

Arbitration Award Summary

06-111 - Arbitrability of Letters of Reprimand

Case outline:

A member had been given a letter of reprimand, but had not been offered any union representation for the meeting where the discipline was given.

Employer's argument:

The Employer made preliminary arguments that letters of reprimand are not arbitrable under the Collective Agreement. They first argued that the issue had already been decided in a previous arbitration back in 1995. That arbitrator ruled that letters or reprimand are grievable, but they are not arbitrable and therefore he had no jurisdiction to hear them.

The Employer further argued that the grievor is not without recourse if a procedural infraction occurs. The matter is grievable and the issue will be addressed-but only to the level of the Minister responsible for the Public Service. The fact that the letter of discipline may be relied on in future disciplinary proceedings is an incentive to the Minister to ensure that the grievance is dealt with fairly, including making sure that the grievor is given a full opportunity to be heard.

Union's argument:

The Union noted that the grievance did not involve simply the jurisdictional issue, but that there were three questions to be determined: Are the grievance "in their wholeness" arbitrable? If so, is there a breach of the collective agreement as a result of a failure to provide proper notice to the grievors? Can relief be awarded for the breach?

The Union argued that the issue of advance notice and union representation is paramount to the letter of reprimand and triggers the jurisdiction for arbitration. The Union recognized that the arbitrator is without jurisdiction on the letter of reprimand alone. However, the matter of notice and representation is clearly arbitrable and requires that the issues be dealt with in their totality at the final arbitration level.

The Union also argued that the words used in Article 37.07 (d) "may give rise...", calls for a discretionary analysis. Union representation protects employees, for example, from making inculpatory statements which may prejudice their case in later proceedings. The right to union representation permits a union representative to proactively address all issues at every stage of the grievance procedure, including arbitration.

Arbitrator's decision:

The arbitrator found that he was without jurisdiction in this matter.

Although the arbitrator understood the Union's concerns regarding admissions that may be made during the meeting called to give a member letter of reprimand, he also felt that he had to respect the intentions of the parties as set out in the language of the collective agreement. The arbitrator reads that the language is clear in Article 37.01 (2) (d) wherein it indicates that both the employer and the union have agreed that minor discipline shall be grieved to the level of the Minister and no further. The arbitrator also reads Article 37.07 to limit the right to advance notice and union representation to more serious discipline leading to a suspension or discharge.

The arbitrator felt that by accepting the interpretation of the Collective Agreement as suggested by the Union would amount to an alteration or amendment of the agreement in contravention of Article 37.22.