMBER NC-W-15, 975-D, DATED APRIL 9, 1979, WHERE HE STATED IN PERTINENT PART:
 - A REVIEW OF RECENT ARBITRAL AWARDS IN DISCIPLINARY CASES REVEALS A GROWING CONSENSUS AMONG ARBITRATORS THAT A JUST CAUSE STANDARD, TO WHICH DISCIPLINE IS CONTRACTUALLY REQUIRED TO CONFORM, EMBODIES THE PRINCIPLE OF PROCEDURAL DUE PROCESS ... RATHER, ARBITRATORS HAVE RECOGNIZED THAT PARTICULAR DUE PROCESS CONCERNS ARE IMPLICITLY ADDRESSED BY THE PARTIES IN NEGOTIATING EMPLOYEE RIGHTS TO GRIEVE DISCIPLINARY ACTION; AND, ARE INHERENT IN ANY CONTRACTUAL PROVISION REQUIRING AN EMPLOYER TO ESTABLISH JUST CAUSE FOR DISCIPLINING OR DISCHARGING EMPLOYEES.
 - THUS, IT CAN BE SEEN THAT DUE PROCESS IS NOT A MERE TECHNICAL REQUIREMENT; IT IS AN INTEGRAL PART OF THE JUST CAUSE CLAUSE THAT THE PARTIES HAVE AGREED UPON. FOR AN ARBITRATOR, IN CONSTRUING A JUST CAUSE CLAUSE, PARTICULARLY WHERE DISCHARGE IS INVOLVED, TO REACH A DETERMINATION WITHOUT CONSIDERING WHETHER DUE PROCESS HAS BEEN AFFORDED A GRIEVANT IS TO INVITE THE VERY LABOR UNREST THE PARTIES HOPED TO AVOID IN INCLUDING SUCH A CLAUSE IN THEIR COLLECTIVE BARGAINING AGREEMENT.

ARBITRATOR AUGUST C-34816

- ARBITRATOR RENFRO WENT ON TO DISCUSS OTHER SOURCES IN HIS DISCUSSION OF PROCEDURAL DUE PROCESS AND NOTED THE DISCUSSION IN CCH'S CURRENT COMMENT AND CCH ANALYSIS, §58,572.-5 WHICH HELD THAT "FAILURE TO AFFORD AN ACCUSED MAN HIS FULL RIGHTS UNDER THE LAW WILL INVALIDATE THE ENTIRE PROCEEDINGS AGAINST HIM", AS WITNESSED BY MANY SUPREME COURT DECISIONS. IT IS NOT STRANGE, THEN, TO FIND THE IDEA OF PROCEDURAL DUE PROCESS WELL ESTABLISHED IN THE FIELD OF INDUSTRIAL AND LABOR RELATIONS DEALING WITH DISCIPLINE. "THE UNION OFTENTIMES RAISES THE ISSUE OF FAILURE TO PROVIDE INFORMATION, HOWEVER, MORE OFTEN THEN NOT IT IS THE DELAY OF INFORMATION WHICH IS AT THE CORE OF THE ALLEGATION. IN THE INSTANT CASE, WE HAVE A REQUEST FOR INFORMATION WHICH THE UNION PRESENTED AS EVIDENCE, AND WAS INCLUDED IN THE CASE FILE, YET MANAGEMENT DID NOT REBUT THE FACT THAT THE INFORMATION WAS NOT PROVIDED. ALSO, THERE WAS NO INDICATION THAT THE INFORMATION WAS PROVIDED TO THE UNION AT ANY LEVEL SUBSEQUENT TO INFORMAL A. MANAGEMENT AT FORMAL A ACKNOWLEDGED THE REQUEST, BY HIS INITIALS ON THE FORM, BUT THE INFORMATION REQUESTED WAS NOT PROVIDED TO THE UNION OR MADE PART OF THE GRIEVANCE FILE.

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- THE JCAM AT ARTICLE 31.3 CLEARLY PROVIDES CLEAR AND UNAMBIGUOUS LANGUAGE REGARDING REQUESTS FOR INFORMATION SUBMITTED BY THE UNION AND THEIR RIGHT TO RECEIVE THAT INFORMATION.
- INFORMATION.
 - ARTICLE 31.3 PROVIDES THAT THE POSTAL SERVICE WILL MAKE AVAILABLE TO THE UNION ALL RELEVANT INFORMATION NECESSARY FOR COLLECTIVE BARGAINING OR THE ENFORCEMENT, ADMINISTRATION OR INTERPRETATION OF THE AGREEMENT, INCLUDING INFORMATION NECESSARY TO DETERMINE WHETHER TO FILE OR TO CONTINUE THE PROCESSING OF A GRIEVANCE. IT ALSO RECOGNIZES THE UNION'S LEGAL RIGHT TO EMPLOYER INFORMATION UNDER THE NATIONAL LABOR RELATIONS ACT.

