

UNION ARGUMENTS ON DISCUSSIONS FOR ATTENDANCE

Management attempts to play a word game with the discussion language of Article 16 and Part 511.42 of the Employee and Labor Relations Manual. They sometimes admit that they did not hold any discussion but they maintain they talked to the employee. Talks or fireside chats do not meet management's obligation to discuss items in Article 16 or the ELM.

Management will also argue on occasion that discussions after the first discipline for attendance, aren't necessary. The Union maintains the direct opposite!

To begin with we're dealing with attendance issues. Attendance requirements are not specifically defined. Based on that, the elements of each record are different and there is nothing that defines an attendance trigger. The only way an employee knows when their record at any given time, may trigger discipline is if they are told. That has to come prior to the discipline, and it has to meet the requirements of Article 16 and Postal regulations.

Discussions are formal meetings with an employee. They are designed and defined to warn an employee of minor infractions. An employee's attendance record must be considered minor sometime prior to justifying discipline. Each specific record must be dealt with for that purpose. The fact a previous record caused discipline doesn't define the trigger for this one.

A past record does not relieve management's obligation to counsel and discuss this one. The contract requires these discussions.

If management's theory is, "once an employee receives discipline management no longer must give discussions," that can't include attendance discipline. We must maintain that management must alert the employee of where the trigger is for each record. In attendance cases, the regulations designed for that purpose clearly require discussions. Those regulations are found in Chapter 5 of the Employee and Labor Relations Manual, Part 511.42 deals specifically with management's responsibility in dealing with unscheduled absences, and states:

511.42 Management Responsibilities.

To control unscheduled absences, postal officials:

- b. Discuss attendance records with Individual employees when warranted.

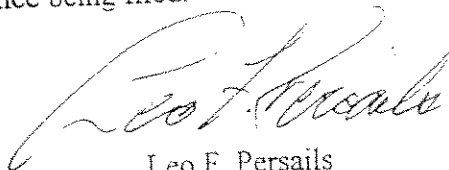
Management's theory on how discipline can omit discussions cannot be considered when their own attendance regulations require it. The regulations don't say talk to the employee, it says discuss. The word discuss obviously is lifted from Article 16 and therefore must meet the requirements of discussions defined in Article 16. They must also be given for attendance issues when warranted, and because each attendance record is different, that must be prior to discipline.

Management cannot hold that talks meet attendance rules as required in both the National Agreement and in part 511.42b. The grievant has the right to know exactly where management felt the record justified discipline before it got there. The regulations clearly require it, and it's our job to argue in the grievance procedure when management doesn't comply.

We should always request the dates of any discussions in writing and try to establish our record if it can be used to support the grievant. We obviously don't want to establish any discussion record that will hurt the grievant. The things we want to establish are,

- (1) No discussion.
- (2) No discussion in the time frame.
- (3) Alleged discussions on bad dates.
(Employee was off) (discussion wasn't warranted) (etc...)
- (4) Talks or chats, not discussions.
- (5) Management claims a discussion wasn't needed due
to prior discipline.

While we may ask for discussion dates in writing after the discipline is issued, management has no right to refer to them in the discipline, on a 3972, or any other formal way. Those areas violate Article 16 language. They may respond in writing to our request, but they have no other right to refer to a discussion record in writing. The same applies to past discipline that has been altered or expunged, as defined in step 4 agreements. All discussion and procedural challenges must be made a matter of record in the grievance procedure, or management may rescind and reissue claiming it was prior to a grievance being filed.


Leo F. Persails

PREPARED BY
LEO F. PERSAILS
NATIONAL BUSINESS AGENT

STEP 3 IRREGULAR IN ATTENDANCE APPEAL INFORMATION

TO UNION REPRESENTATIVE ONLY

1. Does grievant have prior discipline? Yes No
2. Settled? Yes No Decision Included
3. Live? Yes No Charge Included
4. Comments _____

5. Discussions? Yes No
6. Dates _____ Supervisor Involved _____
7. Was written request for dates enclosed? Yes No
8. Were illnesses short term extended both
Comments _____
9. Accumulated Sick Leave to Cover? Yes No
10. Is AWOL Included? Yes No
11. Is AWOL in the grievance procedure elsewhere? Yes No
12. Settled? Yes No Decision Included
13. Comments _____

14. Was a Reduction Offered at Step 1 or 2? Yes No
15. What Type of Reduction? _____
16. Does the Local want a 72 Hour Letter if not National Certified?
 Yes No
Personal Comments _____

The above is necessary for proper handling of attendance cases as well as information for us. In addition, we always need doctor statements, 3971's, 3972 for one year from date of discipline back, and other involved documents.



