

THE PENNSYLVANIA RAILROAD COMPANY

INSTRUCTIONS FOR SUPERVISORS
IN CONNECTION WITH THE
HANDLING OF DISCIPLINE



October 1, 1965

NOTE

This manual is not a contract between the company and the employees. Nor does this manual extend the rights to which the employees are entitled under the respective labor agreements. If there is a conflict between this manual and the applicable agreement, the latter will govern.

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FOREWORD TO THE SUPERVISOR

In meeting its obligation to the employes, shippers, and the public, your Company requires proper behavior and strict compliance with rules and regulations. As a supervisor you are expected to apply discipline to yourself and the employes you supervise in order to meet this obligation.

The standards of discipline in your working group are a reflection of your capacity for leadership. It is your job to build an efficient working team. You do this mainly through training, personal coaching, and careful and patient on-the-job instruction. Discipline in its broad sense means proper behavior through systematic training, regular instruction, and the exercise of intelligent authority. Simply stated this means that as a supervisor you will set high standards of performance for the employes which they will attain by orderly behavior. They will have pride in their work unit and expect you to take just and proper action when someone does not perform his job in a proper manner.

Discipline as it is viewed by your Company is a positive tool of accomplishment. It means training the employes, counseling them, correcting their mistakes through personal instruction, encouraging them to improve their skills. It means the impartial enforcement of rules and regulations. Good disciplinary policies are clearly indicated by the morale, the efficiency, and the spirit of cooperation of the personnel.

Your position of authority sets you apart. Your subordinates should look to you for advice and guidance. They expect you to organize their work and to give them their assignments, but in addition, they expect you to take action when necessary. They rely on your judgment and sense of fair play to fit the penalty to the offense and to impose punishments impartially.

Unfortunately, not all of our employes respond to leadership, training, and encouragement, and for this or other reasons you must from time to time take positive corrective action. It is on these occasions that you see the word "discipline" in its

limited or special sense—meaning the administration of the Company's system of reprimands and, if necessary, temporary or permanent separation from service. When this becomes necessary, your attitude must be that the discipline which you administer will be suited to the offense and reasonable under the circumstances. You should administer it justly and procedurally so that it will not be overturned on appeal.

It is to assist you in doing so that this manual has been written.

I GENERAL

Discipline, as it is referred to in this manual, is a formal action. It is a matter of record and must therefore be based upon a proper and adequate record of evidence. Situations may arise which are not covered in this manual but require the exercise of sound judgment. However, if there is any doubt about how to proceed at any stage of handling, advice should be sought before proceeding further.

The formal action taken in disciplinary matters is subject to review by others, including the Manager, Labor Relations, designated as the highest officer of this company to handle such disputes and by the various Referees who sit with the National Railroad Adjustment Board or Boards of equal authority who may sustain or reverse the action taken. They will usually support the disciplinary action if these four steps have been followed:

1. The provisions of the applicable labor agreement relating to discipline have been followed. The agreement rules negotiated with the labor organizations must be complied with substantially and in good faith in taking action with the employe involved. These agreements vary as between labor organizations and may change from time to time as the parties agree. Supervision charged with disciplinary responsibility must, therefore, keep currently informed of the specific rules applicable.
2. The handling of the employe has been fair and impartial. Because there may be differences of opinion as to what is or is not fair and impartial, certain procedures have been developed which should be followed to insure fair treatment. Beyond this the conduct of company officials should be such that they cannot successfully be accused of being other than fair and impartial.
3. The action taken has been based upon sufficient evidence. The record of the trial must provide evidence to show that the accused employe did something he should not

- have done, or neglected to do something that he should have done, as stated in the charge.
4. The discipline is commensurate with the offense. There have been no measurements established for applying a fixed amount of discipline for a particular offense. However, sound judgment must be exercised to see that the discipline is suited to the offense and to the individual involved.

Handling of Supervisory Employees

This manual has been prepared to cover the procedures to be followed in the handling of discipline of employees subject to formal discipline rules contained in collectively bargained agreements. However, there are some supervisory employees covered by agreements with certain labor organizations which do not provide formal disciplinary procedures. Among these agreements are those with Yardmasters and Assistant Yardmasters. Gang Foremen and Station Masters and Assistant Station Masters. These employees as well as other supervisory employees whose positions are not covered by any agreement are not ordinarily subject to suspension as a disciplinary measure.

