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If you have any questions about the grievance procedure beyond the materials provided, you may consult with the Department of Personnel.

Please contact **Marlene Gamroth** at ex. 1209 or at [marlene.gamroth@hochunk.com](mailto:marlene.gamroth@hochunk.com)

## Department of Personnel

P.O. Box 667

Black River Falls, WI 54615

(800) 232-0086

(715) 284-9465 (fax)

# The Successful Grievance

The Grievance Process is in place for employees to bring various issues that arise in the workplace to Board consisting of fellow coworkers trained to identify harassment, discrimination, or the improper or unlawful exercise of authority. The success of each grievance is determined by how well the *Grievance Form* is constructed, how concise and relevant the evidence and supporting documents are fashioned, and how well the case is presented to the Board. The following information is designed to assist you, the Grievant, in submitting your grievance in a way that increases the likelihood of success and relief. Your investment into the quality of your complaint will largely affect the overall success of your grievance.

## The Grievance Form

Fill your form out completely!

**HO-CHUNK NATION GRIEVANCE FORM**  
(Please print or type all information)

**Example**

Grievant Name: John Doeskins  
Address: 10 Eagle Drive  
Anywhere, WI 12345

Department: Maintenance  
Job Title: General Laborer  
Supervisor: Jane Doe, Manager

Date of Incident: 7/23/07  
Date of Filing: 7/26/07

Reference to Employment Relations Act (i.e. WISCONSIN EMPLOYMENT RIGHTS ACT Ch. 5, pg. 45) Employee Discipline (a) Depending on the circumstances of an incident discipline will normally be appropriate and should bear a reasonable relationship to the violation.

Summary of Issue: I worked work on 8/1/07. I called in on 7/23/07 for the first time and was given a 1-day suspension. I do not feel discipline was appropriate.

Relief Sought: Removal of Suspension & negative reference and backup for loss of wages.

Grievant's Signature: John Doeskins Date: 7/26/07

Grievance Received By HR on: 7/26/07

The terms of this grievance are contingent upon the employee maintaining full confidentiality over the grievance response. No part of a response may be discussed with anyone. Disclosure of it may result in disciplinary action.

Date Modified: 02/05/05

(Please print or type)

Grievant Name: John Doeskins )  
Address: 10 Eagle Drive )  
Anywhere, WI 12345 )

Department: Maintenance )  
Job Title: General Laborer )  
Supervisor: Jane Doe, Manager )

Date of Incident: 7/23/07 )  
Date of Filing: 7/26/07 )

Reference to Employment Relations Act (i.e. WISCONSIN EMPLOYMENT RIGHTS ACT Ch. 5 pg. 45) Employee Discipline (a) Depending on the circumstances of an incident discipline will normally be appropriate and should bear a reasonable relationship to the violation.

1. ERA – Cite the portions of the ERA that are relevant.
2. Summary – Briefly describe the incident in question and/or what makes your discipline “improper.”
3. Relief – Clearly state what you are seeking

## *Don't Get Your Case Dismissed!*

Your grievance must pass the initial review of the Department of Personnel. If your grievance does not meet certain requirements, the Department will recommend a dismissal to the Grievance Review Board at a hearing. The reason(s) the Department would request a Board to dismiss a grievance is because:

1. ..the Grievance Form is incomplete.
2. ...the Grievance Form is incoherent (doesn't make sense).
3. ...the Grievance Form cites no direct or implied cause of action (It's not enough to be unhappy...a law must be broken).
4. ...the Grievance Form was not filed in a timely fashion (**within five (5) business days of the date that the employee knew, or should have known, of the event that formed the basis of the dispute.**)
5. ...the Grievance seeks no identifiable relief or seeks relief beyond the scope of authority granted to the Board. If the relief you desire is not authorized by law, a hearing is unnecessary. Department may also seek a dismissal if such relief is moot.
6. ...the issue cannot be grieved (i.e. voluntary separation of employment, lay-offs, etc.)

## *Know the Lingo!*

**Bridge Service Credit** – The linking or connecting of a recalled or rehired employee where regular status was held for purposes of considering seniority, pay, and vacation accrual rates.

**Burden of Proof** – an obligation that remains on a single party for the duration of the grievance.

**Cause of Action** – Violation of law; facts that may justify the right or reason to seek relief.

**Continuance** – the postponement of a grievance at the request of either or both parties in the dispute, or by the Department of Personnel. A motion for continuance may be granted when necessitated by unforeseeable events or for other reasonable cause.

**Deliberation** – The process in which the GRB discusses in private the findings of the hearing and decides which argument to favor between the Grievant and the Respondent.

