

GUIDELINES (for Union use)

Grievances re: Discipline for expansion of street time

Issue Statement: Did the Employer have just cause to issue the grievant a letter of warning alleging discharge of duties/**extension of field times**, dated ? Contract provisions, including but not limited to: Articles 3, 10, 15, 16, 19, and 34 of the Collective Bargaining Agreement and M-39 115.

FACTS TO CONSIDER: (provide evidence as necessary)

- Does management have any proof of actual wrongdoing or time-wasting practices?
- Did management observe the grievant in the field on the date(s) at issue?
- If the discipline is solely based on computer data and performance expectations: Is the data accurate?

Are management's performance expectations reasonable? (E.G., based on the grievant's performance; based on valid, recent route inspection data; etc.)

Does the performance on the date(s) at issue compare favorably with the grievant's performance on other dates not cited?

Was the grievant made aware of the performance expectations?

Are there reasons the grievant took longer than expected? (E.G., mail volumes or make-up, including parcels and accountables; weather; new construction; customer, vehicle, traffic problems; recent changes in office or street procedures; etc.)

Did any other carriers take longer than expected on the date(s) at issue?

- Has the grievant requested a special inspection, or is there other evidence the route is the problem, not the grievant?
- Did management follow the procedures of the Best Practices flow chart?
- Was the grievant given remedial training?
- Was the grievant given sufficient time to improve?
- Was the grievant warned of impending discipline?
- 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:

- Articles 3, 5, 15, 16, 19, 34; M-39 115, Chapter 2.

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.

• THIS IS CRITICAL. In a Step 4 grievance denial, case # Q94N-4Q-C 99022154, management has recognized that “DOIS” (or any other computer program) is only a “management tool” to project performance expectations. It does not establish either an office or a street standard. “Base” data is determined from averages, which include higher values. If applicable, it must be argued at the earliest opportunity that data from DOIS, or other such computer program, is not alone sufficient to prove improper performance.

• If there is no proof the grievant did other than work conscientiously and productively all day, and the basic premise of the discipline is that the grievant took longer than management expected to deliver their assignment, consider the following. In Article 34 of the National Agreement, the parties recognize the principle of a fair day's work for a fair day's pay. Although there are minimum standards for times for the casing of mail in the office, there are no concrete standards for the time of delivery in the field on any particular day. (Reference M-00304) Arbitrators have consistently ruled, as indicated by Arbitrator Levak in case #W4N-5B-D 3530 (C-05952), that the mere fact that a letter carrier takes longer than management expects to complete deliveries on any particular day does not justify discipline. (C-07603 also contains a useful discussion of relevant arguments and proofs.)

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.