

Handbook EL-921

Supervisor's Guide to Handling Grievances

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Preface

The Postal Service, working in conjunction with the national unions, strives continuously toward improvement of the labor-management climate by fostering better communications, greater trust, and improved working relationships at all levels of the company.

You are a key figure in promoting this philosophy. As the management team member that is involved from the outset in problems, complaints, and grievances, you can contribute to the improvement of relations between management and labor by giving your sincere attention and by making every effort to *settle* differences even before they reach the formal grievances stage.

The material contained in this booklet is intended to serve only as broad guidelines. It is provided to assist you in the handling of grievances and disciplinary actions. The guidelines are not necessarily requirements that must be strictly complied with or blindly followed, and *no employee rights are created when these guidelines are not followed.*

- Labor Relations Department

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I. Introduction

This material provides a broad guideline for supervisors in handling grievances and disciplinary actions under the current collective bargaining agreements. No attempt has been made to answer specific questions nor to develop a *cure-all* for grievance processing. Effective grievance processing can only be accomplished through additional experience and by applying the concepts outlined in this material.

To continue improving in labor relations, every supervisor must have not only a thorough knowledge of, but also a belief in, the philosophy of labor relations as expressed here. You, as supervisors, must work hard to develop and maintain a positive labor relations attitude in the Postal Service. You have the first opportunity to open communications so that mutual trust, two-way dialogue, and an environment of cooperation are developed between management and labor.

By working out problems before they become grievances and by resolving grievances at the lowest possible step, you can make a contribution to the overall improvement of labor-management relations that will impact favorably on all facets of our organization.

II. Handling Grievances

A. General

The collective bargaining agreements cover all matters agreed to between management and the unions regarding wages, hours of work, overtime, and other terms and conditions of employment. Parts of some handbooks, manuals and published regulations of the Postal Service also contain material that directly relates to wages, hours, or working conditions as they apply to employees covered by the National Agreements, and that material must contain nothing that conflicts with the Agreements. As management conducts its business, there is always the possibility that an employee and/or the unions may believe that a violation of the Agreement(s) has occurred. While problems are best *resolved* before they become grievances, supervisors must know how to handle grievances quickly and satisfactorily when they do arise.

B. Supervisory Responsibilities

Management is responsible for directing its operations; employees and/or the unions, however, have the right to file grievances if they believe their rights have been violated. A supervisor must be in a position to respond properly should a grievance arise. Use the following guides in handling grievances:

Treat every grievance as though it were sure to wind up in arbitration, but do not be adversarial in your approach.

**Allow employees and/or unions a full opportunity to present their points of view.
Listen: don't interrupt.**

Make sure that time limits and other procedural requirements under the grievance procedure have been observed.

Know the background of the grievance, and the existence of prior similar cases and their outcome. Know the applicable provisions of the Agreement and any information relating to past policies and practices.

Make sure the employee and/or the union has presented the full story, specified the exact nature of the alleged violation, and stated the precise remedy that is sought.

Make a detailed and accurate record of the results of the investigation. This should include:

- **Any pertinent payroll documents.**
- **Work, personnel, or disciplinary records.**
- **A summary of the employee's and/or the union's and management's positions.**
- **The names and statements of witnesses.**
- **The nature of any evidence presented by either side.**

We must stress the importance of finding out *who, what, when, where, and why*. Make absolutely sure that you have all the facts. This requires asking questions.

It is the responsibility of local management to *resolve* as many grievances as possible at Step 1. When a grievance has merit, you should admit it and correct the situation. *You* are a manager--*you* must make decisions--don't pass the buck. Your decision on a grievance should be based on the facts of the situation and the provisions of the National Agreement. You should listen to the employee's or union's grievance and make sure of the facts.

Do's and Don'ts

***Do* try to make the decision fairly.**

***Do* try to be reasonable.**

***Do* take the action you believe should be taken based upon the individual circumstances involved.**

***Do* give the employee or the union a complete answer including the reasons for your decision.**

***Don't* make a decision in anger.**

***Don't* try to "get back" at an employee or the union for some other action you didn't like.**

***Don't* tell the union you do not have the authority to make a decision.**

If you do not have the answer, advise the union steward or representative that you will get back to him or her and then seek assistance from higher level management in developing a response.

The time limit for each step is a limit, not the length of time you are expected to take to reach your decision. You are expected to expedite your decision, but not at the expense of sound judgement. If you follow the policy of fair, firm, and decisive, you will find that fewer grievances are appealed to Step 2. Study the facts thoroughly and determine how they relate to the provisions of the Agreement. If you then believe the employee's or union's grievance is unjustified, deny the grievance. Be certain you can justify your decision.

