

## **GUIDELINES (for Union use)**

### **Grievances re: Discipline for failure to follow instructions/extension of field time resulting from *conflicting* management instructions**

**Issue Statement:** Did the employer have just cause to issue the grievant a letter of warning dated ..... alleging failure to follow instructions? Contract provisions, including but not limited to Articles 3, 15, 16, and 19 of the Collective Bargaining Agreement, M-39 115.

#### **FACTS TO CONSIDER:** (provide evidence as necessary)

- Was the grievant given a clear, unambiguous instruction? If not, specify the conflict and/or ambiguity in the instruction. A written statement is essential.
- Was the grievant made aware failure to comply with the instruction would lead to discipline?
- Did the grievant willfully disobey the instruction? Again, document the intentional ambiguity in management's actions. Obtain the grievant's clock rings, copies of forms 3996 and/or 1571, as well as the posted schedule of his/her assignment(s) that day, inclusive of any "pivots."
- Were there witnesses?
- As would be judged under a "reasonable person" test: Did the grievant make a good faith effort to comply with the instructions, however unreasonable?
- Are there prior disciplinary actions cited in the charges? Are they properly cited?
- If the discipline is a suspension, was there proper higher review and concurrence?
- Were the just cause elements present? (See Below)

#### **ARGUMENTS/CITATIONS:**

- Management has the burden of proving discipline was issued for just cause.
- Article 16 of the Joint Contract Administration Manual: Discipline must be for just cause, which includes several considerations:
  - (1) Is there a rule which was violated; if so, was the employee aware of the rule and forewarned of disciplinary consequences for failure to follow the rule"
  - (2) Is the rule reasonable? With documented instances of conflicting instructions, management's behavior can be shown as unreasonable and intended merely to intimidate, confuse, or set the employee up for disciplinary action.
  - (3) Is the rule consistently and equitably enforced?
  - (3) Did the company make a reasonable effort, before disciplining, to discover whether the grievant did, in fact, violate this rule (including interviewing the grievant)?
  - (4) Was its investigation fair and objective?
  - (5) Did it obtain substantial evidence that the grievant was guilty of the offense with which charged?
  - (7) Was the degree of discipline given reasonably related to the seriousness of the proven offense and/or to the grievant's record with the company?
  - (8) Did management provide requested information and steward time, and did they meet to discuss the grievance with full authority to resolve it?
- M-39, § 115:

Discipline must be corrective, not punitive, and for just cause. Management must make every effort to correct a situation before resorting to disciplinary measures.

- Arbitrator Levin, in his decision in case #C-01043, stated that several essential elements must be present for a valid charge of insubordination: "First, there must be a clear and unambiguous order that is understood by the employee. Second, the penalty for not complying must be clearly stated to the employee. Third, the employee must have refused to carry out the order."

**REMEDY:**

- Rescind the discipline; make the grievant whole; and/or other appropriate remedy.  
(Management provide clear and unambiguous order that is understood by the employee)

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.

**C-01043**

Arbitrator Levin

**Arbitrator's Opinion**

The arbitrator must agree with the union that the conditions involved in Charge # 1 does not constitute insubordination. There must be several essential elements present for a valid charge of insubordination. ***First, there must be a clear and unambiguous order that is understood by the employee. Second, the penalty for not complying must be clearly stated to the employee. Third, the employee must have refused to carry out the order.*** Failure to fully comply in all respects to an order, or carrying out the order after argument or discussion about the order, is a significant disciplinary violation, but not as serious as insubordination. In this case, the record shows that the grievant did carry out the order, albeit belatedly and badly.