



THEORY OF THE CASE

After a thorough investigation of the facts surrounding the incident and having figured out what happened in the process of building the best defense or claim, it is important to develop a theory of the case to which your presentation will conform and to figure out how this theory can best be proved to the arbitrator through the presentation of your case.

The nature of the incident, of course, sharply controls the development of a theory simply because of the two broad divisions into which disputes fall: Contract Interpretation on one hand; Discipline and Discharge on the other. There are some common considerations to be taken into account on any issue in contention. These would include:

1. Are there any fatal PROCEDURAL defects apparent?
2. What PRACTICE, if any, has been applied in past cases?
3. Are there other FACTORS on this matter that are in areas OTHER THAN THE CONTRACT?

In matters of INTERPRETATION OR APPLICATION, the issue is essentially one of rights and obligations. The key question, therefore, has to be: Is the language clear or is it ambiguous? Other issues of importance include:

1. Has the contested language or clause been ruled on before in arbitration?
2. Have previous grievance settlements given an indication of a mutually accepted process for handling the problem?
3. Is the current dispute consistent with such past

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history or does this concern an issue not covered by existing rulings and/or practices?

4. Does the issue in arbitration relate to a little used right or the avoidance of an implicit obligation?
5. Does the case demonstrate that contract language is being twisted into a new meaning not anticipated by the other side?

In disputes relating to DISCIPLINE, THE ISSUES CENTER ON EQUITY rather than rights and is more complex. The key question in these disputes is: DID THE GRIEVANT COMMIT THE INFRACTION AND ARE PROOFS OF THIS MISBEHAVIOR AVAILABLE? Assuming that the fact of the violation can be demonstrated, other issues of vital importance include:

1. Does the contract control the penalty handed out?
2. Were the surrounding circumstances to the act mitigating or aggravating?
3. Does the grievant's discipline record pose a problem because it shows past offenses?
4. Does the penalty fit the crime?

Depending on the nature of the dispute and the party's view of the findings resulting from a thorough investigation of the case, the theory of the case can be developed. In so doing, the theory of the other side's case can usually be figured out and this should be taken into account when your own theory is developed. It is important to not only convince the arbitrator that YOU HAVE THE MERITS IN THE CASE, but to also convince the arbitrator that THE OTHER SIDE IS WRONG IN THEIR PRESENTATION OF THE CASE.

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