

NATIONAL AUTOMOBILE TRANSPORTERS JOINT ARBITRATION COMMITTEE
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BULLETIN NO. 588
(NA 1996)

TO: ALL EMPLOYERS AND LOCAL UNIONS

RE: NATIONAL MASTER AUTOMOBILE TRANSPORTERS AGREEMENT ARTICLE 7,
SECTION 20--INNOCENT UNTIL PROVEN GUILTY PROCEDURE AND POLICIES.

On Thursday, April 4, 1996, the National Automobile Transporters Joint Arbitration Committee convened to discuss recent developments involving the procedures and underlying policies of Article 7, Section 20 commonly known as the "innocent until proven guilty" provision. More specifically, the newly negotiated provisions of Article 7, Section 20 state:

"An employee who is discharged or suspended shall remain on the job until the discharge or suspension is sustained under the grievance procedure, except in cases involving the cardinal infractions as defined in the applicable Area Agreement as any offense for which an employee is subject to discharge without a prior warning notice."

The members of the National Committee discussed various issues involving Article 7, Section 20 including, without limitation, the proper notification of disciplinary action; the rights of either party to docket a case involving discipline controlled by Article 7, Section 20; the effect of an employee's conduct subsequent to an issuance of a notice involving Article 7, Section 20; and the nature of offenses that are subject to the restraints imposed by Article 7, Section 20.

After extensive discussion the National Committee authorized the Co-Chairpersons to issue the following policy and procedural guidelines for use by all parties to the National Agreement.

I.
NOTIFICATION PROCEDURE

The general procedure to be followed by the parties in the issuance of disciplinary action within the scope of Article 7, Section 20 is described below.

Once the Employer has finished its investigation and concluded that it believes that just cause has been found to issue a Notice of Disciplinary Action in the form of a suspension or discharge which is not a cardinal infraction, it shall issue a written notice to the employee with a copy to the Local Union which contains the following information.

1. The nature of the alleged offense (other than a cardinal offense designated in the appropriate Supplemental Agreement),
2. The nature of the discipline to be issued (i.e., a suspension and length thereof or a discharge).
3. A statement which expressly states that the Notice is issued subject to the provisions of Article 7, Section 20 of the National Agreement.

Once the written notification is issued, the Local Union and grievant are placed on notice and, therefore, either or both must protest the Employer's proposed action within the time period allowed to protest an Employer's disciplinary action as defined in the appropriate Supplemental Agreement or established by the parties' practices.

Therefore, if a timely protest is submitted to the Employer, the employee shall remain on the job until and if the discharge or suspension is sustained under the grievance procedure.

If the Local Union or the employee fails to protest the Employer's actions in a timely manner, the Employer may implement the proposed discipline without further delay.

II. DOCKETING PROCEDURE

The National Committee acknowledged that pursuant to Article 7, Section 4, either the Local Union or the Employer may docket a grievance with the appropriate joint arbitration committee within fifteen (15) days after the required local level hearing. Therefore, in the event a Local Union or the employee does file a timely protest over an Employer's proposed discipline which falls within Article 7, Section 20, either the Local Union or the Employer is entitled to docket the disputed action with the appropriate joint arbitration committee. The filing of such a grievance will be subject to the applicable joint arbitration committee Rules of Procedure.

III. IMPACT OF INVOLVED EMPLOYEE'S SUBSEQUENT MISCONDUCT

The National Committee further agreed that the following general guidelines shall apply to an employee's alleged misconduct subsequent to the issuance of a Notice of Discipline falling within the coverage of Article 7, Section 20.

- A. In the event an employee subsequently commits the same offense which led to the earlier notification of discipline under Article 7, Section 20, it shall be treated as a separate and distinct offense. Accordingly, a separate notification must be issued by the Employer as described in the earlier provisions of this bulletin. In the presence of a timely protest by the Local Union or the employee to the subsequent action, the employee shall continue to work until either or both of the proposed disciplinary actions are sustained.
- B. In the event the same employee subsequently is involved in an alleged commission of an unrelated offense (e.g., excess absenteeism rather than minor cargo damage), the same policy discussed in "A" above shall apply. The Employer must issue a separate notice and the Local Union and employee are required to protest this later action on a timely basis just as in the case of the first instance. In the presence of a timely protest by the Local Union or the employee, the employee shall continue to work until either or both of the disciplinary actions are sustained under the grievance procedure.
- C. In the event the same employee is involved in a later incident involving a cardinal offense as defined in the appropriate Supplemental Agreement, he/she is subject to immediate discharge or suspension without the restraints imposed by Article 7, Section 20. Accordingly, if an employee was previously disciplined and is working subject to the provisions of Article 7, Section 20 and is thereafter discharged for an offense for which discharge is permitted without a prior warning notice as defined in the Supplemental Agreement, the Employer may terminate the employee without further delay. Thereafter, both disciplinary actions, if timely protested, would be subject to further processing pursuant to the provisions of the grievance procedure.
- D. Cardinal offenses falling outside Article 7, Section 20.

Article 7, Section 20 states that a cardinal infraction is one defined in the applicable Area Supplement as any offense for which an employee is subject to discharge without a prior warning notice.

It was acknowledged by the National Committee that there are provisions of the National Agreement which provide for discharge without need of a prior warning notice for misconduct may be treated as a cardinal infraction. An example is Article 30, Section 14(c) which contains the industry's substance abuse policy. The parties acknowledged that dischargeable offenses listed in Article 30, Section 14(c), Industry Substance Abuse Policy will be treated as cardinal offenses and, therefore, are not subject to the restraints of Article 7, Section 20.

In the event of any Local Union or Employer have questions concerning the contents of this Bulletin, please contact your respective Co-Chairperson at your earliest convenience.

Very truly yours,

**NATIONAL AUTOMOBILE TRANSPORTERS
JOINT ARBITRATION COMMITTEE**

RONDAL C. OWENS, Union Co-Chairperson
R. IAN HUNTER, Employer Co-Chairperson

RIH:mim

Dated: May 1, 1996

cc: Kurt Kobelt
NATLD Staff

Two Copies Local Union
Two Copies Employer