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- PARTICULARLY WHERE THE GRIEVANCE BEING PROCESSED IS ONE OF DISCIPLINARY REMOVAL, AND WHERE IN THE STAKES ARE VERY HIGH, **IT IS IMPERATIVE THAT ALL REQUESTED INFORMATION BE PROVIDED SO THAT THE GRIEVANT HAS THE BEST OPPORTUNITY AT A DEFENSE.** WITHOUT ASSURING THE ACCUSED MAN (IN THIS CASE THE GRIEVANT) HIS FULL RIGHTS UNDER THE LAW, IT INVALIDATES THE ENTIRE PROCEEDINGS AGAINST HIM. THE FACT , CIRCUMSTANCES IN THE INSTANT CASE SHOWS THAT MANAGEMENT FAILED TO REBUT THE UNION'S ALLEGATION THAT THE REQUEST FOR INFORMATION WAS NOT SATISFIED. THE EVIDENCE OF RECORD FURTHER DEMONSTRATED THAT THE SERVICE FAILED TO PROVIDE THE REQUESTED INFORMATION, THUS, THIS ARBITRATOR CANNOT BE ASSURED THAT THE GRIEVANT WAS PROVIDED HIS FULL RIGHTS UNDER THE COLLECTIVE BARGAINING AGREEMENT.

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- THE JOINT CONTRACT ADMINISTRATION MANUAL (JCAM) AT ARTICLE 16, REQUIRES THAT "NO EMPLOYEE MAY BE DISCIPLINED OR DISCHARGED, EXCEPT FOR JUST CAUSE", THE JCAM EXPLAINS THAT PRIOR TO THE ISSUANCE OF DISCIPLINE, MANAGEMENT MUST REVIEW THE ELEMENTS OF "JUST CAUSE" AND BE ABLE TO SATISFY ALL QUESTIONS, WHICH WERE ESTABLISHED BY ARBITRATORS REVIEWING DISCIPLINARY ACTIONS, TO DECIDE IF MANAGEMENT DID INDEED PROVE THAT THERE WAS A NEED TO TAKE ACTION, AS WELL AS PROVE THAT ACTION WAS NECESSARY AT THE LEVEL IMPOSED. THE SERVICE'S FAILURE TO PROVIDE THE INFORMATION REQUESTED BY THE UNION AND ITS ABSENCE FROM THE GRIEVANCE FILE, NOT ONLY DENIED THE GRIEVANT'S ABILITY TO MOUNT A DEFENSE, BUT BY DOING SO, MANAGEMENT FAILED TO PROVIDE THE EVIDENCE NECESSARY TO PROVE THAT JUST CAUSE EXISTED. TO UPHOLD A REMOVAL, THE ULTIMATE DISCIPLINARY ACTION, THE EMPLOYER MUST PROVE BY CLEAR AND CONVINCING EVIDENCE, THAT THE GRIEVANT WAS GUILTY AS CHARGED.

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- PRIOR DISCIPLINARY ACTION CAN BE USED TO ASSIST IN DETERMINING THE APPROPRIATE LEVEL OF DISCIPLINE NECESSARY, BUT IT CANNOT BE USED TO DETERMINE GUILT. SIMPLY PROVING THAT AN EMPLOYEE HAS HAD AN ATTENDANCE PROBLEM IN THE PAST IS INSUFFICIENT TO SUPPORT TERMINATION. AN EMPLOYER MUST SATISFY ALL QUESTIONS OF JUST CAUSE, INCLUDING THAT A THOROUGH INVESTIGATION WAS CONDUCTED. THE GRIEVANCE FILE LACKS THE EVIDENCE NECESSARY TO PROVE THAT FACT, PARTICULARLY WITHOUT THE INCLUSION OF THE PS FORMS 3971S AND OTHER DOCUMENTS REQUESTED BY THE UNION. THE UNION'S ARGUMENTS REGARDING THE LACK OF SUPERVISOR INPUT ON THE FORMS 3972S ALSO HAS MERIT, BUT MUST BE REVIEWED IN THE CONTEXT OF THEIR INABILITY TO FULLY PREPARE THEIR DEFENSE DUE TO THE LACK OF INFORMATION PROVIDED.

