

Discipline Guide
Environment Canada

56785-
eng *

Prepared by
Human Resources Directorate
April 1992

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PHILOSOPHY	2
GUIDELINES	2
DEFINITION OF MISCONDUCT	3
MISCONDUCT VERSUS INCOMPETENCE/INCAPACITY	3
DRUG AND ALCOHOL RELATED MISCONDUCT	4
UNDERLYING CONCEPTS/DEFINITIONS	4
TYPES OF DISCIPLINE	6
STEPS TO FOLLOW	8
ROLE OF THE SUPERVISOR	10
ROLE OF THE STAFF RELATIONS OFFICER	10
DELEGATION OF AUTHORITY	11
CONCLUSION	12

INTRODUCTION

This guide is aimed primarily at the first line supervisor or new manager who has little experience in handling disciplinary matters. It is intended to provide basic information to these individuals and assist them in making decisions. The information provided should enable the manager/supervisor to handle problem cases in a fair and just manner, as consistently as possible.

While one main aspect of the managerial function is the maintenance of discipline among employees, this should seldom involve recourse to disciplinary measures as the large majority of employees in any organization conduct themselves in a responsible manner.

In accordance with the various Public Service Terms and Conditions of Employment Regulations, the Deputy Minister is authorized to establish standards of discipline for employees and to prescribe, impose, vary or rescind penalties, including suspension and discharge.

In applying discipline it should be understood that each case is different. Severity, unique, circumstances, past record, and a host of other factors are considerations that have to be taken into account when applying discipline.

PHILOSOPHY

The philosophy on discipline within Environment Canada aims to correct employee behaviour through the progressive application of more severe disciplinary action for successive acts of misconduct. In some cases, the misconduct will be sufficiently serious to warrant severe disciplinary action on a first offence.

GUIDELINES

GENERAL

Timeliness of disciplinary action in response to unacceptable behaviour must be dealt with in a fair and timely fashion. Managers must ensure that the penalty imposed encourages employees to follow the established respect for rules. Employees must understand that misconduct is unacceptable behaviour.

CONSISTENCY OF APPROACH

Fairness requires that employees committing the same offense be treated substantially alike; however, absolute consistency is not always possible or desirable since the circumstances surrounding an offense may add to or lessen its seriousness.

DEFINITION OF MISCONDUCT

Misconduct is a wilful action or inaction on the part of an employee which, when compared to standard practice, is viewed as unacceptable.

Examples:

ATTENDANCE:

Lateness
incorrect reporting time,
absence without leave,
leaving work without consent;

WORK PERFORMANCE:

Negligence,
failure to carry out instructions,
failure to attempt to do assigned
duties;

PERSONAL BEHAVIOUR:

AWAY FROM WORK

Any action bringing disrepute to the
Department, including an indictable
offense;

AT WORK

Insubordination, obscene language,
fighting, assault, sleeping,
disregard for safety and health
rules, harassment, discrimination,
theft, fraud, conflict of interest,
being under the influence of
alcohol or drugs, etc.

MISCONDUCT VERSUS INCOMPETENCE/INCAPACITY

Misconduct should not be confused with incompetence or incapacity. Incompetence and incapacity are dealt with under Section 31 of the Public Service Employment Act. Misconduct refers to wilful behaviour on the part of the employee to do or not to do something.

Incompetence deals with the inability of an individual to perform his job function in a satisfactory manner. Incapacity implies that the employee is incapable of performing the duties of the position and it appears that the incapacity will continue for a lengthy or indefinite period. Health reasons are the most common form of incapacity.

DRUG/ALCOHOL RELATED MISCONDUCT

When contemplating disciplinary action, special consideration must be given to employees who have identified drinking or similar drug related problems as the source of their misconduct. While such problems are not, by themselves, an excuse for misconduct, every effort must be made to encourage and assist an employee to seek and obtain professional assistance in accordance with the Department's Employee Assistance Program or through other recognized and certified counselling services. Discharge may be considered only when (a) the employee refuses to cooperate in the diagnosis or treatment of his/her problem; (b) progressive discipline has been imposed, and (c) the misconduct continues. Otherwise, proposed terminations for alcoholism or other drug problems causing incompetence or incapacity, where there is good indication that the employee's behaviour is not within his or her control, shall be processed under Section 31 of the Public Service Employment Act.