In cases of minor infractions or violations, such employees may be called in for a meeting with a supervisor who should discuss their shortcomings with them, confirming the discussion in writing. In more extreme cases, the employee may be disqualified from holding a supervisory position. If this has been done and the employee appeals, a hearing (not an investigation or trial) should be conducted at which the employee may have representation and a written transcript should be made of the proceedings. If it is then decided to continue the disqualification, the employee should be so advised in writing with the reasons therefor.

In cases of major infractions or violations involving the likelihood of dismissal in all capacities, the employee, who has been disqualified as a supervisor, should then be handled under the

discipline rules covering the class or classes in which he holds seniority. For example, an employe having trainman's seniority who may be subject to possible dismissal for an offense committed while working as a Yardmaster, should be tried in compliance with the discipline rules of the trainmen's agreement after having been properly disqualified as a Yardmaster.

Rights to Representation

In matters involving discipline, employes are entitled, if they so desire, to be represented. If the agreement with the labor organization involved does not specifically restrict the employe's choice of a representative, he may select any person or persons he desires. However, some of our agreements provide such a restriction. The agreement may limit the selection to a member of the grievance committee, an officer of the union or some similar restriction.

It is the policy of this company to permit an attorney or other individual to represent an employe even in situations where the applicable agreement provides for a restriction if the union representative agrees to such representation. In those circumstances, a Power of Attorney must be furnished.

It is the responsibility of an employe to arrange for his own representation, but the proceeding need not be unreasonably delayed by the unavailability of such representative.

An employe may be accompanied by more than one representative but it is not necessary to permit the presence of such a number of representatives as to interfere with an orderly proceeding.

Preparing the Case

When it has been decided to initiate formal disciplinary proceedings, careful preparation must be made. The preliminary work necessary to prepare the case will vary according to the nature of the offense, the information immediately available, and many other factors. Keep in mind that the record may be

reviewed by persons unfamiliar with the locations and operations involved and endeavor to develop a complete and understandable presentation. Every case should be fully prepared and the following are a few suggestions:

1. Study of maps, diagrams or sketches showing locations such as road crossings, switches, signals, turnouts, curves or other physical features of the area is helpful. These should show distances if that is a factor. Photographs may also be desirable in setting the scene.
2. When it is apparent that a rule, special instruction, or bulletin is involved, the trial officer must be familiar with the interpretation of or background for the rule so that he may, if necessary, properly state the company's intent in applying the rule or instruction.
3. While an investigation is not necessarily a part of every disciplinary proceeding, it may be desirable to take statements from the people involved in an occurrence. This may include the person or persons suspected of having committed an offense or it may involve others who are likely to have some knowledge of the occurrence.

At any investigation that may result in disciplinary action, it is necessary to follow certain rules which will be discussed later.

4. It is always well to plan ahead the line of questioning to be used. This permits the following of a sequence of events thus making a clear record and, in addition, permits the person who will conduct the proceedings to anticipate issues that may be controversial. He is then better prepared to cope with those problems.
5. The employee's personal record including previous discipline should be reviewed.

Holding Employees Out of Service

An employee suspected by the management of having committed a major offense may be held out of service pending trial

and decision. In case of an offense other than a major offense, no employe may be held out of service prior to trial and decision.

A "rule of thumb" for deciding whether an offense is major is to consider whether it is one in which severe or major discipline could properly be imposed upon a finding of guilt.

Some examples of what have been considered major offenses are:

1. Violation of Rule G of the Rules for Conducting Transportation.
2. Vicious conduct or committing a crime on company property.
3. Dishonesty in handling company funds.

These are just a few of the acts that are certainly major offenses which warrant immediate removal from service of the suspected employe. Occurrences which involve offenses that are not clearly either major or minor require the exercise of discretion on the part of the supervisory forces. In doubtful cases, the tendency should be to retain the employe in service, pending further action. Holding out of service is an action that should be reserved for the more serious offenses.

When a decision has been made to hold an employe out of service, it may be done immediately. Although the action may be taken orally, the employe should also be notified promptly in writing that he is being held out of service. The notice should describe the incident that caused him to be removed from service. It should be worded in a general way but not in such form that it may be construed as a specific accusation. The notice may be delivered to the employe personally and a receipt taken or it may be sent by Certified United States Mail (return receipt requested) to his last known address. No special form is required but a suggested form is shown in Attachment "A".