**De Novo** – A second time; afresh. A matter sent back to the original court (or GRB) for a new trial, as if it had not been previously heard nor decided. The Ho-Chunk Nation court system does NOT exercise de novo practice(s).

**Dismissal** – An order disposing of grievance or portion, thereof.

**Motion to Proceed** – An order to schedule a case to a full GRB hearing for meeting the requisites in whole or in part.

**Preponderance of Evidence** – the greater weight of the evidence required in a grievance for the GRB to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

**Recess** – A temporary break from a GRB hearing

**Relief** – Items awarded by the actions of the GRB intended to correct fault or error of supervisory management or a deficiency in operational function that infringed on the right(s) of the Grievant; sometimes a restorative measure to return to status quo.

**Summary of Incident** – A brief description of the event that prompted disciplinary action.

**Summary Judgment** – A final decision by the Board that resolves a grievance in favor of one of the parties. A motion for summary judgment is made after both sides present initial evidence and opening statements but before the entire matter is discussed before the GRB. The party making the motion marshals all the evidence in its favor, compares it to the other side's evidence, and argues that the most reasonable option would be to make an immediate determination since ultimately, the information that has already been provided is what is going to determine the outcome of the case. Further review would essentially be unnecessary.

**Withdrawal** – A voluntary rescinding of a grievance by its author (Grievant); no action may be required by the GRB although a formal dismissal can be issued.

*Know the Flow!*

**HO-CHUNK NATION**  
**GRIEVANCE FORM**  
(Please print or type all information)

**Example**

Grievant Name: John Doe  
 Address: 123 Main St  
 Department: Administration  
 Date of Incident: 7/15/17

Discipline: Reprimand  
 Date of Hearing: 7/20/17

Reference to Employment Contract Article 11.1 (11.1) and Employment Policy  
 HCEAA Ch. 5 § 95 (5) Employee Discipline (d) Depending on the nature of the disciplinary action and on individual circumstances, disciplinary actions should be progressive and should bear a reasonable relationship to the violation.

I was reprimanded on 7/15/17. I worked on 7/20/17 for the first time and was given a 1-day suspension. I do not feel discipline was progressive.

Request: Removal of Suspension & negative references and backing for loss of wages.

Grievant's Signature: John Doe Date: 7/20/17  
 Grievance Received by HR on: 7/20/17

The terms of this grievance are contingent upon the employee maintaining full confidentiality over the grievance procedure. No part of a report may be discussed with anyone. Disclosure of a report is a disciplinary action.

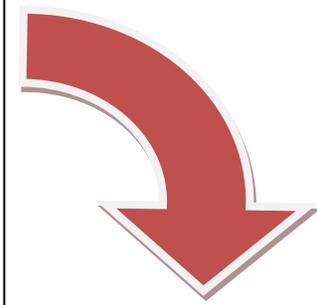
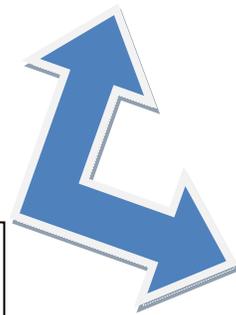
HR Number: 10000

Grievance Filed



**Department of Personnel**

- Intake
- Preliminary Review
- Alternative Dispute Resolution



**Grievance Review Board**  
**DECISION**

In the Matter of:  
 John Doe  
 Grievance Case #: 01234567  
 v.  
 Sandrine Carter, Transportation, Justice  
 Unit

**DECISION**

**INTRODUCTION**

On August 26, 2017, a grievance was filed with the Department of Personnel following a determination by the management of the Transportation Division to reassign Mr. John Doe. The Grievance Review Board must determine whether the supervisory management of the Transportation Division acted in accordance with the provisions of the applicable provisions of the collective bargaining agreement.

The Grievance Review Board has determined that supervisors of the Transportation Division have exercised proper discretion in their decision to discipline Mr. Doe. Therefore, the Grievance Review Board hereby DENIES Grievant's request for relief.

**FINDINGS AND RECOMMENDATIONS**

A hearing was conducted on January 4, 2017. John Doe and Sandrine Carter (Grievant) represented by counsel. Sandrine Carter represented management. The Grievance Review Board advised Mr. Doe that he is a member of the Transportation Division management. His behavior was proven as stated by the Department of Personnel.