C. Disciplinary Grievances

Once the discipline has been initiated, the employee or the union may grieve the discipline within the time limits specified in Article 15. Just because the discipline was fully discussed at the time of issuance is no reason for the supervisor to breeze through Step 1 with a quick, "Grievance Denied." Points which should be covered by the supervisor in any such Step 1 discussion include:

Is there a misunderstanding as to management's reasons for having initiated the discipline?

On what basis does the employee feel that management lacked just cause?

On what basis does the employee or the union feel that the action taken is too severe?

We recognize that in many cases the union pursues a discipline grievance simply because of internal reasons, or because there is "nothing to lose and everything to gain." Whatever the reason behind the grievance, the result is the same--management's right to invoke discipline and the way that this right was exercised has been challenged. Therefore, even though the employee and/or the union is the moving party in filing a grievance against management, management must be able to justify the action.

Therefore, it is crucial that the supervisor not only take good notes during the Step 1 discussion, but also advise both the reviewing authority and the designee for Step 2 that a grievance has been filed. Since the reviewing authority thoroughly reviewed the proposed discipline before it was initiated, that person will be a key source of information for management's Step 2 designee. There must be a clear channel of communication between these two individuals.

(See Section V for instructions on use of Form 2608, *Grievance Summary - Step 1*.)

D. Role of the Step 2 Designee

The reviewing authority looks at the proposed discipline before it is imposed and concurs with the proposed action, based on the facts supplied by the supervisor. On the other hand, the Step 2 designee must look at both sides of the coin in an effort to resolve the grievance at the local level.

A situation may arise where the Step 2 designee finds the discipline either unwarranted or too severe, based on the facts and evidence presented at the Step 2 discussion. If so the Step 2 designee should thoroughly discuss the case with the reviewing authority and the supervisor involved before rendering a decision. Step 2 designees must not handle grievances as though they were "rubber stamping" decisions that have already been made. Also, the Step 2 designee must not accept without question all statements of facts or opinions by other management personnel regarding the case, nor assume automatically that the statements of facts or opinions forwarded by the union or grievant are fabrications or highly biased. Statements of facts by either party should always be documented.

Except to check out new facts which may be presented at the Step 2 discussion, the Step 2 designee will not have to develop management's case if the reviewing authority and supervisor involved have done their homework. The primary responsibility of the Step 2 designee is to review the case to determine whether *just cause* exists for discipline and, if so, whether the degree of discipline is appropriate.

Unlike nondisciplinary grievance for which the union must show that we violated the Agreement, in discipline cases we have to justify the action taken. The burden of proof is on us to establish *just cause*. Many times the union appeals primarily because management takes the position that once the decision is made, it is up to the union to show it is not justified.

(See Section V for instructions on use of Form 2609, *Grievance Summary - Step 2*.)

E. Summary

Management has the right to manage, but an employee or the union has the right to question management's application of the National Agreement through the grievance procedure.

Supervisors have the responsibility to be firm but fair in handling grievances.

All aspects of a grievance case must be fully documented and considered in reaching a decision.

The burden of proof in disciplinary grievances is on management, while in other grievances, it is on the union.

Supervisors must always be reasonable in their dealings with employees or the union.

III. Discipline

A. Basic Considerations

Management can only accomplish its mission through the effective use of people. Labor relations is a people-oriented process, and how successful we are in *working with people* will determine, to a great measure, whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

Let your employees know what is expected of them.

Know fully if employees are not attaining expectations. Don't guess--make certain with documented evidence.

Let the employee explain the problem--and listen! If given a chance, employees will explain their problems. Draw it out, if necessary, but get the whole story.

What are employees obligations? Some are spelled out fully, and some are at least touched on, in the collective bargaining agreements. Others relate to behavior expected in an industrial or work environment. These include, but are not limited to:

Working safely.

Reporting for work regularly and as scheduled.

Cooperating with fellow employees and superiors.

Performing quality work.

Maintaining the general ability to perform the job as required.

Following reasonable rules, orders, and directions.

B. Disciplinary Procedures

The main purpose of any disciplinary action is to correct undesirable behavior on the part of an employee. All actions must be for *just cause* and, in the majority of cases, the action taken must be progressive and corrective.

The following is a review of the measures management should take in dealing with employee problems:

As a supervisor, you should know daily what each employee is doing. If an employee usually does an acceptable or above-average job, but does poorly on a particular day, you are responsible for talking with the employee in a friendly and constructive manner. Determine what the problem is and try to help.

