

SECTION 7

EMPLOYEE RELATIONS

7.03 DISCIPLINE

AUTHORITY: COLLECTIVE AGREEMENT BETWEEN THE PROVINCE
OF PRINCE EDWARD ISLAND AND THE UNION OF
PUBLIC SECTOR EMPLOYEES
CIVIL SERVICE ACT & REGULATIONS

ADMINISTRATION: PEI PUBLIC SERVICE COMMISSION
GOVERNMENT DEPARTMENTS AND AGENCIES

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1. INTRODUCTION

- 1.01 An employee who fails to maintain proper standards of conduct or commits a disciplinary offense shall be subject to disciplinary action. No employee shall be disciplined except for just cause.
- 1.02 The administration of discipline is the responsibility of the Deputy Head. The Deputy Head may delegate responsibility for disciplinary action to departmental directors, managers and supervisors.
- 1.03 Discipline in the work place is somewhat similar to discipline in society in that it serves three functions:
- (a) as a punishment for unacceptable behaviour;
 - (b) as a corrective measure to ensure unacceptable behaviour is not repeated;
 - (c) to act as a deterrent to others.

2. APPLICATION

- 2.01 This applies to all employees within the Civil Service.

3. POLICY

- 3.01 The discipline philosophy of the Civil Service is based on correction rather than punishment; as such the emphasis should be identification and isolation of problem situations before formal corrective action is required. The corrective approach dictates that the employee be aware of the reasons for and the desired results of the discipline and understand that discipline flows as a result of the employee's own action.
- 3.02 Discipline is normally a progressive process except for certain kinds of misconduct which, because of their seriousness, justify moving immediately to a more serious stage of discipline. The framework under which discipline occurs is found in the *Civil Service Act* (S. 32), its regulations (S. 29-35) and the UPSE Collective Agreement.

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3.03 DISCIPLINE PROCESS

Although management has the right to discipline any employee, this discretion is qualified by the right of the employee to have protection against unfair treatment. Therefore, the Employer must be able to demonstrate "just cause" for any disciplinary action imposed. For just cause to exist, these three requirements must be met:

1. The employee breached the rule or committed the offence charged against him/her.

In arbitration, the onus or burden of proof is on the Employer to produce evidence and establish the facts (on the balance of probabilities) which provide sufficient cause to discipline the employee. This evidence must demonstrate that the discipline was for just and proper cause.

It follows then that the standard of proof on the charge of misconduct or breach varies with the gravity of the misconduct forming the basis of the charge. The more serious the offence, the more convincing evidence must be relied on to prove Employer's position. During the investigation period, it is important to document facts in writing so that any discipline which may follow can later be substantiated if necessary.

2. The misconduct or offence warranted discipline.

To address this issue, four questions must be addressed:

- i) Did the employee neglect their job duties or responsibilities?
- ii) Did the employee violate any policies, rules or practices that endangered themselves, their clients or co-workers?
- iii) How would a reasonable person act in a similar circumstance?
- iv) How has the Employer responded to similar situations in the past?

3. Is the penalty just and appropriate to the act or offence as

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corrective discipline?

An Arbitration Board has the authority to substitute its judgement for management in assessing the appropriateness of the penalty. The following factors will be taken into consideration:

- i) What is the seriousness of the offence or rule violated in terms of policy and obligations?

Usually this is determined by the degree that either job duties were neglected or that the safety of clients, other employees or the offender were in danger.
- ii) What were the circumstances under which the misconduct occurred?
How would a normal, prudent person act under similar circumstances?
- iii) What is the continuous service of the offender? It is generally accepted practice that greater consideration should be given to long service employees.
- iv) Has the employee been satisfactory or above average up to now? If so, some recognition and consideration of this would be made in assessing a penalty.
- v) The past discipline record of an employee may be used to determine the degree or penalty for an offence. It cannot be used to determine his/her guilt on the new offence. Whereas the first offence may warrant a minimal reprimand, a second or third similar offence may warrant more severe discipline. This is a compelling reason why all discipline must be documented.

A general rule to follow goes as follows:

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“If the offending act was not documented, the act did not occur”. Another factor that must be considered is the period of time that has elapsed since the previous infraction. Since the real objective of discipline is correction, a long period of good conduct is a mitigating factor as far as previous infractions are concerned.

vi) Equality of Treatment:

Discipline must be consistent, uniform and objective. An employee has a just complaint, in the absence of a poor record or other aggravating factors, if they are disciplined more severely than others for the same offence. Previous failure to discipline may indicate that no discipline will follow for a particular infraction. In such situations, a tightening of discipline should be preceded by a notice that such conduct will no longer be tolerated. A manager who disciplines an employee for some particular behavior yet allows other employees to go without discipline for the same behaviour may be found to be discriminatory and the disciplinary penalty may be overturned.