The Grievance Review Board notes an initial lack of materials in preparation for the hearing from both the management and from the Grievant. Throughout the hearing, the Grievant

Sandrine Carter, Transportation, Justice Unit  
 Page 2 of 2

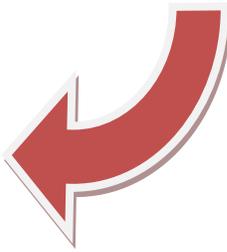
Decision Drafted/Finalized



- Hearing Scheduled
- GRB Members Established
- Notifications Sent
- Exhibits Gathered



- Prepare Board Members
- Conduct Hearing
- Deliberation/Decision



*It's all about the Relief!*

**WARNING: If you do not seek relief that the Board or the Executive Director of Personnel is authorized to provide, a dismissal will be recommended at the hearing!**

Reinstatement/Reassignment to comparable position:

**Information to include:** What is/was my job title, preferred location, my current rate of pay or what was my rate of pay upon separation? (“Comparable” allows that a position can be granted that is 15% below or above the base wage of position currently held or the position held upon separation.) The Board can only direct the Executive Director of Personnel to *offer* you a position...if you decline, the obligation has been met.

Removal of negative reference(s): Specify your Relief!

**Information to include:** What do you want removed? Suspension or termination papers (Disciplinary Action Forms) and any a supplemental relevant attachments that accompanied them.

The Board cannot remove the following documents because they do not affect your standing as an employee or qualify as “negative references”:

1. Counseling Reports
2. Annual Performance Evaluations
3. Incident Reports
4. Performance Improvement Plans

Compensation for actual lost wages: Do the Math!

**Information to include:** Were you sent home early? How many days were you suspended or how many working days since your last day of employment? Were you suspended over a holiday? What was your rate of pay at the time disciplinary action was imposed? How much did you receive in unemployment benefits?

The Department of Personnel will calculate lost income from wages considering any taxes, encumbrances, deductions, or debts owed to the Nation notwithstanding any Unemployment Compensation paid to the employee on behalf of the Nation. Any forthcoming adjustments to the total amount will be applied to the award.

## DON'T ASK for

1. ...a higher score on your Annual Performance Evaluation.
2. ...money for pain and suffering. Monetary relief is limited to *actual* loss of wages.
3. ...continuous enforcement of other laws, oversight, and supervision from the Board.
4. ...mileage or reimbursement of costs unauthorized by the supervisor.

## *Filing Your Grievance Properly*



### **Suspension or Termination**

What compels a Board to overturn a Disciplinary Action?

Management fails to properly identify negative performance or a cause of action.

Management needs a reason to impose disciplinary action. This means the employee has demonstrated (typically) repeated poor performance or failure to correct noted deficiencies in their work. Boards often seek evidence indicating management has provided clear notification to employees of performance deficiencies and any non-disciplinary<sup>1</sup> corrective measure taken related to the specific violation of law that prompts discipline. Management must also be prepared to verify the cause of action and must prove to the Board that a clear violation of the Nation's law(s) took place.

Management Fails to Ensure Progressive Discipline

Progressive Discipline starts with a suspension. Supervisors **ARE NOT** required to provide a Counseling Report or a Performance Improvement Plan before a suspension is imposed. The law states that Progressive Discipline will "normally" be applied but supervisors maintain the discretion to execute any level of punishment as long as such punishment bears reasonable relationship with the violation of law.

Management Fails to Prove Discipline Meets the Reasonable Relationship Standard

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<sup>1</sup> Counseling Reports, Performance Improvement Plans, Annual Performance Evaluations, Communicated Correspondence, etc.

Boards in whole or in part may not agree with the corrective measures imposed by a supervisor but often defer to their (supervisory) authority to make that call. The Board does may amend, change, or alter disciplinary action even if they agree the punishment was too harsh; discipline that fails to fall within reason will be overturned in whole.

Management Fails to Ensure Due Process in Part or in Whole

An absence of Due Process of Law in the disciplinary process is the “silver bullet” of any Grievance. The Trial and Supreme Court and prior GRBs have fortified its necessity when property is taken (through a suspension or termination) by overturning several clear actions of unlawful misconduct when a supervisor fails to provide their employee a reasonable opportunity to their side of the story prior to any forthcoming action. To uphold an administrative action, the Board will verify that management...

*Supervisors must give the employee a reasonable opportunity to state his or her side of the story **BEFORE** disciplinary action is determined!*

**IMPORTANT**

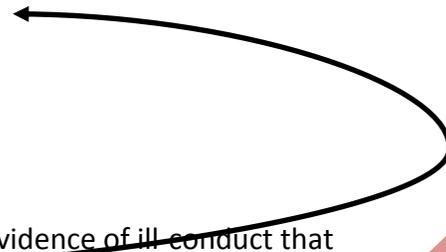
1. ...made sure the employee was aware of the standards expected.
2. ...notified the employee of any negative performance or misconduct.
3. ...notified the employee that they are not meeting the standards.
4. ...**gave the employee a reasonable opportunity to give their side of the story.**



**Discrimination**

Be prepared to support exactly how you were discriminated based upon one or more of these categorical indexes listed in the Employment Relations Act.

