



DOCUMENTING TO WIN!

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Grievance Denied For Lack Of Documentation

All too often the Union files grievances and fails to provide supporting documentation or the proper documentation needed to prove what is being alleged.

Although management has the burden of proof in discipline cases, the Union has the burden in contract cases.

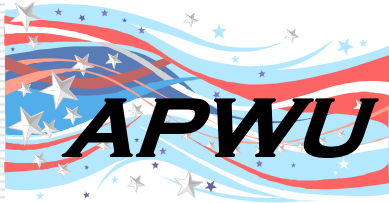
The fact remains, we **must provide documentation** to prove our case. Arbitrators have no problem denying a grievance for lack of documentation.



What is Documentation?

While the term ***Documentation*** can be defined in more than one way, the relevant meaning here is:

The furnishing of documents to substantiate a claim put forth by the Union in its grievance. It is the confirmation that facts or statements are true by the putting forth of documentary evidence.



Types of Evidence Used To Document Grievances

**Evidence can be in many forms.
For example:**

- **Testimony Evidence**
- **Documentary Evidence**
- **Physical Evidence**
- **Digital Evidence, etc...**



Types of Evidence (Cont'd)

Testimony Evidence:

- ☐ A form of evidence that is obtained from a witness who makes a solemn statement or declaration of fact.
- ☐ May be oral or written.
- ☐ Is documented in the form of a written statement and made a part of the grievance file.
- ☐ In written form, it actually strengthens the oral testimony given on the day of the hearing.



Types of Evidence (Cont'd)

Documentary Evidence:

- ❑ Any evidence introduced at arbitration in the form of documents.
- ❑ Although this term is most widely understood to mean information on paper (such as clock rings, leave slips or work orders), the term actually includes any media by which information can be preserved.
- ❑ Photographs, tape recordings, films, and printed emails are all forms of documentary evidence.



Types of Evidence (Cont'd)

Physical Evidence:

- ❑ Any evidence introduced in an arbitration hearing in the form of a physical object intended to prove a fact in issue based on its demonstrable physical characteristics.
- ❑ Physical evidence can conceivably include all or part of any object.



Types of Evidence (Cont'd)

Digital Evidence or Electronic Evidence:

- ❑ Any probative information stored or transmitted in digital form that a party to an arbitration hearing may use or offer as evidence.
- ❑ The use of digital evidence has increased in the past few decades as arbitrators have allowed emails, digital photographs, word processing documents, spreadsheets, and computer printouts.



Arbitrator's Decisions

Arbitrators sometimes base their decision on documentation alone.

Arbitrators have wide latitude in crafting remedies in their awards. However, the decision should be based on the essence or spirit of the Contract.

As previously stated, a case can be won or lost based on the lack of documentation or the wrong documentation.

An argument advanced without documentation/proof is likely to fail.



Arbitrator's Decisions (Cont'd)

In USPS #WOT-5E-C 11717 Arbitrator Morris Davis denied the case because of lack of documentation. He said:

“Moreover, (or in addition) the Union’s monetary argument is based upon mere conjecture and speculation. In addition, that argument is unsubstantiated by required record documentation which identifies any specific individual who suffered an actual loss because of the Agency’s action. Grievance denied.”



Arbitrator's Decisions (Cont'd)

In USPS #C94C-4C-C 97066313 Arbitrator Linda Klein said:

“After a careful examination of the evidence presented at the hearing, the Arbitrator finds that the position of the Union cannot be sustained. Although the grievant was not on the overtime desired list for the quarter in question, she was nevertheless required to work on her non-scheduled day. The Union maintained that her assignment violated the local selection procedure, however, no documentation outlining said process was presented; nor was the Arbitrator given a copy of the overtime desired list in effect at that time.”



Arbitrator's Decisions (Cont'd)

In USPS #H00T-1H-C 04113974 Arbitrator James Odom quoted Arbitrator Earnest Marlatt stating:

"An arbitrator obviously cannot award a remedy to PTF clerks who were improperly denied work unless he knows who those clerks were and how many hours were involved. The Union has the burden of proof to document these specific facts at Step 2 or, at the latest, at Step 3. There is no assertion here that the Postal Service failed or refused to provide copies of time cards or other data from which the Union could determine specific instances. ...'Consistent with the above findings, the requested remedy is denied because of lack of proof of injury. The Postal Service is directed to cease and desist from failing to comply with Requests for Information.'"



Relevant Documents

Documents that are relevant to the case:

When it comes to documentation the questions that should be at the forefront of the Steward's mind are:

What documentation do I need in the file that will prove my case?

What documents do I need to include that will poke holes in management's position?



Relevant Documents (cont'd)

In most cases, the documents needed to prove the matter asserted by the Union usually boil down to one or two pieces.

It is not unusual to see grievance packages that consist of multiple pieces of documentation that have nothing to do with the case.

However, don't be discouraged from including a document when in doubt.



Relevant Documents (cont'd)

Documents placed in the grievance package as a “red herring” are not recommended.

Most advocates know a *red herring* document when they see one.



Relevant Documents (cont'd)

❖ Red Herring:

A technique used in arbitration intended to mislead the arbitrator and the opposition.

❖ Red Herring Fallacy:

A logical fallacy in which one purports to prove one's point by means of irrelevant arguments.



