

***MAJOR GUIDES USED BY ARBITRATORS IN  
HANDLING DISCIPLINARY GRIEVANCES***

## MAJOR GUIDES USED BY ARBITRATORS IN HANDLING DISCIPLINARY GRIEVANCES

1. Employers are entitled to prescribe reasonable rules on conduct for their employees.
2. Employees have a right to know what is expected of them by the employer. Employers must give adequate notice of rules, except where the need for a rule is self evident and the employee should "automatically" know what behavior is expected of him. Violations of rules must not be condoned to the extent of rendering them invalid.
3. Employers have no jurisdiction over the private lives of employees when they are off duty and not on company property. The exception of this occurs when an employee's behavior off duty is such as to seriously damage or threaten to damage the employer's legitimate interests.
4. Employees must accept the need for industrial discipline and must conduct themselves in a manner which is not inconsistent with the goal of producing goods and services efficiently.
5. Employers must not take hasty action in anger. They must not act arbitrarily, capriciously or discriminatorily.
6. Policies with regard to discipline must be carried out consistently and uniformly. This does not mean that differences in the background or circumstances of particular cases will not be considered. Consistency as to the purpose of discipline is the standard most often applied.
7. The punishment should fit the crime. There is, however, considerable controversy among arbitrators as to whether they have the authority or mitigate a punishment when it is regarded as excessive.
8. The proper approach to industrial discipline is corrective and not punitive. Discharge should be used as a last resort after it has been determined that corrective measures will not succeed.
9. The evaluation of a given penalty will depend not only on the immediate offense, but also on the employee's previous disciplinary record.

→ OFF DUTY CONDUCT

#### **10. Post Discharge Conduct or Charge**

- A. Arbitrators have ruled that discharge must stand or fall upon the reason given at the time of discharge. Other reasons may not be stated at a later date or when the case reaches arbitration.**
- B. Some arbitrators qualify such conditions by stating that post discharge information could not be used to justify discharge but could be used in determining what the penalty should be.**

#### **11. Double Jeopardy**

- A. It has been held that once discipline for a given offense has been imposed by management, it cannot be increased**
- B. The double jeopardy concept does not apply where the preliminary action taken against the employee may not be considered final.**
- C. The double jeopardy concept also has been held to apply where management unduly delays the assessment or enforcement of discipline.**

#### **12. Grievant's Past Record**

- A. An offense may be lessened by a good past record and may be aggravated by a poor record. The employee's past record often is a major consideration in determining the proper penalty for his offense.**
- B. Arbitrators have held that circumstances may exist where neither the incident at the time of discharge, nor any other single incident cited was sufficient reason to warrant discharge. But the employee's overall unsatisfactory conduct and performance over an extended period may justify discharge. These are usually referred to as "last straw" situations.**
- C. While the employer may have the right to post notations of alleged rule violations in the employee's records, failure to notify the employee at the time of occurrence prevents the employer from using them at a later date to support disciplinary action. Arbitrators have given little consideration to past rule violations or warnings that have not been put in such a form as to make them subject to a grievance.**

- D. If an employee is given notice of alleged violation entries in his record and does not file a grievance, an arbitrator may accept the entries on face value without considering their merits.
- E. Evidence of past acts showing a course of conduct has been considered relevant in some types of cases, indicating the likelihood that the employee committed the specific act with which he was charged.

13. Charges of Anti-Union Discrimination

A charge of discrimination because of union activities can not rest upon mere speculation but requires clear proof to sustain such charges.

The burden of proof in charges of discrimination lies with the party making the claim.

14. Circumstantial Evidence

Conditions may occur where direct evidence is not available but circumstances exist indicating a chain of events that could only lead to one logical conclusion. These conditions are most apt to occur in cases of conspiracy.

Circumstantial evidence does not eliminate the requirement that there be clear convincing proof that the offense charge was committed. Mere suspicion is not enough to establish wrongdoing.

15. Management Also At Fault

Where an employee is guilty of wrongdoing but management is also at fault in some way that contributes to the employee's improper conduct, arbitrators have been persuaded to reduce or set aside the penalty.

16. Knowledge of Rules Warnings

- A. Just cause requires that employees be informed of rules. Employees can hardly be accused of violating a rule if he has never been exposed to the rule.
- B. Failure to give warning to an employee of possible future dismissal if he fails to adhere to a rule may be reason for an arbitrator to reinstate a discharged employee.

17. Mitigating Circumstances

← DISCRIMINATION

- A. Conditions may exist where an employee is guilty of violation of the contract for a reason beyond their control. Arbitrators have taken these extenuating facts in consideration when assessing guilt or penalty when it can be shown that the incident was beyond the employee's control.**
  
- B. Under the just cause section of the contract, arbitrators have reinstated employees where it can be shown that the reason for discharge was an isolated incident that is not likely to happen again and the employee has learned his lesson.**

*JUST CAUSE*

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**Grief Brothers Cooperaage  
U.M.W.A. District 50  
Carroll R. Daugherty**

**JUST CAUSE MAY BE DETERMINED BY ANSWERS TO THE FOLLOWING QUESTIONS. "NO" ANSWER TO ONE OR MORE NORMALLY SIGNIFIES THAT JUST AND PROPER CAUSE DID NOT EXIST.**

- 1. Did the employer forewarn the employee of the possible consequences of his/her conduct?**
- 2. Was rule or order involved reasonably related to orderly, efficient, and safe operation of business?**
- 3. Before administering discipline, did employer make effort to discover whether employee did in fact violate or disobey rule or order?**
- 4. Was employer's investigation conducted fairly and objectively?**
- 5. In investigation, did employer obtain sufficient evidence that employee was guilty as charged?**
- 6. Has employer applied its rules, orders, and penalties even handedly and without discrimination?**
- 7. Was degree of discipline reasonably related to the seriousness of offense and employer's record of employee?**