Sex	Race
Religion	National Origin
Pregnancy	Age
Marital Status	Disability
Sexual Orientation	



Support includes documented incident(s), witness testimony, anecdotal evidence of ill conduct that was made specifically because of your \_\_\_\_\_



## Harassment

Those who have successfully demonstrated to the Board that harassment is/was evident have similar characteristics. These may include:

1. Documented evidence made immediately following an incident and reported to the supervisor of the person in question. Information included dates, times, locations, description of incident, people involved, outcome and any response from the supervisor who the report was made to.
2. Witnesses who discuss what *they* saw or heard and were prepared to discuss matters in detail.
3. Testimony focusing in on events that reflect harassment as the ERA defines it and how it has affected the employee.
4. A notice or filing of a Whistleblower complaint.

**IMPORTANT:** It is **YOUR** responsibility to prove harassment has or is taking place. Here are some dos and don'ts when filing:

### DO:

- Document any experience that demeans you and undermines the integrity of the employment relationship by creating an unreasonably intimidating, hostile, and objectively offensive working environment. Ask yourself if the experience was important enough to document when it happened? If it wasn't, it's probably not important enough for a Board to grant relief.
- Apply the Nation's definition of harassment to each incident you use to support your case.
- Bring in witnesses who shared similar experiences and can provide testimony that can attest to environment created by such behavior.
- Focus on the quality of the evidence and testimony you are about to bring, not the quantity.
- File harassment separately.
- Remember that a GRB cannot make a decision on whether or not you felt or feel harassed; only if the behavior and conduct meet the Nation's definition.
- Hit a "home run" with your presentation! If you think you are far from meeting your burden of proof with a preponderance of evidence that supports a thorough and concise testimony, use your time to focus on other aspects of the grievance.

## **DON'T:**

- Assume the Board is going to make a finding of harassment on sympathy alone.
- Add a charge of harassment because you think it's going to help your other case.
- File harassment because you think it's a generic category that you can put all your complaints in.
- Use hearing time to ponder and reflect upon random occurrences that "might" be harassment. Your time to present can be viewed as how well the Board feels you are prepared to make this case.
- Use witnesses to testify as to how *you* feel or felt or how undesirable the supervisor is. The Board will not be making character judgments but will evaluate the behavior, the environment that is created, and how it relates to the Nation's employment law.
- File harassment because you're upset with a decision made by your supervisor(s) or because you don't like them. A lack of evidence is a red flag and a pretty obvious characteristic that trained GRB members identify.

**Important:** You don't have to convince the Board you felt harassed! You must prove that the individual in question's statements or actions violated harassment as defined by the ERA. If the GRB determines the burden has been met, a second hearing may be convened to consider sanctioning the employee who "knowingly" violated the law.



## **Hiring Practice**

Ho-Chunk Preference is **ONLY** applied when two or more candidates who possess equal qualifications and experience are considered for a position. Although not mandated by the ERA, applicants are encouraged to submit their complaint of a misapplication of Ho-Chunk Preference in writing. The Department of Personnel must respond to all written inquiries.

The Nation also provides preference points to members from other tribes, and points to Veterans (must provide Form DD214). If you feel you have been denied any preference points, you may contact the Department of Personnel. You may request your scores from the interview but the department will NOT release the scores of other applicants.

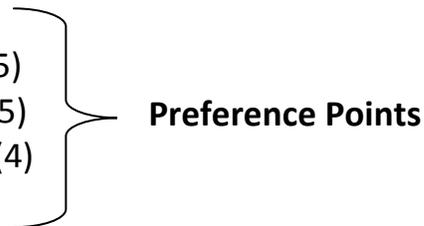
When an inquiry has taken place, the Board may examine materials but may not disclose information on other applicants (personal, professional, scores, etc.)

