

# Management breaks its promise on the CARE program



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In my March 2016 column, I discussed the CARE program (Counseling At-Risk Employees) unilaterally developed by management. The Nov. 15, 2015, USPS notification letter (USPS 3959) and the program handbook still are posted on the safety page of the NALC website for the use and protection of our membership. Download the document, read it and protect your members from misuse of the information collected.

The document states, “This program is not to gather information for any type of corrective action ... CARE Team members will not discuss the CARE meeting with any employees.”

**During meetings held with management** in December of 2015, we raised concerns over the potential for abuse by rogue managers who do what they want, taking matters into their own hands. We shared that we needed commitments to confirm that the information cannot be used against employees.

NALC made a follow-up inquiry, leading to a USPS response dated July 13, 2016, that in part said the following:

During the December 7, 2015 meeting on CARE, the union expressed a concern over supervisors using information collected during the CARE process against employees. You were advised that the CARE program was established to resolve safety issues and that the installation head is responsible for program compliance. **Information collected under the CARE process cannot be used for discipline.** However, an employee may be subject to corrective discipline outside of the CARE program for violation of safety rules/regulations.” (Emphasis mine.)

I next wrote about CARE in my November 2016 column, where I emphasized the above highlighted commitment and promise made by management at the headquarters level.

My column advised that, “If one of your employees is eventually issued discipline based on information you believe was acquired through the CARE program, then we need to drill down to find when and how management acquired the information used to support discipline. If your investigation establishes that CARE information was misused, then you should argue that point in your grievance and include a copy of the employer’s July 13, 2016, letter to the NALC.”

**Why are we bringing this up again? Recently we received an arbitrator’s decision on a removal issued to an employee for a safety infraction.** The notice of removal

listed two prior disciplines, which were citable; however, there was no 14-day suspension cited. Instead management went directly to a removal.

The union argued that this was a violation of Article 16 of the National Agreement because the discipline did not follow the model that discipline must be corrective rather than punitive. The *Joint Contract Administration Manual (JCAM)*, at page 16-2, specifically states that:

The requirement that discipline be “corrective” rather than “punitive” is an essential element of the “just cause” principle. In short, it means that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

Management defended its bypassing of the 14-day suspension by testifying that it had held a number of CARE counseling sessions with the carrier and that those efforts should replace the 14-day suspension. The arbitrator, not knowing of the above commitments, determined that there had been no violation of the National Agreement, based on the information contained in the file and the evidence presented at hearing.

Management made a promise at the headquarters level and allowed the field to ignore the commitments made to NALC.

## Records retention

**In addition to the CARE-related issue referenced above,** I noted that the employer listed accidents that exceeded the records retention period authorized in the *Administrative Support Manual (ASM)*. Section 351.2 of the *ASM* sets forth the rules relating to retention of records, as well as the required disposal of such records, as instructed in Section 351.6, which provides that disposal is the permanent removal of records or information from Postal Service custody.

ASM Section 351.21 identifies the authorized retention period for our records, including accidents. The option of transferring your records to the National Archives or the Smithsonian Institution as outlined in *ASM*, Section 351.61 is not viable, so the records must be destroyed when they exceed the retention period. Review those documents and argue that the improper retention of records creates an unfair bias against an employee. Former National Arbitrator Carlton J. Snow made such a ruling in a regional case from San Fernando, CA in C#23951.