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Entant Plaza, SW
Washington, DC 20260-4100

198 4 AGREEMENT
ARTICLE 16 SECTION _____
SUBJECT _____
DISCUSSIONS 3972

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Re: L. Epperson
Tampa, FL 33602
H4C-3W-D 56064

Dear Mr. Tunstall:

On December 16, 1987, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.


The issue in this grievance is whether or not discussions are improperly noted on PS Forms 3972.

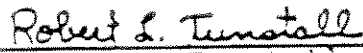
After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The parties at this level agree that per Postal Bulletin 21477, dated September 20, 1984, discussions shall not be noted on the reverse of the grievant's Form 3972.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,


Samuel M. Pulcrano
Grievance & Arbitration
Division

 12-23-87
Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Leo F. Persalls
National Business Agent
G-3310 Miller Road
Suite J
Flint, Michigan 48507
(313) 230-0755

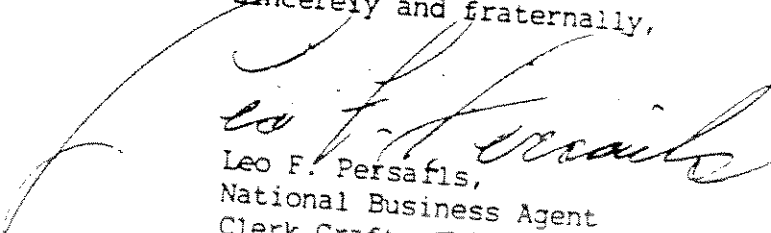
Dear Local/State Officer:

Enclosed is a suggested format to relieve the pressure applied to an officer or steward by a grievant, that demands a "last chance agreement".

I'm sure that each Local is aware of the game that management plays with employees that are under the threat of removal. It actually amounts to blackmail, and I would never recommend that a steward sign one. I also believe that every employee under pressure of last chance should be advised not to sign, and that it will eventually cost them their job. The past record shows that few if any last longer than a year before another removal is issued. The second removal is also supported by the "last chance agreement" and the employee has given up almost any chance of winning.

While the last chance must be viewed as a death sentence, I understand the pressure stewards are in when the grievant demands it. If this occurs even after efforts to discourage the grievant, I would suggest you require a signature on the enclosed document, or one like it. Management should never see or receive the document, but it should be kept for the steward's and union's protection. In addition, I believe it should never appear the steward was an equal partner in such agreements, but rather their signature was demanded.

Sincerely and fraternally,


Leo F. Persalls,
National Business Agent
Clerk Craft, Chicago Region

National Executive Board

Max Eber - President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

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Industrial Relations Director

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Director, Clerk Division

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George A. Mokenner
Director, SDM Division

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Western Region

James F. Williams
Central Region

Phil C. Fleming, Jr.
Eastern Region

Richard D. White, Sr.
Northeastern Region

Arthur Salsbury
Southern Region

LFP/rmt

LAST CHANCE AGREEMENT

This is to clarify that I am requesting _____ (name) _____,
an APWU Steward with the _____ (name) _____ Local to sign a last
chance agreement with management involving me and my job.

I have been advised by the steward that I should not agree or request the
steward to agree to such a possible violation of my rights. I have been
advised also that the agreement may, and probably will, cost me my job in
the end result. I have been further advised that the Union will have little
or no chance of defending me if I am charged with violations of this agreement.

I still maintain and demand that the steward sign the agreement with manage-
ment and me, regardless of the outcome, and I will not hold the Union responsible
for any problems caused by it in the future.

(signed)

(type name of grievant)



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

January 5, 1981

Daniel B. Jordan, Esq.
Attorney at Law
American Postal Workers Union,
AFL-CIO
817 14th Street, NW
Washington, DC 20005

Re: E. Andrews
Washington, D. C.
ABNA-0840

Dear Mr. Jordan:

On November 14, 1980, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure with regard to disputes between the parties at the national level.

The matters presented by you, as well as the applicable contractual provisions, have been reviewed and given careful consideration.

At issue in this case is whether the Cleveland, Ohio post office has adopted and enforced a policy whereby employees using sick leave in excess of three percent of their scheduled hours will be disciplined.

During our discussion, several points of agreement were reached. They are:

1. The USPS and the APWU agree that discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" must be determined on a case-by-case basis in light of all the relevant evidence and circumstances.
2. The USPS and the APWU agree that any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals.

3. The USPS will introduce no new rules and policies regarding discipline for failure to maintain a satisfactory attendance record or "excessive absenteeism" that are inconsistent with the National Agreement and applicable handbooks and manuals.

The above constitutes our national position on such matters. We do not agree that a three percent policy as stated in your grievance has been implemented in the Cleveland, Ohio post office.