Interview scoring criteria is established as follows:

Relevant Knowledge and Skills (1-10)  
Guest Services Skills (1-10)  
Experience (1-3)  
Punctuality (0 - 5)

Oral & Written Communication Skills (1-10)  
Education (1-3)  
Initiative (4 - 5)  
Appearance\* (0 - 5)  
Greeting/Professionalism\* (0 - 5)

Ho-Chunk Tribal Member (8)  
Non-Enrolled parent of Ho-Chunk dependent (5)  
Non-Enrolled spouse of Ho-Chunk dependent (5)  
Native American (enrolled with another tribe) (4)  
Veteran (2)



\* Business Applicants

## *The Hearing*

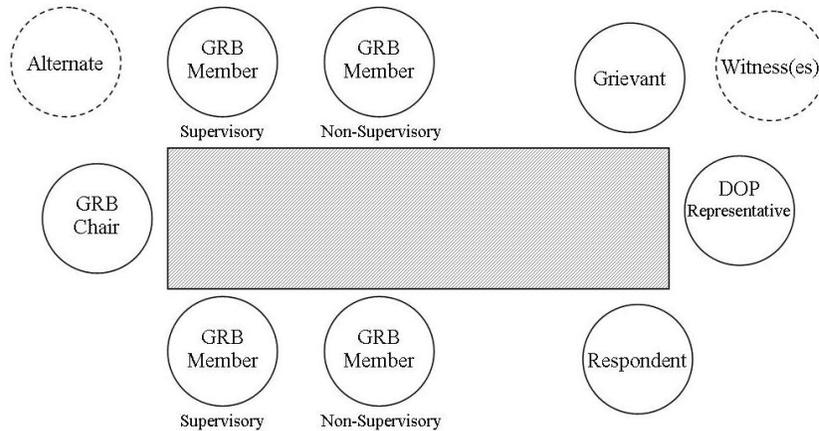
On behalf of supervisory management, the Department of Personnel will provide an introduction and consolidated summary of the case. The DOP representative will attest that the discipline met the requisites of law and may include why management believes the discipline should be upheld. At that time, the DOP may reserve or exercise their right to make any motion for the Board to consider.

Your opening comments are based on the reason for the grievance. **YOU** have the burden of proof; not the management. Describe the incident and note any discrepancies or inconsistencies that your opening remarks have with the introduction. Tell the Board where you were “wronged” either by a decision or a systemic deficiency. **USE THE LAW!!!** Each Board is different so arguing ethics of right and wrong may lead to uncertainty of subjective discretion. When a violation of law is proven to be evident, personal feelings are likely to get trumped by (the Board’s) moral obligation to uphold the law. The Board does not expect a courtroom presentation but if you’re able to find the specific clause of the ERA (or any law) that pertains to the case, this will certainly work to your advantage.

Your closing comments summarize the highlights of the hearing and the highlights of your testimony. Note the small victories you had during the hearing. Note any places where management fell short of a credible or salient argument. Explain how this event has affected your personal life briefly and add how the relief would allow you to resume. Acknowledge the Board and all parties for attending and conclude your testimony.

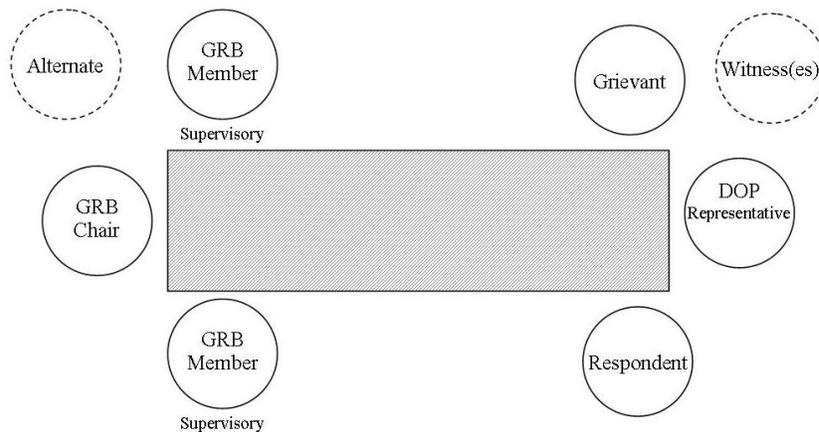
# Who's Present at the Hearing?

## Grievance Review Board Composition Non-Supervisory Grievance



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## Grievance Review Board Composition Supervisory Grievance



## General Tips

- Label and organize your evidence accordingly.
- Be prepared to respond to the evidence provided by the Respondents.
- Speak directly to Board members – They make the decision, not the Supervisor(s), or the Department of Personnel.
- Quality not quantity (Brief, targeted testimony and relevant evidence ONLY).
- RELAX. Your audience is made up of your peers and coworkers. THEY DECIDE!
- Don't be afraid to ask for a break. The Board takes one when they need one ...you can, too!