

GUIDELINES (for Union use)

Grievances re: Discipline for irregular attendance

Issue Statement: Did the employer have just cause to issue the grievant a letter of warning dated alleging failure to adhere to attendance regulations? Contract provisions, including but not limited to: Articles 3, 10, 15, 16, and 19 of the Collective Bargaining Agreement; M-39 115, ELM subchapter 510.

FACTS TO CONSIDER: (provide evidence as necessary)

- Do 3971s and the grievant's 3972 show the absences are properly cited in the notice of charges?
- Were any of the cited absences scheduled in advance? Have any cited absences been charged as unscheduled which should have been charged as scheduled? Discipline for scheduled leave is not for just cause.
- Did the grievant provide any documentation in support of the absences?
- Has management attempted the restriction (ELM 513.391) process as a corrective measure?
- Are any of the cited absences the subject of another grievance (e.g. AWOL charges)?
- Do any of the grievant's cited absences have FMLA or Sick Leave for Dependent Care implications? If so, is there proof, and did management make the grievant aware of FMLA rights and responsibilities?
- Has the grievant used less leave than earned during the period of charges?
- How does the grievant's attendance during the period of the charges compare with prior periods? Has there been improvement?
- Have others with similar records been similarly disciplined?
- Was the grievant's attendance discussed prior to issuance of discipline? When?
- Has the grievant committed a prior, similar infraction?
- 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:

Remember, management has the burden of proving discipline was 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?

(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?

Also, 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.

- ELM § 511.1:

The U.S Postal Service policy is to administer the leave program on an equitable basis for all employees. considering (a) the needs of the USPS and (b) the welfare of the individual employee.

- ELM § 512 and ELM § 513:

Annual leave is provided to employees for rest, recreation, and for personal and emergency purposes. And Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

Leave used for negotiated purposes does not automatically justify discipline. "Regular in attendance" has never been defined, and the concept can be unreasonably applied. In the decision in grievance #C-00599, Arbitrator Holly opined: "[T]he Employer cannot discipline an employee for absences which are legitimately caused by the physical incapacity of an employee up to at least the point where that employee exhausts his/her accumulated Sick Leave benefits. To hold otherwise would make it possible for the Employer to say to an incapacitated employee, "although you have accumulated Sick Leave available, you cannot use it because to do so would make your attendance unsatisfactory." Certainly, such a conclusion is not in accord with either the intent or spirit of the negotiated Sick Leave benefits."

- FMLA:

JCAM, p.10-15: "The employer is also required to notify the employee ... In the Postal Service, this notification is met by providing the employee a copy of the PS Form 3971 accompanied by a copy of Publication 71..." and "Employers cannot use the taking of FMLA leave as a negative factor in employment actions such as ... disciplinary actions."

- Sick Leave for Dependent Care:

SL for DC is a contractual entitlement obtainable because of the physical condition of a covered family member. The physical condition of a family member is not within the control of the employee. Discipline for SL for DC is not for just cause since discipline is to be corrective, and the ultimate cause of the alleged infraction is beyond the control of the employee.

REMEDY:

- Rescind the discipline; make the grievant whole; and/or other appropriate remedy.

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.