

T&A GRIEVANCE PROCEDURE - Articles §33.3 and §33.5

Article 33.3 sets forth the parameters for issuing discipline to an employee, serving an employee with an NOD and for the employee to file an appeal. Article 33.5 provides the framework for determining penalties and gives the employee the right to a hearing process.

1. What are the Time Limits for Management to Issue Discipline?

The dates on T&A NOD cannot go back more than one (1) year prior to the date of NOD.

2. How and When is the NOD Considered Served?

Two (2) copies shall be served on the employee either in person or by registered or certified mail, return receipt requested. The definition of “service” has been amended such that service is completed 10 business days after mailing the NOD if the first-class mail is not returned.

3. What Information Included with the NOD?

The Notice of Discipline served on the employee shall be accompanied by a written statement that:

- The employee has a right to object by filing a grievance within (twenty-one) 21 days;
- The grievance procedure provides for a hearing by a Permanent Umpire as its final step;
- He or she is entitled to representation by CSEA or by private counsel selected at his or her own expense at every step of the proceeding;
- If grieved, no penalty can be implemented until the matter is settled or the Permanent Umpire renders a determination;
- A copy of this Article shall be supplied.

4. What Happens When an Employee is Unable to Appeal?

If the employee is unable to personally sign and file a disciplinary grievance. CSEA may, at the employee’s request, submit such grievance on employee’s behalf provided:

- Within twenty-one (21) calendar days of submission, the employee must appear to sign the grievance form **OR** CSEA must produce documentation supporting any reason as to why the employee could not appear.
- Should neither of these actions occur, the grievance shall be deemed void after twenty-one (21) calendar days.

5. When Does the Employee Have a Right to a Hearing?

All time and attendance NODs that are not settled or resolved are heard before a Permanent Umpire in accordance with the penalty schedule except as otherwise provided in 33.5(g).

6. What are Determinations of the Permanent Umpire?

- The determination is confined to the guilt or innocence of the grievant and the appropriateness of the proposed penalty.
- The employee's entire record of employment may be considered by the Permanent Umpire with respect to the appropriateness of the penalty to be imposed.

7. What is the Permanent Umpire's Authority?

- The decision is final and binding and receives the same legal effect as an arbitration award. There is no appeal process beyond the Permanent Umpire's decision, except for limited court review, upon the same basis and arbitration award may be challenged.
- Upon a finding of guilt, the Permanent Umpire can uphold the penalty proposed in the NOD or impose a lesser penalty within the minimum and maximum penalties contained in the penalty schedule and appropriate to the NOD.
- May additionally direct the grievant to attend counseling sessions or other appropriate programs jointly agreed upon by the State and CSEA.

8. When Does the Appointing Authority Have the Option to Pursue Discipline Before a Disciplinary Arbitrator Instead of a Permanent Umpire?

- If an employee is to be served an NOD related solely to time and attendance
AND
- Within three years of this notice has been found guilty of or settled (or combination of both) two prior NODs that are NOT solely related to time and attendance

9. How Is an Adjournment Granted?

Entitles an employee to appear at the review before a Permanent Umpire and to have a CSEA representative or an attorney, provided as his/ her own expense, present.

Matters scheduled to be heard by the Permanent Umpire may not be adjourned except, at their discretion, for good cause shown. If an adjournment is granted, the matter will be rescheduled for the next regularly scheduled appearance of the Permanent Umpire. If an adjournment is not granted, the case will be heard based on the record, in the absence of the employee, and will be argued by the Contract Administration Specialist.

Examples of good cause could be because Grievant is:

- Absent on approved leave
- Out on Workers' Compensation leave
- Out on an extended sick leave

Examples not viewed as good cause could be because Grievant:

- Is out on suspension under Article 33 for other misconduct
- Is out on administrative leave pending investigation for other misconduct
- Is on a pass day the day of the hearing
- Calls in sick the day of the hearing

Steps to take to obtain an adjournment before the scheduled hearing day:

- If it is the grievant seeking the adjournment, then he/she should contact the Local representative or the Contract Administration Specialist to make the request to the T&A Disciplinary Administrator.
- The Administrator will call the other party to seek agreement on the request. If the other party agrees, the adjournment is granted.
- If the other party objects, the Administrator places the request before the Permanent Umpire.
- If the adjournment is granted, the Administrator will notify the parties verbally and then send a rescheduling letter to the grievant with the appropriate copies to the parties.

10. How is Prior Record Determined?

Under the Penalty Schedule of Article 33.5, the penalty sought is dependent upon the employee's past record of time and attendance NODs. The "three-year rule" is applied for determining prior record. The intent of the language change in 1992 was to allow an employee to "rehabilitate" his/her time and attendance record and remove any prior time and attendance NODs from that record, by having a three-year period of acceptable attendance since the final resolution of the last time and attendance NOD.

- Review the prior NOD which the employee received before the current NOD. Determine how it was resolved (decision, settlement, no appeal).
- The NOD which was received immediately prior to the current NOD is the one to measure for the purposes of the three-year rule. This means that in determining whether it is considered "erased" will depend on if it was resolved less than three years before the issuance of the current NOD.

Example:

An employee receives an NOD in 2010 and 2011. The employee receives an NOD in 2015. This latest NOD will be treated as a first NOD for purposes of penalty. The same employee is issued another NOD in 2016. That NOD now becomes the 4th NOD for purposes of penalty.

11. How is the Penalty Schedule Applied?

- The Penalty Schedule provides for minimum and maximum penalties for specific categories of time and attendance offenses in consideration of Prior Record.
- Offenses are divided in to main categories: Tardiness and Absences
- "Two Track" Approach- An offense in one category does not count as a prior NOD in the other category
- Discipline solely for tardiness must proceed on the tardiness schedule of penalties and cannot be considered as prior record for any other offense.
- Discipline that combines tardiness and unauthorized absences must proceed on the appropriate level within the type of unauthorized absence charge.