Relevant Documents (cont'd)

Basically, if a document/evidence is to be admitted at arbitration, it must be relevant, material, and competent.

To be considered relevant, it must have some reasonable tendency to help prove or disprove some fact.

It need not make the fact certain, but at least it must tend to increase or decrease the likelihood of some fact.



Relevant Documents (cont'd)

Once admitted as relevant evidence, the arbitrator will determine the appropriate weight to give a particular document.

A given document is considered relevant if it is offered to prove a fact that is in dispute in a case.

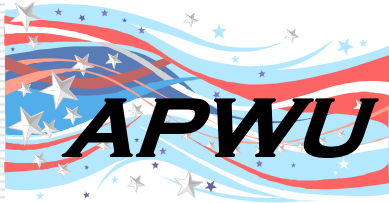


Relevant Documents (cont'd)

So we can say that a relevant document is one that is applicable to the issue and which ought to be received by the arbitrator and allowed in the hearing as evidence.

The relevant documents must be a part of the grievance package at least by the time it is heard at the Step 2 level.

Notwithstanding, documents can be entered into the files at Step 3 and during reviews of Direct Appeals.



Best Documents/Evidence

The best evidence rule follows that when the contents of a written document are offered into evidence, the **court** will not accept a copy or other proof of the document's content in place of the original document unless an adequate explanation is offered for the absence of the original.



Best Documents/Evidence (cont'd)

However, arbitrators permit the use of mechanically reproduced documents unless one of the parties raised a genuine question about the accuracy of the copy or can somehow show that its use would be unfair.



Test For Admissibility OF A Document

The presentation of testimony and documentary evidence offered through witnesses must meet three requirements:

- 1) Materiality
- 2) Relevancy
- 3) Competency



Test For Admissibility OF A Document (cont'd)

To be material, documentary evidence must relate to the issue. If the documents are not related to any part of the **contested issue**, most likely it will not be considered by the arbitrator.

Example: If Mike does not deny that he slept through a dispatch, documentary evidence or testimony would not be material. However, if Mike denies sleeping through a dispatch then such documentary evidence and testimony would be material.



Test For Admissibility OF A Document (cont'd)

To be relevant, documents and testimonies must tend to prove a particular proposition or to persuade the arbitrator of the truth of an allegation. This is referred to as having probative weight.

Example: If Mike denies sleeping through a dispatch and management puts on a witness that testifies that she saw Mike sleeping while on his **lunch hour**, this testimony would not be relevant to the question of whether Mike slept through **his dispatch**.



Test For Admissibility OF A Document (cont'd)

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- To be **competent** and admissible, the document must be relevant and material to the factual matter at issue.
 - A witness who testifies at a hearing must be competent in their ability to give evidence.

Example: If management presents a witness to testify against Mike who was not present or not directly related to the evidence management is presenting to charge Mike, the Union would object to this witness testifying on the basis of competency.



Examples of Documents To Add

Issue: Overtime Disputes

ADD:

- Statement from by-passed employee
- Overtime Desired List
- Overtime Volunteer List
- Copy of Workweek Schedule
- Name of the person(s) who worked
- Statement of person(s) who worked and number of hours worked
- Specify whether OT, POT or in excess of 12 hours



Examples of Documents To Add (cont'd)

Overtime Disputes (cont'd)

- Employee's ETC Report (Clock Rings)
- Item 14 of your L.M.O.U.
- Overtime Activity Sheet
- Copies of all Requests For Information (RFI) forms, both for information given as well as information denied
- Always add the C.B.A. and J.C.I.M.

NOTE: This list is not all inclusive!



Examples of Documents To Add (cont'd)

Issue: Crossing Crafts & Occupational Groups

- Job description of grievant
- Job description of person who crossed crafts or occupation group
- Copy of PS Form 1723 issued for person who crossed crafts (Note: make argument if 1723 is not given)
- Copy of clock rings of person who crossed crafts
- Name and title of person who authorized the across craft lines assignment



Examples of Documents To Add (cont'd)

Crossing Crafts & Occupational Groups (cont'd)

- Statement from grievant
- OTDL List
- Workweek schedule
- Vehicle number utilized if transporting mail
- Make of vehicle and tag number if private vehicle used
- Destination of mail being transported
- Type of mail being transported

NOTE: This list is not all inclusive!



Examples of Documents To Add (cont'd)

Issue: Subcontracting VMF

- PS Form 4541 (Contractor's work order)
- Copy of VMA (Vehicle Maintenance Agreement if available)
- Copy of BPA (Basic Pricing Agreement)
- Copy of 7381's (Requisitions)
- Copy of the Initial Comparative Report
- Copy of the Decision Analysis Report
- Log Copy Report or VMA Order Register



Examples of Documents To Add (cont'd)

Subcontracting VMF (cont'd)

- PS Forms 4543's (both sides)
- AS 707-a Section 1.4.1
- OTDL for VMF employees
- Invoices from the Vendor
- The Union's Cost Comparison (ERT x National average)
- **NOTE: This list is not all inclusive!**



Thank you for your indulgence. I hope this presentation will have some influence on how you document your grievances in the future. Hopefully it will make your cases stand the test in arbitration.