

# Separation for disqualification of 'letter carriers'

**W**e have seen several cases in which clerks are being reassigned under Article 12 into the letter carrier craft, failing some aspect of the EL-804 driving tests, and being administratively separated for failing the test. Notwithstanding any position concerning Article 12, which will not be addressed at this time, this Contract Talk article will provide you with some of the arguments which should be addressed in the grievance file for administrative separations. Regardless of the assistance this article may provide, if you are faced with this situation, contact your NBA for specific guidance.

**The first item of defense is to answer the Just Cause Test.** Currently, the Postal Service issues a GATS number to these cases coded with a "D," which typically refers to discipline—although these are administrative separations. It is important to address just cause from the standpoint that it does not apply to an administrative separation. There isn't a rule that was broken; it isn't discipline, so there wouldn't be a thorough investigation, nor was the severity of the discipline reasonably related to...etc., etc. Discipline is not the issue; failure to pass a test is.

What provision of the National Agreement applies to administrative separations for disqualification? Article 19, Handbooks and Manuals states:

**Article 19, Handbooks and Manuals**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement...

The *Employee Labor Relations Manual (ELM)* is covered by Article 19, and section 365.3 refers specifically to Separations-Involuntary:

**365.31** Removal

**365.311** Definition. Removal is an action involuntarily separating an employee, other than an employee serving under a temporary appointment or a career employee who has not completed the applicable probationary period, for cause.

**365.32** Separation-Disqualification

**365.321** Applicability. This type of separation applies only to employees who have not completed their probationary period.

**365.322** Reasons for Action. Separation-disqualification is an action that results from the failure to meet conditions specified at the time of appointment (such as failure to qualify by conduct or capacity during the probationary period).

**365.323** Probationary Period. Separation-disqualification must be effected during the probationary period. Action is ini-

tiated at any time in the probationary period when it becomes apparent that the employee lacks capacity for efficient service.

A cursory reading of this *ELM* provision makes it clear an administrative separation based on a failure to pass a test—disqualification—must be completed during the probationary period. If the grievant is a post-probationary employee, then you must include these violations in the grievance file. You should request to review the grievant's OPF and include a copy of the grievant's Form 50s, which demonstrate their appointment/hiring date and date of reassignment. These documents will establish the grievant is not a probationary employee.

**To bolster your argument that disqualification separations outside the probationary period are a violation,** you should add the national-level arbitration decision of Shyam Das—C-26852—to your file. Das acknowledges the applicability of separation by disqualification must be within the probationary period. Typically, submission of arbitration decisions in a grievance packet is frowned upon, but the submission of national awards is always appropriate.

In addition to the above, the following provisions in the EL-312 should be reviewed:

**517.61 Purpose**

The Initial Road Test...before entering rural and city carrier positions...An eligible rating on this examination indicates that the applicant has demonstrated the minimum, basic driving skills expected of a new rural or city carrier.

The language is clear. An employee reassigned into the carrier craft must pass the initial road test prior to being reassigned. Request a copy of the initial road test to assess whether it was given *prior* to reassignment.

The driving test(s) are those administered through Handbook EL-804. The EL-804 indicates an employee who requests a transfer to another craft outside the installation must successfully complete all the driving requirements in the losing installation *prior* to being reassigned. If the grievant was reassigned outside the installation and the testing was not done prior to the reassignment, you must include this violation in the grievance file. Request a copy of the grievant's test scores and the location of the testing. This will demonstrate the time and location of the testing was not compliant with the specific provisions of EL-804.

**As stated earlier in the article, it is imperative you work with your National Business Agent to prepare these types of grievances.** ✉