

# **Talking Grievances**

## **An online series of successful grievance Ideas**

### **Bill Lewis**

Time after time I see good arguments lost by the steward by failing to raise the argument during the grievance process. I am sharing some experience to help the steward to be successful in the defending the grievant.

Certain steps should be taken when investigating a removal/discipline. During your investigation you should focus on certain elements contained within the Notice of Removal/Discipline. Removals require a thorough examination of the actual removal notice. When I examine/review a piece of discipline, I check for certain procedural/contractual requirements that must be part of the written notice.

#### **Date of Issuance**

I cross check the date of issuance and the date the grievant signed for the discipline. The grievant signing the Notice of Removal helps establish a date when the grievant received the discipline. If the discipline is mailed, I check the certified number or delivery confirmation number for the date the grievant received it. (I check the dates on the web @ [usps.com](http://usps.com)). The dates are important to determine if the grievant was given the 30-day advanced written notice. Article 16 Section 5 and the JCIM support the 30 day argument. The JCIM states Employees must be given thirty days advanced written notice prior to serving a suspension of more than fourteen days or discharge.

*It must be 30 days not 29 days, count the days. The date it was received on is not the first day.*

#### **Review of Discipline .... The Concurrence**

Checking the concurrence on a removal or any suspension is critical. The concurrence is not just a rubber stamp as I have seen in most cases. The concurrence argument often is forgotten or never explored. A bad concurrence is enough to over turn a discharge. Article 16 Section 8

Arbitrator Eischen wrote in a national award, "A violation of Article 16.6 occurs whenever: (1) the initiating official is deprived of freedom to make his own independent determination to discipline by a command decision' dictated from higher authority to suspend or discharge; (2) the initiating and reviewing/concurring officials jointly make one consolidated disciplinary action decision; or 3) the higher authority does not review the record and consider all of the available evidence before concurring in the supervisor's proposed discipline. In each such instance, because there have not been two separate and independent judgments on discipline, the employee is deprived of the essential due process check and balance protection that Article 16.6 is intended to provide.

Parenthetically, Arbitrator Eischen later determines that the process of review and concurrence is not a "ministerial formality or a mere technical laying on of hands, by the reviewing/concurring official. As to the remedy for an established violation, a finding issued that proper concurrence serves as a condition precedent to the imposition of a removal or suspension, and invalidates the disciplinary action.

### **Comparing Charges in the Documents**

Too many times the charges contained in the removal have made a major transformation between the PDI to the factual report (request for discipline) to the actual removal. This is not just a minor defect. The grievant at the PDI must be made aware of the charges.

### **Past Elements of Discipline.**

A thorough investigation must be done when reviewing past elements cited in the removal. You must check to see if the discipline is beyond 2 years. Determine if the discipline cited was previously settled. When discipline is cited that has not yet been adjudicated you must raise that argument, i.e. pending arbitration or one of the other steps.

For all discipline, please don't forget to raise the Just Cause in your write up. Please check your JCIM, Article 16. Remember you have 14 days with no exceptions.

For more useful information, documents, memo and forms please visit my [steward resource page](#).