UNDERLYING CONCEPTS/DEFINITIONS

There are some concepts that are closely related to the application of discipline. They must be well understood in order for management to select the appropriate response to a suspected act of misconduct. The appropriate response is derived from the concept of Natural Justice.

NATURAL JUSTICE

Natural Justice requires that an employer be fair and reasonable in its application of discipline. In practice, the punishment must fit the crime. It embodies the concept of Just Cause.

JUST CAUSE

Just Cause requires that an act of misconduct must actually occur before disciplinary action can be taken. Just Cause consists of three major elements:

- proof that misconduct occurred;
- decision whether disciplinary action is warranted; and
- choice of the appropriate disciplinary action.

BURDEN OF PROOF

In discipline cases, the onus of proving that the penalty imposed was just and reasonable rests with the employer. The standard of proof in discipline cases is the "balance of probabilities" rather than being "beyond a reasonable doubt" as in criminal cases. While the onus is on management to prove that its actions were justifiable, failure of the employee to rebut allegations may be considered by some arbitrators as an admission of guilt. There is, however, no set rule on this matter.

CULMINATING INCIDENT

A Culminating Incident is an act of misconduct which is viewed as the "last straw" offense which, when proven, could lead to the discharge of the employee. In isolation, the incident may not necessarily warrant severe disciplinary action, but, in light of the employee's record, it leads to the dismissal. This concept is consistent with the philosophy of progressive discipline used in the Public Service. It also demonstrates the importance of having records of previous disciplinary actions in order to be able to justify the measures being taken. The Culminating Incident theory is a specific application of the concept of Just Cause.

DOUBLE JEOPARDY

Double Jeopardy can occur when an employee has been disciplined for one specific incident and further disciplinary action is taken against the employee for the exact same incident at a later date. For example, once an employee is given a written reprimand for an incident, it would not be acceptable to suspend the employee one week after the fact for the same incident. It should be remembered, however, that if an employee has been charged under the Criminal Code for theft or fraud and administrative discipline is imposed on the employee such as discharge, this is not deemed to be Double Jeopardy. The employee is accountable under the Criminal Code regardless of whatever administrative discipline is imposed by the employer.

MITIGATING CIRCUMSTANCES

There are a number of extenuating or mitigating circumstances which should be considered in deciding on the appropriate disciplinary action to be taken and which could lessen the penalty to be imposed. These include:

- the employee's length of service and previous record;
- the degree of wilful involvement (deliberate, malicious, oversight, lack of understanding, etc.);
- degree of provocation;
- other contributing factors such as inadequate instruction or poorly worded or inappropriate posted rules;
- past practice in similar circumstances;
- whether or not the offence was an isolated incident;
- momentary aberration, on the spur of the moment action;
- is the employee remorseful;
- the employee's rehabilitative potential;
- the seriousness of the offence.

PROVOCATION

Provocation is a circumstance, relating to an incident, that would lessen the penalty to be imposed on an employee. The employee is not exonerated of his/her actions; however, the degree to which the employee was taunted by another will have a bearing on the disciplinary action imposed on the employee.

CONDONATION

If the employer had failed to warn the employee of unacceptable behaviour in the past and eventually disciplined the employee for misconduct that in the past had gone uncorrected, condonation would lessen the severity of the discipline imposed.

DISCRIMINATION

When an employee is disciplined, the employer must ensure that the severity of the discipline reflect what the employer has done in the past for similar misconduct. The penalty imposed would be reduced by an arbitrator if the employee could prove that other employees had been treated differently for the same type of offense under similar circumstances.

MOMENTARY ABERRATION

Where an employee is disciplined for misconduct and the misconduct was the product of very strong momentary personal impulse rather than an act which was premeditated, the arbitrator may diminish the penalty if the incident is deemed to be an isolated occurrence not likely to recur.

These are just some of the factors which may have an effect on the severity of the disciplinary measures imposed on an employee.

TYPES OF DISCIPLINE

TYPES

There are five types of disciplinary action:

- oral reprimand;
- written reprimand;
- suspension;
- financial penalty; and
- discharge.