When an employe has been held out of service and is disciplined, the time held out prior to receiving Notice of Disci-

pline (Form G-32) is to be considered in applying the discipline. For example, an employee who has been held out of service ten days and is suspended for thirty days may be required to serve only twenty additional days. However, if the employee is held out of service forty days and suspended for thirty, he may be entitled to compensation for ten days.

An employee, who has been held out of service, may be returned to service prior to trial and decision. This does not limit the amount of discipline which may be imposed.

Attention must be paid to the time limit provisions in some labor agreements.

Check List for Holding Employees Out of Service

1. In case of an offense other than a major offense, the employee may not be held out of service prior to trial and decision.
2. The decision to hold an employee out of service must be based on sound judgment.
3. Employee should be given a written notice promptly, delivered personally or sent Certified United States Mail (return receipt requested) to his last known address. (See Attachment "A")
4. The written notice should inform the employee of the incident which led to his being held out of service.
5. If an employee is out of service, whatever further action is indicated should be taken promptly. Where agreements with the employees provide for time limits, they must be observed. Failure to do so results in serious complaints from the labor organizations and may invalidate otherwise justifiable discipline.

II THE INVESTIGATION

Elsewhere in this manual it has been stated that an investigation is not always a part of every disciplinary procedure. Employees may be disciplined without an investigation having been conducted and an investigation may be conducted without applying discipline. However, because the facts developed at an investigation may, and frequently do, result in disciplinary action, they must be conducted in such manner as to assure fairness to the employees while at the same time achieving their purpose.

The purpose of an investigation is, of course, to secure facts that will help in arriving at a proper solution to a problem and to discover misconduct, if any, by an employee. It is not a trial. It is an attempt to find out when? where? why? and how? some incident occurred and who? is involved. The purpose is *not* to establish guilt.

Notice to Attend

Employees required to attend an investigation should be sent a "Notice of Trial or Investigation," Form G-250, (See Attachment "B"), properly prepared to show that it is for an *investigation*, (*not a trial*). The completed form should also show that it is in connection with an *occurrence*, (*not a charge*). In order to insure receipt of notice by the employee, it should be delivered in person and receipted on the bottom portion of the Form G-250 or sent by Certified United States Mail (return receipt requested) to the last known address.

In specifying the time, place and date of the investigation, it should be kept in mind that it may be held in the manner most convenient to the company. However, an effort should be made to avoid undue inconvenience to the employee.

The company has a right and in some instances a legal obligation to investigate occurrences. Therefore, a notice to attend an investigation is an order and requires compliance on the part of the employee. Refusal to comply with such an order

without a suitable reason may subject the employe to a charge of failure to comply with such order. The order to attend must, of course, be reasonable with respect to time, place, and date. Proper consideration should also be given to excusing the employe from attending if he has reasonable cause for absence. However, if the company desires to challenge the validity of the employe's reason, it should be prepared to prove that the employe's reason is invalid. If an employe refuses to attend because of an alleged physical condition, he should be asked to furnish written medical evidence. Failure or refusal to attend an investigation does not preclude disciplinary action growing out of the occurrence under investigation. Labor agreements dealing with the taking of statements from injured employes must be observed.

Unreasonable Refusal to Answer Questions

There would be no point in requiring an employe to attend an investigation only to have him refuse to answer proper and pertinent questions. Any unreasonable refusal to respond to questioning should, therefore, be treated the same as refusal to attend an investigation. The record should show that the employe's responsibility and the consequences of his failure to answer have been pointed out to him and his representative. Prepared statements presented by the employe should be accepted but the employe may not refuse to answer questions concerning their contents.

Recessing or Postponing

The investigation may be postponed or recessed. This subject will be discussed more thoroughly in connection with trials and the principles stated there apply generally to investigations. (See page 13 under heading III "The Trial")

Statements Taken Separately

In developing the facts surrounding an occurrence, the witnesses to the occurrence should be questioned separately. Each

is telling his story as he saw or heard it. When two witnesses to the occurrence give conflicting statements they may be brought together to clarify the disputed point. If the rules in the labor agreement permit only one investigation or statement, the conflict may have to be resolved at the trial.

Conducting the Investigation

In commencing the investigation, each employee should be advised what is being investigated. This should be the same as the occurrence shown on the Form G-250 that was sent to the employee instructing him to attend. (See Attachment "B") The employee must be informed that during the questioning he is entitled to be accompanied by one or more persons of his own choosing, subject to the terms of the applicable agreement, without expense to the company. If the employee is so accompanied, the person or persons should be properly identified as should all other persons in attendance. The presence of a representative at the investigation is only to insure that the employee's rights are not violated. The representative has no right of cross-examination and may be permitted to participate only to the extent deemed necessary to properly develop the facts. The employee, not his representative, must answer the questions directed to him.

