What every T.E. should know

The First 90 work days

We understand the pressures that a new employee must feel during his first days and weeks on the job. It is entirely understandable that you desire to prove yourself worthy to your new employer. We know that new employees will often skip a break or a lunch in order to finish their assigned work in the time given. During your first ninety days, you have the added pressure of the threat of termination by management without recourse.

After 90 work days

A TE may be separated at any time, upon completion of their term or for lack of work, and such separation is not grievable, unless the separation is contended to be pretextual (false). A TE removed for just cause is entitled to the grievance-arbitration procedure if the TE has completed 90 work days or has been employed for 120 calendar days, whichever comes first. In any such grievance, the only issue would be whether the TE was shown to have acted as charged, *in that the principles of progressive discipline do not apply to TE's*.

"Best" Advice

Do the best that you can. Your best effort does not require that you skip a break, shorten your lunch, or run your route. A basic principle of the employer-employee relationship is the principle of a fair days work for a fair day's pay. This principle is recognized in our National Agreement. If you go out and do the best you can, you have done all that is required. These entitlements have been negotiated for all letter carriers, including Transitional Employees.

What to Do

An important requirement for all carriers is to follow instructions. Sometimes instructions are impossible to follow or intentionally vague. If you are given an instruction that you feel that you are unable to accomplish or that you do not understand, ask for clarification. If the supervisor insists on you following his impossible demands, attempt to deliver the mail and call the office when you are unable to return as ordered. If you are being treated unfairly, ask to speak to a shop steward. If you are not allowed time to speak to a shop steward, please call the union office.

Ask for Advice

Your fellow letter carriers and union members will be your best source of information. Whatever problem you might have, your fellow letter carriers have probably dealt with it before. They will give you a straight answer. Carriers who have learned their rights and stand up for themselves are rarely bothered by supervisors. If you learn and understand your rights, you will also feel less pressure in the workplace.

Avoid Confrontation

Always work hard and avoid confrontations with supervisors. Let the shop steward assist you to defuse any uncomfortable situations before they occur. As you begin to understand your rights better you will prove to management that you have every intention of exercising your rights if necessary.

Your Union will not allow management to abuse your rights if you ask for our help. Stand your ground and I am certain you will succeed in making the workplace a better place for you. You should expect to be treated no less than your fellow letter carriers are treated.

Joint Contract Administration Manual (JCAM)

Article 3 (Management Rights)

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
C. To maintain the efficiency of the operations entrusted to it;
D. To determine the methods, means, and personnel by which such operations are to be conducted;
E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(*The preceding Article, Article 3, shall apply to Transitional Employees*.)

The Postal Service's "exclusive rights" under Article 3 are basically the same as its statutory rights under the Postal Reorganization Act, 39 U.S.C. Section 1001(e). While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions. For example, the Postal Service's Article 3 right to "suspend, demote, discharge, or take other disciplinary action against" employees is subject to the provisions of Articles 15 and 16.

(Article 3 is a line many supervisors use when they cannot think of a better answer.)

Article 5 (Prohibition of Unilateral Action)

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

- **(*The preceding Article, Article 5, shall apply to Transitional Employees.)***

  Article 16 (Special Transitional Employee Rules)
  January 16, 1992 Mittenthal Panel Arbitration award established the category of Transitional Employee (TE). The award, which appears as an Appendix to this publication, provided the following in Items 9 through 11:

  9. Transitional employees will have access to the grievance procedure for those provisions which apply to transitional employees.
  10. Transitional employees are temporary N.T.E. (not to exceed) employees who may be terminated at any time prior to completion of the 359-day term as provided in paragraph 11 or as otherwise required by this Award.
  11. Transitional employees may be separated at any time upon completion of their assignment or for lack of work. Such separation is not grievable except where the separation is pretextual.

- ***(Meaning they must have a legitimate reason to let you go after 360 days (new contract). They cannot separate a T.E. without first making it known the T.E. was either a problem, or having problems that they must attempt to fix. Letting you go cannot come as a surprise if they choose to make this decision)***

- **Transitional employees may otherwise be removed for just cause and any such removal will be subject to the grievance-arbitration procedure, provided the employee has completed ninety work days, or has been employed for 120 calendar days, whichever comes first. Further, in any such grievance, the concept of progressive discipline will not apply. The issue will be whether the employee is guilty of the charge against him or her. Where the employee is found guilty, the arbitrator shall not have the authority to modify the discharge.**

  (The 'Just Cause' principles are listed here – there is a lot here, but further proof they cannot fire you just because they want to; regardless what they may want you to believe.)

  Just Cause Principle

  The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

  "Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the basic considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.**

- **Is the rule a reasonable rule? Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.**

- **Is the rule consistently and equitably enforced? A rule must be applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor. Consistently overlooking employee infractions and then disciplining without warning is improper. If employees are consistently allowed to smoke in areas designated as No Smoking areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is usually improper. If several similarly situated employees commit an offense, it would not be equitable to discipline only one.**

- **Was a thorough investigation completed? Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's day in court privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves before the discipline is initiated.**

- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record? The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.**

- **Was the disciplinary action taken in a timely manner? Disciplinary actions should be taken as promptly as possible after the offense has been committed.**

- **Corrective Rather than Punitive? The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.**

  In the case of removal for cause, a transitional employee shall be entitled to advance written notice of the charges against him/her in accordance with the provisions of Article 16 of the National Agreement. Article 16.11 does not restrict the union and management from agreeing to a lesser penalty during discussions at earlier steps of the grievance-arbitration procedure. However, it does provide that where the employee is found guilty of the charge against him or her, the arbitrator shall not have the authority to modify the discharge.

  National Arbitrator Mittenthal held in G90N-4G-D 93040395, August 18, 1994 (C-13837) that a Transitional Employee removed for cause is entitled to advance written notice of the charges against him/her and, in accordance with Article 16.5, is entitled to remain on the job or on the clock at the option of the employer during the notice period provided by Item 11 above.

  In the Step 4 Settlement F90N-4F-D 94022367, January 4, 1995 (M-01202) the parties agreed that when an NALC transitional employee has completed a previous 359-day term of employment in the same office and in the same position, a termination for cause during the first ninety work days (or 120 calendar days, whichever comes first) of an immediately subsequent appointment is subject to the grievance-arbitration procedure. Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Use of Privately Owned Vehicles

The parties agree that the following represents the policy of the U.S. Postal Service and the American Postal Workers Union concerning the furnishing of privately owned vehicles (POV) by employees of the crafts represented by the APWU:

No craft employee represented by the APWU may be coerced into furnishing a vehicle or carrying passengers without the employee's consent. The use of a personal vehicle is the decision of the employee and it is not the intent of the parties to discourage such use of personal vehicles when transportation is needed from one postal facility to another or in the completion of the employee's assignment. When an employee begins his/her work day at one postal unit and is provided transportation to another unit to complete his/her tour of duty, that employee will be provided transportation back to the unit where his/her tour began if transportation is needed. If the employee ends tour at the new location the return trip will not be on the clock but transportation will be provided promptly by management upon request.

Date: July 21, 1987

(*The preceding Memorandum of Understanding, Use of Privately Owned Vehicles, applies to Transitional Employees.)*

Employee Labor & Management Manual (One of the manuals referred to above)

Section 432.13 (Transitional Work Force)

Employees in the transitional work force are noncareer bargaining unit employees categorized as transitional employees (TEs) and utilized in accordance with the terms of their respective collective bargaining agreements. They are hourly rate employees hired for terms designated in the appropriate national bargaining agreement.