

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

### **Grievances re: Discipline for AWOL**

**Issue Statement:** Did the Employer have just cause to issue the grievant a letter of warning dated ..... alleging AWOL? Contract provisions, including but not limited to: Articles 3, 10, 15, 16, and 19 of the Collective Bargaining Agreement; M-39 115; ELM 511.1, 513, 666.82

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

Review ELM § 666.82

- Did the grievant fail to report as scheduled?
- Did the grievant notify an appropriate official as soon as the inability to report for duty became apparent?
- Did the grievant provide any evidence of the need to be absent? Was evidence requested, or was the grievant made aware of the requirement to provide evidence?
- Did the grievant complete a 3971?
- Do the grievant's time card records actually reflect an AWOL charge (i.e. code 24)?
- Are there prior disciplinary actions cited in the charges? Are they properly cited?
- Has the grievant committed a prior, similar infraction? Has the grievant received an Article 16.2 discussion regarding this type of offense?
- 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.

- **Argument:** Leave (which could include LWOP) should have been granted for equity purposes. AWOL and discipline were management's choice, and are punitive, not corrective choices.

- 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 § 666.82:

Employees failing to report for duty on scheduled days, including Saturdays, Sundays, and holidays, will be considered absent without leave except in actual emergencies which prevent obtaining permission in advance. In emergencies, the supervisor or proper official will be notified as soon as the inability to report for duty becomes apparent. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or fails to provide satisfactory evidence that an emergency exists will be placed in a nonpay status for the period of such absence. The absence will be reported to the appropriate authority.

- ELM § 512.11:

Annual leave is provided to employees for rest, recreation, and for personal and emergency purposes.

- ELM 512.412:

An exception to the advance approval requirement is made for emergencies; however, in these situations, the employee must notify appropriate postal authorities as soon as possible as to the emergency and the expected duration of the absence.

- ELM 512.422:

The supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave, the disapproved block on Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reasons for disapproval. (UNION NOTE: other leave, e.g. LWOP can be granted.)

- ELM § 513.1:

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.

- ELM 513.332:

An exception to the advance approval requirement is made for unexpected illness/injuries; however, in these situations the employee must notify appropriate postal authorities as soon as possible as to their illness/injury and expected duration of absence. ... The supervisor approves or disapproves the leave request. When the request is disapproved, the absence may be recorded as annual leave, if appropriate, as LWOP or AWOL, at the discretion of the supervisor as outlined in 513.342.

- ELM 513.364:

Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

- ELM 513.365:

If acceptable proof of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.

- LMU, Item 4. (f):

Emergency leave will be granted priority consideration.

## **REMEDY:**

- Rescind the discipline; make the grievant whole, including payment of leave as requested; 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.