ARBITRATION
HOW IT WORKS
DUE PROCESS IN THE RAILROAD INDUSTRY

- Investigatory Hearing
  - Due Process defined by the Collective Bargaining Agreement

- Arbitration
  - Governed by statutory Due Process
TYPES OF ARBITRATION VENUES

RAILWAY LABOR ACT

- RLA Section 3, First
  - National Railroad Adjustment Board (NRAB)
    - 1st, 2nd, 3rd & 4th Divisions
- RLA Section 3, Second
  - Public Law Board
  - Special Board of Adjustment
    - Requires agreement between the parties
RAILROAD ARBITRATION IS AN APPELLATE PROCESS

- Neither Party may rely on evidence not developed at the investigation
- Objections must be raised in the investigation hearing
- Objections must be preserved throughout the on-property appeal process
DISCIPLINE ARBITRATION

CARRIER’S BURDEN OF PROOF

- Legal Standards of “Proof”
  1. Beyond a Reasonable Doubt
  2. Clear & Convincing Evidence
  3. Preponderance of Evidence
  4. Substantial Evidence
DISCIPLINE ARBITRATION

SUBSTANTIAL EVIDENCE

- “More than a mere scintilla”

- Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion

- May consist of inferences, but such inferences must be a product of logic & reason and must rest on the evidence
WHAT DO WE HAVE TO OVERCOME SUCH A LOW STANDARD OF "PROOF"?
SEVEN TESTS OF JUST CAUSE
DISCIPLINE ARBITRATION

SEVEN TESTS OF JUST CAUSE

- Reasonable Rule or Work Order
- Notice of rule & performance standard, and consequences for failure to comply
- Sufficient Investigation
- Fair Investigation
- Proof (substantial evidence)
- Equal Treatment
- Appropriate Discipline
IN THE INVESTIGATION

- You are not trying to convince the railroad, you are there to convince the arbitrator
- Educate the arbitrator
- Weaken the railroad’s evidence with your own evidence
- Use experienced employees as expert witnesses
- Show that the accused is a GOOD employee