This is where your concern for the employee can be used to prevent additional and perhaps more serious problems. Personal concern does not mean being soft on employees; it is a trait of a good manager.

If minor offenses occur, discussion with the employee may be effective in correcting deficiencies. In such a case, let the employee know what the problem is. Be specific. Cite examples and let the employee know what is expected. You have a responsibility to encourage employees to correct their shortcomings. Let the employee talk--an interchange may be all that is needed. Follow up to make sure the discussion was effective. If the

employee corrects the shortcomings after this discussion, let it be known that you appreciate the improvement.

What happens if the employee's behavior does not improve? A second discussion is sometimes advisable, or formal disciplinary action may be initiated through issuance of a letter of warning or suspension. Remember, your job is to handle disciplinary actions so they are corrective and not punitive.

In suspending an employee, use extreme caution in convincing yourself that the penalty is appropriate for the offense. Progressively longer suspensions may be in order to correct a situation. When these fail, discharge should be considered. Before you take such action, review thoroughly:

Is it for just cause?

Have we made attempts to correct the employee's behavior?

Have we taken prior progressive disciplinary action?

Is the decision based upon objectivity and not emotionalism?

Remember, however, certain offenses may warrant discharge without prior progressive discipline.

C. Just Cause

What is *just cause*? The definition of just cause varies from case to case, but arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

Is there a rule?

If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule?

Important: It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule 10 years ago." You may have to prove that the employee should have known of the rule.

Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.

Is the rule a reasonable rule?

Management must maintain work rules by continually updating and reviewing them, and making sure that they are reasonable, based on the overall objective of safe and efficient work performance. Management's rules are reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee, and this is known to the employee.

Is the rule consistently and equitably enforced?

If a rule is worthwhile, it is worth enforcing, but be sure that it is applied fairly and without discrimination.

Consistent and equitable enforcement is a critical factor, and claiming failure in this regard is one of the union's most successful defenses. The Postal Service has been overturned or reversed in some cases because of not consistently and equitably enforcing the rules.

Consistently overlooking employee infractions and then disciplining without warning is one issue. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again.

Singling out employees for discipline is another issue. If several employees commit an offense, it is not equitable to discipline only one.

When the Postal Service maintains that certain conduct is serious enough to be grounds for discharge, it is unwise--as well as unfair--to make exceptions. If the Postal Service is to maintain consistency in its position that theft or destruction of deliverable mail is grounds for discharge even on a first offense, for example, then the otherwise good employee guilty of this offense, like the borderline or marginal employee, must be discharged.

Was a thorough investigation completed?

Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?

The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues 5-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a 30-day suspension for the same offense.

There is no precise definition of what establishes a good, fair, or bad record. Reasonable

judgement must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be use to determine the appropriate disciplinary penalty.

The Postal Service feels that unless a penalty is so far out of line with other penalties for similar offenses as to be discriminatory, the arbitrator should make no effort to equalize penalties. As a practical matter, however, arbitrators do not always share this view. Therefore, the Postal Service should be prepared to justify why a particular employee may have been issued a more severe discipline than others.

Was the disciplinary action taken in a timely manner?

Disciplinary actions should be taken as promptly as possible after the offense has been committed.

D. Disciplinary Arbitration

Management bears the burden of proof in disciplinary arbitrations. This is an important requirement which must not be taken lightly.

At an arbitration hearing, management witnesses are not assumed to be any more honest or credible than union witnesses. The fact that the supervisor testifies that an incident happened a certain way may not convince the arbitrator if the grievant or other union witnesses testify otherwise. The Postal Service should be prepared to prove its case to an arbitrator; therefore, the supporting exhibits should be gathered before the discipline is ever initiated.

A pertinent definition of *proof* is this: *Proof is the testimony and exhibits which convince an arbitrator that the employee committed the offense as charged.*

When conducting the investigation before disciplining an employee, the supervisor should gather all available and relevant evidence that will help to prove the case. This information is frequently available in the form of official records. For instance, if the charge involves tardiness, a copy of the employee's time card showing the arrival time might be introduced. On any attendance-related charge, Forms 3971, 3972, etc., would be relevant. When available, this type of documentation should accompany the supervisor's request for formal discipline.

E. Investigation

As previously discussed, when an employee commits an offense which seems to warrant discipline, the supervisor must avoid rushing into a disciplinary action without first investigating. The need for an investigation to meet our *just cause* and *proof* requirements is self-evident. However, the employee's past record must also be checked before any disciplinary action is considered. This is obviously necessary if we are to abide by the

principle of progressive discipline.