ORAL REPRIMAND

Where an offense of a minor nature is committed for the first time and the employee is otherwise performing his/her job satisfactorily, a warning in the form of an oral reprimand will normally result. The oral reprimand should be introduced as constructive criticism in the hope that the problem will be corrected. The employee should be advised of the nature of the problem, the expected corrective action and the means of attaining improvement. An oral reprimand or warning must not become part of an employee's personal file. However, the delegated supervisor or manager should keep a note as a personal reminder of the date the action was taken.

WRITTEN REPRIMAND

A written reprimand is a statement placed on the employee's personal file by his supervisor and outlining:

- the nature of the misconduct;
- the disciplinary measure being imposed;
- the corrective action expected from the employee;
- the probable consequences of further misconduct.

Written reprimands are used when an employee has failed to correct minor acts of misconduct after oral reprimands or the nature of the misconduct is such that a more severe disciplinary measure is warranted.

SUSPENSION

A suspension is an enforced, temporary removal of an employee from duty without pay. A suspension can be definite or indefinite.

A definite suspension is for a fixed period of time. Its purpose is to correct employee conduct after:

- a serious act of misconduct has been committed;
- a repeated minor act of misconduct following one or more written reprimands.

An indefinite suspension is for an unfixed period of time and is used to protect the service, persons or property pending investigation of certain suspected misconduct when the continued presence of the employee poses a threat.

FINANCIAL PENALTY

This type of penalty is not used often. Normally, if suspension is not a viable form of discipline because of the remote work location, or if the individual is required to perform the duties in question and no other employee is available (for example, on board a ship), financial penalty may be imposed as an alternative to suspension. Careful consideration must be given to this form of discipline. Other employees, the employer and/or public property may be at risk when this form of discipline is imposed. All facts should be evaluated before this option is exercised. This form of discipline may also be used during illegal walkouts or when a number of employees are disciplined simultaneously. The Treasury Board Secretariat is recommending this type of discipline more and more in cases where suspensions would affect operations.

DISCHARGE

As the ultimate penalty, discharge has no element of corrective action and can only be used:

- a) when the offense, even though a first offense, is extremely serious and there is neither reason nor extenuating circumstances to mitigate the penalty; or
- b) when the incident is a culminating incident, i.e. the employee has been found guilty of some fresh act of misconduct that warrants disciplinary action in itself; and has had progressively more severe penalties imposed for past acts of misconduct; has been encouraged to seek professional help if necessary, and has been warned in writing that future misconduct could lead to discharge.

STEPS TO FOLLOW

In order to determine that misconduct has occurred, an investigation must be conducted. The onus is on the manager/supervisor to ensure that the investigation is thorough, fair and timely.

STEP #1: Consultation

Seek the advice of Staff Relations before making a decision. The Staff Relations Officer is familiar with the jurisprudence relating to these matters and should be able to assist you in making a prudent decision.

STEP #2: Investigate and Document

Gather basic information: who, what, where, when, why and how. Obtain all of the facts that are relevant. Talk to the employee and witnesses; talk to the supervisor/manager. Do not ask leading questions that suggest responses. Ensure you understand, take notes. Do not show bias; be professional. The manner in which you conduct yourself will have a bearing on the information you will receive. Inform the employee that the incident will be investigated and that disciplinary action could be taken. Depending on the severity of the infraction, consider suspending the employee during the investigation.

STEP #3: Review

Think and consider all of the facts and evidence. Sort out and summarize what you feel are the real issues. Separate the facts that are disputed from the ones which are uncontested. Identify any mitigating circumstances. Conduct additional interviews if necessary to clear up any confusion.

At this stage, if you feel disciplinary action may be necessary, call the employee to a disciplinary interview. He or she should be informed of his/her right to have his/her union representative present. The employee will be told what offence he or she is considered to have committed and will be afforded full opportunity to explain his or her actions. Inform the employee that his or her explanation will be given every consideration before a final determination is made.

STEP #4: Decision

Be fair; be reasonable; the discipline should be corrective in nature and not punitive unless the employee demonstrates no rehabilitative potential and we have no alternative but to discharge. Refer to the collective agreement to ensure that any provisions relating to discipline are respected. Refer to the Human Resources Management Manual to ensure that, prior to making a decision relating to discipline, you have the requisite authority as outlined in the Delegation of Personnel Authorities. Depending on the discipline to be imposed, the supervisor/manager may have only the authority to recommend, and not to decide the action. For example, only the Assistant Deputy Minister has the authority to discharge an employee.

