

KNOW YOUR RIGHTS



DISCIPLINE INVALID IF IMPROPER NOTICE GIVEN

W. P. Picher
02026

By award dated August 15, 1986, Arbitrator Picher has upheld the right of postal workers to proper notice of a disciplinary interview. Clause 10.04 (which contains a 24-hour notice requirement) is mandatory, she states, and non-compliance renders any discipline imposed by the employer null and void.

In the case before her, the evidence showed the employer notified the grievor on July 2, 1985, of a decision to interview him. The notice stated he would be advised later of the time, date and place. The grievor then left on vacation and the employer attempted to advise him of these particulars by registered letter. The letter was never received by the grievor who, nevertheless, was instructed to attend a disciplinary interview when he returned to work. He attended the hearing with his Union Steward, but refused to participate on the grounds that he had received inadequate advance notice.

Notice to Include Specifics

In agreeing with the Union's argument that the notice given was improper, the arbitrator discusses the rationale for the notice and what it must contain.

"I find that in order to serve the purpose of article 10.04(a), the precision required includes notification of the date, time and place of the interview. Unless the employee is advised of these details, he does not know the point by which he must review his personal file in order to afford himself the right to do so before the interview, as set down in article 10.04(a)(iii). Nor can he effectively avail himself of his right to union representation, as referred to in article 10.04(a)(i), and further specified in article 10.06, if he cannot advise the Union in advance of the date, time and place of the interview."

Notice Is Mandatory

The arbitrator then explains why she does not find the clause merely directory in nature as argued by the employer.

"I am readily satisfied that (the right to notice) is of such fundamental importance to the effective realization of all the other rights set out therein, such as the right to union representation... and the right to review one's personal file..., that it is mandatory, not directory in nature. Without advance notice of the date, time and place of the interview the purpose of the interview as anticipated by article 10.04 cannot be realized."

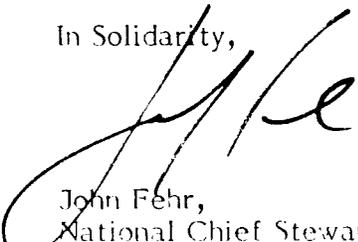
Non-compliance Renders Discipline Invalid

The arbitrator then discusses the consequences of the employer's failure to provide proper notice. She reviews other decisions and notes that arbitrators have found that:

"... a clause that provides for union representation in a disciplinary interview confers a mandatory right of a substantive nature which, if not complied with, voids the discipline that has been subsequently imposed."

The arbitrator states that she agrees with these awards. As a consequence, she sustains the grievance and orders the employer to rescind the 15-day suspension imposed on the grievor. (Pearce CUPW 300 H 767, CPC 86-1-3-1606)

In Solidarity,


John Fehr,
National Chief Steward.

September 4, 1986.
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CUPW