It is equally important that discipline also be administered consistently across the civil service. For this reason, the departmental HR Manager and the PEI Public Service Commission act as central resources in guiding managers through the disciplinary process.

- 3.04 Once a potential discipline situation comes to the employer’s attention, the first point of contact should be your departmental HR Manager. In turn, the HR Manager will likely contact the PEI Public Service Commission, Labour Relations Section. While the HR Manager will be aware of the department’s level of response in other discipline situations, the PEI Public Service Commission has a strong, corporate knowledge of discipline cases across all departments.
- 3.05 Determining the appropriate disciplinary penalty can be very difficult. There are often many mitigating and aggravating factors to consider. It is also essential to be familiar with the Employer’s history in dealing with similar disciplinary situations. In cases of serious discipline, a meeting with the supervisory personnel, HR Manager and Labour Relations specialists should be convened to discuss the circumstances and determine appropriate discipline.

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- 3.06 The PEI Public Service Commission, under the *Civil Service Act*, must also provide its approval in any case where suspension, demotion or dismissal is under consideration.
- 3.07 When a possible misconduct or a breach of a rule or policy occurs, it is essential to fully investigate the matter before coming to a decision about what to do. Ensure the following areas are covered before meeting with an employee:
- (e) Interview all other participants or witnesses to gather as many objective, concrete facts as possible;
 - (f) Check the employee's personnel file for the history of work performance or any prior discipline;
 - (g) Arrange to interview the employee as soon as possible after the offence and, if possible, near the end of the employee's workday;
 - (h) Check legislative and collective agreement requirements;
 - (i) REMEMBER, the employee MUST be given an opportunity to tell their side of the story before any discipline can be imposed.

Review the evidence:

- (j) Did the employee do it?
- (k) If yes, does the misconduct or breach of rule warrant discipline?
- (l) If yes, what is the appropriate penalty?

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Consider all mitigating and aggravating factors:

MITIGATING FACTORS

Previous record of the employee

Remorsefulness

Cooperation in investigation

Condonation by the Employer

Inequality of Treatment

Economic Hardship

Nature of offence in relation to Department's Business and Reputation

Long Service

AGGRAVATING FACTORS

Prior Discipline (How long ago?)

- same offence
- unrelated offence
- related offence

Lack of Remorse, concern, awareness

- indicates likelihood of further offences

Lying/Misleading Remarks

Involving other staff in the misconduct

Non-classified Status/Short Service

Connection to Business Mission
- ie. Damage to reputation of Department or civil service as a whole or financial implications (ie. Theft)

Degree of Premeditation

3.08 When Imposing Discipline Follow These Steps:

1. Review legislative, collective agreement, and policy requirements again.

REMEMBER - in discipline, adhering to procedural requirements is crucial.

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2. Draft the Disciplinary Letter.

Set out the material facts - date, time and misconduct or wrongdoing.

- (a) Cite the section(s) of the Regulations, the work rule, contract obligation, policy or established practice violated.
- (b) Refer to any previous verbal warnings or discipline given for the same or related infraction.
- (c) If a disciplinary suspension, state that the employee is being suspended from work, without pay or benefits, as disciplinary action for the particular wrongdoing. State clearly the dates when the suspension begins and ends.
- (d) State that if the employee fails to correct the undesired behaviour, further disciplinary action, up to and including discharge should be expected. Do not specify the future disciplinary action.
- (e) The PEI Public Service Commission may assist in the preparation of the letter or may contact their Labour Relations legal counsel to assist in the preparation. The disciplinary letter should always be reviewed by the PEI Public Service Commission prior to signing and should be referenced in the letter as being in agreement with the decision.
- (f) Copy the letter to the PEI Public Service Commission, the Union, the personnel file and the Director responsible.

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3. Disciplinary Meeting.

- (a) The manager and/or supervisor should be present;
- (b) Ensure the employee knows in advance that this is a disciplinary meeting and that they are entitled to have the appropriate Union representative present with the employee, pursuant to Article 27.03 of the Collective Agreement;
- (c) Have the signed disciplinary letter to give to the employee during the meeting as well as a copy for the union, where applicable;
- (d) The letter should contain everything that needs to be covered in the meeting. Stick to the facts outlined in the letter.
- (e) Keep control of the meeting; if the employee becomes angry, disrespectful, or threatening, issue the letter and stop the meeting.
- (f) After the meeting, be sure a copy of the letter is sent to the Union if not provided during the meeting.