STEP #5: Communication

The employee must be notified of the decision in person and in writing. Advise the employee that you will be meeting with him/her for the purposes of rendering a disciplinary decision and that he/she has the right to union representation. Where practicable, the employee should receive at least one (1) day's notice.

After the meeting, confirm your decision in writing and include an acknowledgement copy to be signed and dated by the employee. (If the employee refuses to acknowledge the notice as having been read and understood, make a notation to that effect on the file copy and have it witnessed by another management representative).

The disciplinary notice should include the following information:

- a) the nature of the offense;
- b) the discipline being imposed;
- c) the reason for the action (refer to other corrective action recently taken if applicable);
- d) the corrective action required on the part of the employee;
- e) the probable consequences of further misconduct; and
- f) the right of the employee to file a grievance.

Disciplinary notices must be assigned a "Protected" level. If mailed to a home address or post office box, they must be posted under double registration arrangements. Ensure a copy is sent to the employee's file, Staff Relations and, if required by the collective agreement, to the Union representative. Notify the pay and benefits unit promptly when pay action is required.

STEP #6: Follow-up

Since the objective of disciplinary action is corrective in nature, it is essential that the supervisor follow the progress made by the employee in terms of behaviour or conduct. Without excessively supervising the employee, the progress made or not made must be communicated to the employee.

After two years or other such lesser period which may be prescribed in the appropriate collective agreement, provided no further formal disciplinary action has occurred during that period, the disciplinary notice will be removed from the employee's personal file and destroyed along with the contents of the related discipline file.

ROLE OF THE SUPERVISOR

The supervisor/manager is responsible for:

- a) determining that misconduct has occurred;
- b) collecting and verifying the facts by investigation;
- c) keeping clear and concise written documentation of the case;
- d) analyzing the facts and determining/recommending appropriate corrective or disciplinary action to be taken;
- e) obtaining advice from Staff Relations, prior to taking corrective or disciplinary action, whenever possible, and
- f) taking necessary follow-up action.

ROLE OF THE STAFF RELATIONS OFFICER

The Staff Relations Officer has the responsibility to:

- a) provide advice to the manager/supervisor;
- b) assist the manager or supervisor in getting the facts; and
- c) monitor the corrective disciplinary action taken to ensure consistency with Departmental practice as well as jurisprudence.

REDRESS

Where the employer discharges an employee, the grievance procedure set forth shall apply, except that the grievance shall be presented at the final level only. Where an employee has presented a grievance up to and including the final level with respect to disciplinary action resulting in discharge, suspension or financial penalty, and his grievance has not been dealt with to his/her satisfaction, he/she may refer the grievance to adjudication.

DELEGATION OF AUTHORITY

The Human Resources Management Manual contains the chapter on Delegation of Personnel Authorities. The subject of Discipline has been delegated to the following levels:

VERBAL REPRIMAND	LEVELS 1-5
WRITTEN REPRIMAND	LEVELS 1-5
SUSPENSION FOR REMAINDER OF DAY WITH CAUSE	LEVELS 1-4
SUSPENSION OF 1-5 DAYS	LEVELS 1-3
SUSPENSION IN EXCESS OF 5 DAYS	LEVELS 1-2
FINANCIAL PENALTY EQUIVALENT OF UP TO 5 DAYS	LEVELS 1-3
FINANCIAL PENALTY EQUIVALENT OF MORE THAN 5 DAYS	LEVELS 1-2
INDEFINITE SUSPENSION	LEVELS 1-2
DISCHARGE	LEVEL 1/A.D.M.

Please refer to the Delegation of Personnel Authorities (1-1) to determine who has the authority to impose discipline in your organization.

CONCLUSION

This guide is only meant to provide general advice. When an act of misconduct has taken place, or is about to take place, it is strongly recommended that you contact your Staff Relations specialist. They are trained in Labour Relations matters; have access to other specialists in this field; are aware of jurisprudence; and know the proper procedures to follow. Their role is to assist you, please consult with them.