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- THE UNION RELIED ON ARBITRAL OPINION TO SUPPORT THEIR POSITION IN THIS CASE; ONE CASE SUBMITTED BY THE UNION WAS REVIEWED BY ARBITRATOR LOUISE B. WOLITZ. IN CASE NUMBER G11N-4GD 16010412, ARBITRATOR WOLITZ FOUND THAT MANAGEMENT FAILED TO MEET THEIR BURDEN OF PROOF THAT JUST CAUSE EXISTED TO REMOVE THE GRIEVANT AND THAT THE SERVICE WITHHELD INFORMATION FROM THE UNION. SHE FURTHER CONCLUDED:
 - BY DENYING THE UNION THE NECESSARY INFORMATION TO CONDUCT A PROPER INVESTIGATION AND DENYING THE GRIEVANT A CHANCE TO FACE HIS ACCUSER, MANAGEMENT HAS DENIED THE GRIEVANT HIS DUE PROCESS RIGHTS. THE UNION CANNOT FAIRLY REPRESENT THE GRIEVANT TO THE BEST OF THEIR ABILITY NOR PUT FORTH A PROPER DEFENSE WITHOUT ACCESS TO THE INFORMATION RELIED UPON BY MANAGEMENT IN THEIR DECISION TO REMOVE THE GRIEVANT. THE UNION ASSERTED THIS AT THE FORMAL A MEETING, AS CAN BE SEEN IN THEIR CONTENTIONS. MANAGEMENT DID NOT DISPUTE THE UNION'S CONTENTIONS AT FORMAL A, SO THEY SHOULD BE CONSIDERED UNDISPUTED FACTS BY THE ARBITRATOR.

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- LIKEWISE, IN THE INSTANT CASE, MANAGEMENT DID NOT DISPUTE THE UNION ARGUMENTS THAT THEIR REQUEST FOR INFORMATION WAS NOT SATISFIED, AND THE EVIDENCE OF RECORD SUPPORTS THIS CONTENTION. THERE CAN BE NO OTHER ASSUMPTION THAN THAT THE UNION IN THIS CASE CANNOT FAIRLY REPRESENT THE GRIEVANT OR PUT ON A PROPER DEFENSE. AS CONCLUDED BY THE SUPREME COURT AND CITED BY ARBITRATOR RENFRO IN THE AFOREMENTIONED CITED DECISION, "FAILURE TO AFFORD AN ACCUSED MAN HIS FULL RIGHTS UNDER THE LAW WILL INVALIDATE THE ENTIRE PROCEEDINGS AGAINST HIM"; THE SAME APPLIES TO THE GRIEVANT'S RIGHTS UNDER THE COLLECTIVE BARGAINING AGREEMENT. MANAGEMENT'S VIOLATION OF ARTICLE 17 AND 31 DENIED THE GRIEVANT DUE PROCESS, THUS INVALIDATING THE REMOVAL.

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- IF MANAGEMENT FAILS TO PROVIDE INFORMATION AT THE INFORMAL STEP A, THE STEWARD NEEDS TO MAKE SURE THAT THIS IS NOTED ON THE REQUEST FORM, WRITE A STATEMENT THAT YOU DID NOT RECEIVE THE INFORMATION YOU REQUESTED AND WHY YOU NEEDED THAT INFORMATION, SHOW THE RELEVANCE OF WHY, AND PLACE THAT INTO THE FILE THAT GOES UP TO FORMAL A
- IN THE CONTENTIONS OF THE INFORMAL A MEETING THE STEWARD MUST CONTEND THAT THEY DID NOT RECEIVE THE INFORMATION AND BECAUSE OF THAT THE GRIEVANT HAS NOT BEEN GIVEN HIS DUE PROCESS

CONTENTIONS

- IF YOU ARE THE FORMAL STEP A REPRESENTATIVE AND THE INFORMATION THAT THE INFORMAL STEP A REPRESENTATIVE IS GIVEN TO YOU AND NOT THEM, YOU NEED TO MAKE THAT ONE OF YOUR CONTENTIONS
- ARTICLES 17 AND 31 ARE THE SINGLE GREATEST KILLER OF DISCIPLINE THAN THE OTHER TWO OR THREE BEST DUE PROCESS VIOLATIONS COMBINED MAKE SURE YOU ARE PUTTING THEM IN YOUR CONTENTIONS
- NOTHING WILL KILL DISCIPLINE FASTER THAN MANAGERMENTS VIOLATION OF ARTICLE 17 AND 31
- STEWARDS HAVE TO MAKE THAT GREAT CONTENTION ON IT AND GET IT UP TO THE FORMAL A AND BEYOND