

DOCUMENTS REQUIRED FOR DISCIPLINE GRIEVANCES i.e.:

LETTERS OF WARNING, SUSPENSIONS and REMOVALS.

1. Copy of the discipline letter or letter of charges, (letter of warning, notice of suspension, notice of removal, etc.)
2. Copy of the grievant's statement. (Have the grievant write them out; help them, and support them.) It is imperative to get the grievant's version of what happened. This also helps protect the union.
3. Copy of the Factual Report and all requests to higher authority for the concurrence.
4. Interview the grievant, supervisor, concurring official and all witnesses including management's witnesses.
5. Obtain all evidence management relied on to support their position. Question them on the evidence and obtain copies. Also request any and all statements obtained by management during their investigation and all evidence referenced in the letter of charges.
6. Copy of all past elements cited in the letter of discipline. Verify all past discipline. Check on all settlements. Was past discipline cited? Is it outdated? (Over 2 years as per Article 16.10.)
7. Include in the grievance package the number of years of service the grievant has in the Postal Service. (This could work both ways; in our favor or against us. I.e.: The employee should have known better or, on the other side of the coin, the employee should receive consideration for years of service.) Does the employee have any awards in their OPF? Request to review their OPF.

ATTENDANCE RELATED INFRACTIONS

1. All of the above.
2. Copies of all 3971's for the dates cited on the discipline letter. Are the 3971's clear and legible? (If not, demand to review the original 3971's.) Verify the dates with the grievant and supervisor and watch for errors. (i.e.: wrong dates, rest days, scheduled vs. non-scheduled, etc.)
3. Copy of 3972's (both sides) for the past 2 years. Demand to review the original to determine if your copy is accurate.
4. Copy of all medical documentation, including the medical officer's documents. Was the employee sent home by the medical unit? (Not fit for duty?)
5. Number of hours of sick leave and annual leave the employee is carrying.

DISCIPLINE INVOLVING THE INSPECTION SERVICE

1. All of item 1.
2. Copy of the Investigative Memorandum generated by the Inspection Service.
3. Obtain all information stated in the Investigative Memorandum and interview all parties referenced in the I.M.
4. Interview all Postal Inspectors involved with the Postal Service's investigation.

CONDUCT INTERVIEWS FOR ALL DISCIPLINE GRIEVANCES

1. The grievant.
2. The supervisor who issued the discipline.
3. The concurring official.

4. All witnesses for the grievant.
5. All witnesses for management.

When conducting interviews the steward should focus on the WHO, WHAT, WHERE, WHY, WHEN and HOW principles from all parties being interviewed. When interviewing the issuing supervisor and concurring supervisor formulate your questions to work around the 7 TESTS OF JUST CAUSE and the above-mentioned principles.

While conducting the interview, the steward should try to place the person being interviewed at ease and make them feel very comfortable. Most people being interviewed tend to clam up and perceive it as an adversarial confrontation. A wise steward should start the interview by explaining the reason and purpose of the interview to the individual. Always allow the person speaking time to finish and never interrupt. Never turn the interview into a confrontation even when you know the person speaking is not being truthful with you. Try to lead the person into giving the correct or honest answer. This is not always an easy task.

Prior to conducting interviews have all your facts together. Have your questions all written up and leave space for your answers. Keep in mind that an answer to one question may lead to another question. **Try to know the answer to your questions before asking it.**

PRE-DISCIPLINARY INTERVIEWS

1. Get the date of the Day in Court (EL-921). If you are the steward present during a day in court process, you must take notes of the meeting.
2. Who was the supervisor who interviewed the employee?
3. Determine if an interview really occurred?
4. Was the employee given advanced notice that he faced possible discipline and afforded an opportunity to defend him/her self?
5. Did the supervisor lead the employee into believing that this meeting was just a discussion and everything would be OK? (This happens far too many times.)
6. Did the supervisor conduct some form of investigation while performing the Day in Court and encourage the employee to discuss the matter?
7. Did the employee request a union representative be present during the Day in Court process? Remember an employee is not entitled to a union representative during an official discussion. (We may be able to use the argument that when the employee was denied a steward that this had all the makings of an official discussion.)

*****NOTE***ASK THE GRIEVANT AND SUPERVISOR THE SAME QUESTIONS.**

The day in court process is part of the grievant's due process right. I have personally witnessed supervisors who totally abuse the process. The supervisor must conduct a fair and objective investigation into the alleged offense and the employees must be given an opportunity to defend themselves. Did you notice the date on the day in court? This PRE-DISCIPLINARY INTERVIEW must be prior to requesting discipline. (Also watch the date of the request for discipline.) This Pre-Disciplinary interview falls under the test of Just Cause; was a fair and objective investigation conducted prior to the disciplinary action being initiated? There could not have been a fair and objective investigation into the matter if the grievant's account of the incident was not included in management's investigation. Management during this process must try to determine if there was any mitigating factors involved, and did it have bearing on the grievant's behavior. The American Postal Workers Union has been very successful in arbitration at overturning discipline for the lack of a pre-disciplinary interview. Always cite in the grievance papers that management failed to conduct a fair and objective investigation by failing to conduct a pre-disciplinary interview. This is particularly important to raise the issue of pre-disciplinary interview on the step 2-appeal form.

TEST FOR JUST CAUSE

The definition of just cause was really defined by Arbitrator Carroll Daugherty in *Grief Brothers Cooperage vs. United Mine Workers District 50*, 41 LA 555 and is the cornerstone used by virtually every arbitrator. Arbitrator Daugherty formulated even (7) specific questions that must be answered in an arbitrator's mind to establish that a suspension or discharge was for "just cause." A positive "no" answer to one or more of the questions would indicate that "just cause" did not exist.

These questions are taken from the APWU Shop Steward Handbook.

1. Did the USPS give the employee forewarning or knowledge of the possible or probably disciplinary consequences of the employee's conduct? In other words, was there some kind of written (or oral) instructions governing the situation the employee is being disciplined for? This could be a notice posted on a bulletin board or found in an order book. The important thing is that it must be proven that there was actual written or oral communication of these rules before the incident occurred.
2. Was the rule or managerial order reasonably related to the orderly, efficient and safe operation of the USPS's business? Even if he/she believes it's unreasonable, the employee must obey the order. The employee can later file a grievance.
3. Did the USPS, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order? The employee has a right to know what he/she is being disciplined for. The investigation should be made before disciplinary action is taken. In too many cases, the action is taken without proper investigation.
4. Did the USPS conduct the investigation fairly and objectively? (No comment needed.)
5. At the investigation, was there substantial evidence that the employee was guilty as charged?
6. Has the USPS applied its rules, orders and penalties evenhandedly and without discrimination to all employees? Have other employees been guilty of the same infraction of rules and not received a disciplinary action?
7. Was the degree of discipline administered by the Postal Service in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his/her service with the USPS? It would not be just to fire an employee for being tardy twice over a six-month period if he/she had an unblemished record for 15 years prior to that. On the other hand, if the employee has a record of previous offenses, that record should not be used to judge whether he/she is guilty of the latest offense.

Following the above will not guarantee a winner in all grievances, but it should enhance their chances of being settled successfully.

Good Luck with your case