Always go to the scene of the crime, continued

Jamie Lumm

So there I was in March 1987, wishing I was anywhere but the Bellevue, WA Post Office. The arbitrator had just arrived to start the hearing and only a few moments earlier, I had learned that a key element upon which my case was built was not true.

The grievant I was defending had been issued a seven-day suspension for driving through an intersection, while delivering mail, with the driver's side door of his postal jeep open. He also acknowledged that he knew it was against postal rules, but claimed that this type of intersection was not a true intersection because it was a "T" intersection and not a "+." This fact had been argued by the union at the three previous steps of the grievance procedure, and at each step management had denied the grievance, claiming that it didn't matter which type of intersection it was—it was still an intersection and the "closed door" rule applied. So I'd come armed with my best arguments about what an intersection was and how management had failed to properly train the grievant about what constitutes an intersection, blah, blah, blah. I'd researched Black's Law Dictionary, the advocate's bible *How Arbitration Works*, as well as previous arbitration cases, and was ready to dazzle the arbitrator with my soaring rhetoric.

But just before the hearing began, I saw a large map on the wall outside of the hearing room—and found out that the intersection in question was actually a "+." That was bad enough, but I also found out that the grievant had been issued a letter of warning (which was not grieved) just six months before for driving with his door open through this very same intersection.

My case had crumbled. There was no one to blame but myself. I hadn't done one of the basic things any grievance handler is trained to do: I didn't verify what I was told. I didn't go to the scene of the incident and see it with my own eyes. And now I was going to pay for it. However, I did have one faint hope left: It appeared that management hadn't gone to the scene either, because it had never contested the local union's claim that the intersection was a "T." So, I decided to play it cool and see what happened.

Arbitration hearings normally begin with opening statements from the opposing advocates. In a disciplinary case like this, management's advocate speaks first and tells the arbitrator what happened, why the discipline was justified and why it should be upheld. The union advocate then responds with the union's understanding of the incident, why the discipline was not justified and why it should be rescinded.

So, I listened carefully during management's opening statement, and very little was said about the intersection other than the grievant drove through it with his door open. No mention was made of what type of intersection it was, nor was it pointed out that the grievant had received a letter of warning for doing the same thing at this very same intersection just six months before. When my turn came, I decided to be equally vague about the intersection and instead focused my remarks on the punitive rather than the corrective nature of the suspension in light of the grievant's 28 consecutive years of safe driving awards.

After opening statements, management called the supervisor who had witnessed the incident to testify. He explained that he'd been following the grievant for about five minutes when he observed him drive through an intersection with his door open. Management's advocate then asked him to draw a diagram of the intersection and I struggled to keep a poker face as he got up, walked over to the flip chart, and drew a perfect "T." He then testified about how it didn't matter what kind of intersection it was; the door still must be closed. He also pointed out that since the grievant had driven left to right across the top of the "T," his open door was exposed to the road on his right, which was the same as driving through an "+" intersection. The management advocate also testified that the suspension was warranted since the carrier had been issued a letter of warning for driving through an intersection just six months before—but he never mentioned that it was at the same intersection. When management rested its case, I felt that maybe in spite of my blunder, there was still a chance to pull this one out. Then we took a short break.

As we were standing outside of the hearing room, I saw the arbitrator wander over to the same map on the wall I'd seen earlier. I held my breath as he appeared to be looking for the intersection in question. Then he turned and asked if we could show him the intersection on the map. I nodded "go ahead" to the management advocate and his assistant, hoping that they wouldn't find it either. My hopes were dashed a few moments later when I saw all three of them lean in to look closely at the map as the arbitrator exclaimed, "That's not a 'T'!"

All in all, I got lucky that day. It never came out that the grievant's prior letter of warning was at this same intersection. The arbitrator reduced the suspension to a letter of warning because of the grievant's 28 years of safe driving and awarded him back pay for his suspension. But most importantly, I learned a lesson I'd never forget: Always go to the scene of the crime—you never know what you will find. As my former NBA Jim Edgemon often said: "I'd rather be lucky than good." Then he'd add with a wink, "But it's amazing how the harder I work, the luckier I get."