

STEPWISE DISCIPLINE / A SUPERVISOR'S CHECKLIST
GENERAL FACTORS TO EXAMINE

Before deciding the type of disciplinary action to be administered, if any, the Supervisor should prudently pause and consider the general factors below. Doubt or error in any of these factors is likely to produce problems, reversals, or modification during the grievance process or arbitration, or both. The arbitrator will always give the employee the benefit of the doubt in advanced disciplinary action.

The supervisor should be able to prove the following with a preponderance of evidence:

- 1) Was there an offense committed? Was the employee involved in a misconduct violation or was performance below standard?
- 2) Who did it? Was there a supervisory witness or observer who can offer positive identification?
- 3) Was the discipline warranted? (What does the rule/policy say?)
- 4) Does the discipline fit the offense/misconduct/violation/poor performance? (What has been done in past similar instances?)
- 5) Does the discipline fit the employee? (Consult the personnel file. Discuss past instances for this employee with his/her previous supervisors. Consider the effectiveness of earlier counseling/warning/discipline with this employee. Review personnel file and pages of this CHECKLIST.)
- 6) There are several factors which may result in arbitral reversal of serious disciplinary action. To prevent such problems, make sure the intent is to positively assist and correct the employee, rather than to punish the employee or retaliate. Disciplinary actions are subject to reversal or serious modification under the following circumstances. If the supervisor's actions or disciplinary steps violate any of these points, alternate action other than disciplinary action should be considered.
 - a) If the employee cannot be "made whole" in the event of reversal or modification, the disciplinary action can be criticized. Successful appeal of disciplinary action on these grounds can often result in future major changes or concessions in the Collective Bargaining Agreement.
 - b) If some supervisor other than the immediate supervisor disciplined, the action is likely to be interpreted as retaliation or punishment, not positive corrective action.
 - c) If an employee is being disciplined for refusing to perform an act that would have degraded or harmed him/her, the discipline is likely to be modified or overturned upon appeal and could result in litigation, such as for defamation of character.
 - d) The discipline is likely to be modified or reversed upon appeal if the employee refused to do a job which would have caused the employee to do any of the following:
 - 1) Commit an illegal or improper act.
 - 2) Commit an unsafe act.
 - 3) Act in violation of the Agreement/company rule/policy.

The supervisor should perform a +/-/? Just-cause analysis utilizing the JUST-CAUSE CHECKLIST on the following pages and utilizing the SPECIFIC MISCONDUCT CHECKLIST, which is appropriate for the problem being addressed.

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