The Union bases its argument on several factors. First, they feel that the content of several internal management memos clearly indicates that a three percent rule was implemented. In my review of the said documents, I do not find such clarity. Further, the authors of the documents say they had no intention of establishing a three percent rule for individual attendance. Their concern was a three percent reduction in the sick leave usage for the entire office.

Second, the Union has presented affidavits from several employees who attest that they were told by their supervisors and/or in step one grievance proceedings that if they used more than three percent sick leave they would be disciplined. The supervisors referred to have all submitted statements stating that they did not tell employees that there was a three percent rule.

Third, the Union states that the number of disciplinary actions taken with regard to excessive sick leave usage substantially increased after the memos were written. Though numbers were quoted, no documentation was submitted. The Cleveland office has submitted substantial documentation that certainly indicates that if a three percent rule was the policy, it was not being enforced. The Cleveland staff surveyed the attendance records of over seventeen hundred employees. Over 559 employees in that number had used more than three percent of their sick leave during the period January 1980 to July 1980, but were not disciplined. These statistics certainly belie the existence of a three percent rule. Management acknowledges that there has been increased emphasis on attendance, but not based on a three percent rule.

Notwithstanding those listed items to which we can agree, it is our position that in light of the fact circumstances of this case, no policy to discipline employees who used more than three percent of their sick leave existed in the Cleveland post office.

It is further our opinion, that no definitive dispute exists between the parties concerning the contractual provisions for the administration of discipline with regard to failure to maintain satisfactory attendance.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Eugene", with a long horizontal flourish extending to the right.

Robert L. Eugene
Labor Relations Department



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington DC 20260

ARTICLE	<u>16</u>
SECTION	_____
SUBJECT	<u>DISCIPLINE</u>
	<u>NOTICE</u>

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: B. Leszczynski
Des Plaines, IL 60018
H4N-4A-D 30730

Dear Mr. Hutchins:

On October 26, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the day of receipt of a notice of discipline should be included as part of the required minimum period of notice to the employee.


After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that for purposes of computing the period of notice required in advance of the imposition of various disciplinary measures, such notice period shall be deemed to commence on the day following the date upon which the letter of notification is received by the employee.


Accordingly, we agreed to remand this case to the parties at Step 3 for further consistent with the above, processing including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,


Arthur S. Wilkinson
Grievance & Arbitration
Division


Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO



UNITED STATES POSTAL SERVICE

Labor Relations Department
475 L'Entant Plaza SW
Washington, DC 20260-4100

ARTICLE	16
SECTION	
DATE	
RECORDS	
ELEMENTS OF	

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: C. Nietzel
Bakersfield, CA
H4N-5G-D 7167

Dear Mr. Hutchins:

On December 14, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is the extent to which prior discipline may be utilized under the terms of Article 16.10 of the National Agreement.

We agreed that a notice of discipline which is subsequently fully rescinded, whether by settlement, arbitration award, or independent management action, shall be deemed not to have been "initiated" for purposes of Article 16, Section 10, and may not be cited or considered in any subsequent disciplinary action.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Mr. Lawrence G. Hutchins

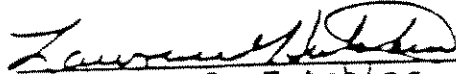
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Time limits were extended by mutual consent.

Sincerely,



Arthur S. Wilkinson
Grievance & Arbitration
Division



Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

(Date) 1/5/89

August 17, 1988

ARTICLE	16
SECTION	
SUBJECT	
ELEMENTS PART	
RECORD	

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

This is in response to the issues you raised in your letter of December 18, 1987, and Step 4 grievance (E7C-NA-C 21, dated June 29, 1988) concerning the maintenance of employee disciplinary records, as well as the Step 4 grievance (E4C-SR-C 43882) challenging the management practice of including in past element listings of disciplinary actions the original action issued and the final action resulting from modification of the original action.


In full and final settlement of all disputes on these issues it is agreed that:

1. All records of totally overturned disciplinary actions will be removed from the supervisor's personnel records as well as from the employee's Official Personnel Folder.
2. If a disciplinary action has been modified, the original action may be modified by pen and ink changes so as to obscure the original disciplinary action in the employee's Official Personnel Folder and supervisor's personnel records, or the original action may be deleted from the records and the discipline record reissued as modified.


3. In the past element listings in disciplinary actions, only the final action resulting from a modified disciplinary action will be included, except when modification is the result of a "last chance" settlement, or if discipline is to be reduced to a lesser penalty after an intervening period of time and/or certain conditions are met.

Please indicate your agreement by signing and returning a copy of this letter.

Sincerely,


Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

DATE 8/17/88


William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 8/17/88