Failure to investigate before taking a disciplinary action can result in some awkward situations for the Postal Service. Examples:

One employee who worked for many different supervisors on a relief assignment was involved in discussions at separate times within one year by different supervisors for similar infractions. When discussion did not correct the employee's irregularity, progressive discipline should have been imposed at an early stage.

In another instance, an employee bid into a new section and immediately became a tardiness problem. During the first 10 days under the new supervisor, the employee was tardy six times. The supervisor held a discussion with the employee without investigating the past record, which would have revealed that the employee had been a continuing problem and had recently returned from a 30-day suspension for tardiness. Obviously, a discussion was not the correct action in this instance.

When in doubt as to the appropriate discipline to be issued, supervisors are encouraged to consult with their managers or with designated labor relations personnel. They will assist you in determining the appropriate corrective action base upon individual circumstances.

F. How Much Discipline

One of the most difficult areas of discipline is the determination of the amount or type of discipline to be issued for a particular offense. The Postal Service generally does not subscribe to any *discipline formula*, where a table of penalties is maintained for particular offenses. The discipline data base, which is part of the National Labor Relations Information System (NLRIS) and accessible to labor relations professionals, provides guidance concerning corrective actions. Generally, however, certain factors should be considered in assessing discipline, and disciplinary action should be tailored to the particular circumstances.

Items for consideration in assessing discipline include but are not limited to:

The nature and seriousness of the offense.

The past record of the employee; and/or other efforts to correct the employee's misconduct.

The circumstances surrounding the particular incident.

The amount of discipline normally issued for similar offenses under similar circumstances in the same installation.

The length of service.

The effect of the offense upon the employee's ability to perform at a satisfactory level.

The effect the offense had on the operation of the employee's work unit; for example, whether the offense made coverage at the overtime rate necessary, whether mail was delayed, etc.

The collective bargaining agreements also provide that discipline be corrective in nature rather than punitive.

IV. Review

A. Get the Facts

- Review the record.
- Find out what rules apply.
- Talk with individuals concerned.
- Get opinions and feelings.
- *Be sure you have the whole story.*

B. Weigh and Decide

- Fit the facts together.
- Consider their bearing on each other.
- Decide what possible actions there are.
- Check practices and policies.
- Consider objective and effect on individual, group, and production.

C. Take Action

- Are you going to handle this yourself?
- Do you need help in handling it?
- Should you refer this to your supervisor?
- Watch the timing of your action.
- *Don't pass the buck.*

D. Check Results

- How soon will you follow up?
- How often will you need to check?
- Watch for changes in productivity, attitudes, and relationships.

V. Grievance Summary Forms

A. Purpose

Forms 2608, 2609, and 2610, *Grievance Summary - Step 1, 2, and 3*, provide officials at each step of the grievance procedure with a concise and accurate report of the grievance. These forms are used to track grievance activity nationwide.

B. Grievance Summary - Step 1

Form 2608 focuses attention on the critical aspects of the grievance in a quick, step-by-step method. The form assists management officials in organizing their thoughts and documenting the grievance.

Read the instructions on the form carefully. You must type or print legibly. All items must be completed as indicated:

1. Self-explanatory.
2. Give name of facility at which grievance is filed (e.g., Anytown Post Office, Anytown Station, Anytown Branch).
3. Give craft (e.g., maintenance, clerk, letter carrier, mail handler).
4. Give grievant's title (e.g., distribution clerk, carrier technician).
5. Self-explanatory.
6. See the provisions of the appropriate contract for time limits. If the grievance is denied for untimeliness, explain in Item 12.
7. Give date when management answered the Step 1 grievance.
8. Give union representative, if any, present at Step 1 meeting.
9. Make the statement of the issue presented in the grievance descriptive, but concise (e.g., whether or not management properly charged the grievant AWOL for arriving two hours late).
10. Tell what remedy the employee or union states is necessary to resolve the grievance at Step 1. (For example: Grant grievant 2 hours of annual leave and destroy all records of the AWOL charge.) Do not use phrases such as "Make the grievant whole." Indicate any settlement offers made by either party at Step 1.
11. Self-explanatory.
12. This is one of the more important items. Complete it giving a clear, concise explanation as to how and why the decision referenced in Item 11 was determined. (For example: This is the sixth tardiness for the grievant in this month and no evidence was presented which justified the tardiness; therefore, the AWOL charge was appropriate.)

Note: You must complete Items 13-20 if grievance is denied.

13a-e. Give detailed information as to the level, step, tour, section, and pay location of the grievant at the time the grievance was filed.

