

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

### **Grievances re: Discipline for failure to report an accident**

**Issue Statement:** Did management violate Contractual provisions, including but not limited to Article 3, 15, 16, 17, 19 and 30 of the Collective Bargaining Agreement; M-39 115, by issuing grievant discipline for not reporting an accident? If so, what is the remedy or what shall be the remedy?

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

- What was the nature of the accident? (I.E. were there damages; did it cause subsequent medical attention; did it cause an OWCP claim?)
- Did the grievant behave reasonably? (I.E. as others would have)
- Did any delay have a negative impact on management? (I.E. was management able to complete accident investigation forms?)
- Was the grievant aware of the rule? And is there proof of this?
- Was the grievant ever given remedial training regarding the rule/regulation?
- What is the grievant's accident record?
- 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.
- In case # C-07685, Arbitrator Render discussed the requirement to report any and all injuries and accidents and, citing the meaning of the terms, and stated "...the service has indicated that some common sense must be used in applying these regulations."

**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.