

GUIDELINES (for Union use)

Grievances re: Discipline for failure to follow safety rules/regulations

Issue Statement: Did the Employer have just cause to issue the grievant a letter of warning dated alleging failure to observe safety rules and regulations? Contract provisions, including but not limited to: Articles 3, 15, 16, and 19 of the Collective Bargaining Agreement; M-39 115; EL 801 Appendix A; EL 827 (350, 360); 4-7-80 Ulsaker memo.

FACTS TO CONSIDER: (provide evidence as necessary)

- What was the nature of the violation? (I.E. grievant's behavior; vehicle or industrial accident?)
- Did the grievant behave reasonably? Is there clear evidence of a disregard for safety rules? (I.E. fingering mail while climbing steps)
- Were there witnesses?
- Did management complete accident investigation forms?
- Was there a police report?
- What specific safety rule/regulation did the grievant violate?
- Was the grievant aware of the rule?
- 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.

- 4-7-80 Ulsaker memo (M-00744): Accidents, even when excessive in management's view, are not in themselves an appropriate basis for discipline. What must be cited are employee actions in a specific situation which are violative of rules.

- Accidents do not automatically justify discipline: C-06871, Arbitrator Sobel: "...accidents can occur in entities which have excellent training programs and in which employees exercise

reasonable caution, are not careless or heedless, and do not violate any specific rules or regulations. "No amount, either of instructions to be careful nor the imposition of discipline will prevent mistakes or errors."

If a vehicle accident is involved:

- EL 801 Appendix A, p.26: The supervisor should utilize Form 4584 and discuss unsafe driving habits immediately, and this should constitute the corrective action unless improper habits continue.
- EL 827 § 350, 360 (ask management for a copy): These provide for refresher driver's training, with the argument being training is corrective, discipline is more punitive.

REMEDY:

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