14. Give grievant's date of seniority that is applicable to this grievance.

15. Tell whether grievant is a full-time regular (FTR), part-time regular (PTR), part-time flexible (PTF), or rural carrier. If the grievant is a rural carrier, include the employee's designation code.

16. Self-explanatory.

17. Include tour and grievant's schedule.

18. Give detailed statement of the background of the grievance. All local memoranda of understanding, documents, or other related information must be attached to this form.

19. Give a concise, descriptive statement of management's position. Cite all contractual provisions (article number and section only--do not recopy the contract) or postal regulations, bulletins, or directives (include specific date, section, part, etc.; e.g., ELM 431.2) that are relied on by management at Step 1.

20. Give a concise, descriptive statement of the union's position. If necessary, for clarification, request from the union representative the position of the union. As in Item 19 above, cite all contractual provisions, regulations, bulletins, or directives that are relied on by the union at Step 1.

21a. Give name and title of management official completing this form.

21b-21c. Self-explanatory.

C. Grievance Summary - Step 2

Form 2609 is used to efficiently consolidate all information provided by either management or the union at Step 2. It is imperative that a legible copy of all forms and documents cited by either the union or management be attached to the summary. Do not assume that management at a higher step of the grievance procedure will have access to any of your information. You must type or print legibly when completing the items on this form. You are required to complete all items:

1-4. Self-explanatory.

5. Give name of facility at which grievance is filed (e.g., Anytown Annex, Anytown Branch).

6-7. Self-explanatory.

8. Give name of union official at the Step 2 grievance meeting.

9. Give craft of the grievant (e.g., maintenance, clerk, letter carrier, mail handler, rural carrier).

10. See the provisions of the appropriate contract for time limits. If the grievance is denied for untimeliness, explain in Item 14.

11. Make the statement of the issue presented in the grievance descriptive, but concise.

12. Tell what remedy the employee or union states is necessary to resolve the grievance at Step 2. Do not use phrases such as, "Make the grievant whole."

13. Self-explanatory.

14. This is one of the more important items. Complete it in detail, giving a clear, concise explanation as to how and why the decision referenced in Item 13 was determined.

15. Give a detailed statement of the background of the grievance, citing all related contractual provisions (article number and section only--do not recopy the contract) or postal regulations having a bearing on the grievance. All local memoranda of understanding, documents, or other related information must be attached to this form. Outline what information was provided by witnesses at the Step 1 meeting. Although they are not required, you may attach verbatim statements of witnesses, even though an outline of the content of such statements has been made.

16. Give a concise, descriptive statement of management's position. Cite contractual provisions, regulations, bulletins, or directives that are relied on by management at Step 2.

17. Give a concise, descriptive statement of the union's position. If necessary, for clarification, request from the union representative the position of the union. Cite contractual provisions, regulations, bulletins, or directives that are relied on by the union at Step 2.

18. Briefly list settlement offers.

19. Include a copy of all documents, forms, or directives cited above and acknowledge by a check on this list that a copy is included. Do not assume that management at the next Step of the grievance procedure will have access to the information.

20a. Give names and titles of management officials completing this form.

20b-20c. Self-explanatory.

D. Grievance Summary - Step 3

Form 2610 clarifies whether the grievance is an interpretive issue (specifically, the issue to be appealed or arbitrated) and if settlement may be possible at a higher level. You must type or print legibly. All items must be completed as indicated:

1-4. Self-explanatory.

5. Give name of facility at which grievance is filed.

6-7. Self-explanatory.

8. Make the statement of the issue presented in the grievance descriptive, but concise.

9. Tell what the union states is necessary to resolve the grievance at Step 3.

10. Self-explanatory.

11. Give the concise, descriptive statement of management's position at Step 3. Cite contractual provisions, regulations, bulletins, or directives that are relied on by management at Step 3.

12. Give a concise, descriptive statement of the union's position at Step 3. Cite contractual provisions, regulations, bulletins, or directives that are relied on by the union at Step 3.

13. Provide information or contentions not set forth at either Step 1 or Step 2, but entered at Step 3. Cite any contentions withdrawn by the union.

14a. Provide a detailed statement as to why this grievance is or is not considered interpretive in nature by management. If interpretive, tell exactly what the interpretive issue is.

14b. Provide a detailed statement as to why this grievance is or is not considered interpretive in nature by the union. If the union states the grievance is interpretive, tell exactly what the union's interpretive issue is.

15-16. Self-explanatory.

Note: If the basic statistical data at the top of the form is available on a label printout, simply paste the label over the requested data.