

GRIEVANCE HANDLING - JURISPRUDENCE (ARBITRATIONS & CASE LAW)

W.M. SCOTT PRINCIPLES

WM. SCOTT AND CO. LTD AND
CANADIAN FOOD & ALLIED WORKERS UNION,
LOCAL P-162,[1977] 1 CAN L.R.B.R. 1 (“WM. SCOTT”)

ARBITRATORS SHOULD POSE THREE DISTINCT QUESTIONS IN THE TYPICAL DISCHARGE GRIEVANCE.

1. **First, has the employee given just and reasonable cause for some form of discipline by the employer?**
2. **If so, was the employer’s decision to dismiss the employee an excessive response in all of the circumstances of the case?**

In answering 2 – the following should be considered:

How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?

Was the employee’s conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?

Does the employee have a record of long service with the employer in which they proved an able worker and enjoyed a relatively free disciplinary history?

Has the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?

Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which seems to arise particularly in cases of discipline for wildcat strikes)?

3. **Finally, if the arbitrator does consider discharge excessive, what alternative measure should be substituted as just and equitable?**

The following is an often quoted, but still not exhaustive, canvass of the factors which may legitimately be considered:

1. The previous good record of the grievor.
2. The long service of the grievor.
3. Whether or not the offence was an isolated incident in the employment history of the grievor.
4. Provocation.
5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.

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6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of their particular circumstances.
7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.
8. Circumstances negating intent, e.g. likelihood that the grievor misunderstood the nature or intent of an order given to them, and as a result disobeyed it.
9. The seriousness of the offence in terms of company policy and company obligations.
10. Any other circumstances which the board should properly take into consideration, example:
 - > failure of the grievor to apologize and settle the matter after being given an opportunity to do so;
 - > where a grievor was discharged for improper driving of company equipment and the company, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance.
 - > failure of the company to permit the grievor to explain or deny the alleged offence.

The board does not wish it to be understood that the above catalogue of circumstances (which should be taken into consideration in determining whether disciplinary action taken by the company should be mitigated and varied) is either exhaustive or conclusive. Every case must be determined on its own merits and every case is different, bringing to light in its evidence differing considerations which a board of arbitration must consider.