The employee being questioned should also be identified for the record to show his name, age, home address, occupation, date entering service and any other pertinent information.

The occurrence should be identified as to date, time and location. Sufficient detail should be developed by questioning so that a person reading the investigation may clearly visualize all the relevant circumstances.

The investigating officer should develop any further facts and expand his search for information as it relates to the particular occurrence involved.

Closing the Investigation

At the end of each employee's statement taken at the

investigation, there must appear the following to be signed by the employee:

"I have read the above statement in its entirety and it is true and correct to the best of my knowledge."

If the employee refuses to sign the statement, he must be asked to specify his reasons and every effort must be made to remove the cause if justified. If he declines to specify any reason, his failure to do so should be set forth and made a part of the statement. In such case, the stenographer or other employee who took notes, which were later transcribed, shall make an affidavit as shown in Attachment "C" substituting the word "investigation" instead of the word "trial".

Furnishing Copies of Statement

Subject to the terms of the applicable agreement, employees and their representatives will be given copies of the employee's own statement. In any event, if an employee is charged with an offense on the basis of his own statement, he should be furnished a copy, whether or not he is entitled to it by the terms of the applicable agreement. There is no requirement that an employee be furnished statements of other employees until such time as they are presented to support charges against him.

Basic Outline for Investigation

To insure an orderly investigation procedure, it is desirable to follow an outline. The following is suggested as an outline which may be used in conducting an investigation:

Statement of _____ (name) _____, _____ (occupation) _____,
given to _____ (name) _____, _____ (title) _____ at
_____ (location) _____ on _____ (date) _____ in connection with:

(Use the same wording as shown on Form G-250)

Present at investigation:

(List Names, Occupations, and Titles)

Questioning by Mr. _____ (name) _____.

Q. Mr. _____ (name) _____, did you receive proper notice to report to this office today for investigation in connection with (repeat again the wording shown on Form G-250)?

A.

Q. Were you also notified that you could be accompanied by one or more persons of your own choosing, subject to the terms of the applicable agreement, without expense to the company?

A.

Q. Do you have such individual or individuals with you and, if so, please state his or their names? (If the applicable agreement restricts the employee's choice of representatives, the employee should be asked to further identify his representative to insure compliance with the agreement.) (See page 3)

A.

Q. Will you please state your correct name, address, age, occupation, and date entered service?

A.

Q. Are you ready to proceed with this investigation?

A.

(The interrogation should continue, developing all facts.)

Q. Have you anything further you would like to add?

A.

“I have read the above statement in its entirety and it is true and correct to the best of my knowledge.”

_____ (name)

_____ (date)

III THE TRIAL

On the Pennsylvania Railroad, the trial is the basic disciplinary procedure and the verbatim record made of the entire trial proceedings is the basic document for assessing formal discipline. All other disciplinary procedures point to or stem from the trial. Many situations arise in connection with the trials and it would be impossible to discuss each and every one. However, if the procedures in this manual are followed, the likelihood of having discipline overruled because of defective handling or allegations of unfairness will be minimized.

Notice of Trial

An employe charged with an offense is entitled to know the specific nature of the charge against him in advance of the trial. The purpose is to permit the employe to arrange for representation and to permit him and his representative (see page 3) to be prepared for the trial. To notify the employe to appear for trial, Form G-250 (Attachment "B") should be used. This form when completed or any other form of notice used should contain the following information:

1. The employe is to attend a trial, not an investigation.
2. An explanation to the employe that he may, if he so chooses, be accompanied at the trial by one or more persons of his own selection, subject to the terms of the applicable agreement, without expense to the company.
3. Advice to the employe that he may produce witnesses in his own behalf, without expense to the company, and that he or his representative will have the right to cross-examine witnesses.
4. Notice to the employe that he will be expected to be present throughout the entire trial.
5. The date, time, and place of trial. In setting the trial date, the employe must be allowed reasonable time to prepare his case and to arrange for representation, if desired.

6. Notice that the employe is to attend trial in connection with a *charge not an occurrence*. Having determined that an offense has been committed, an employe is now accused of having committed the offense by the placing of a charge.
7. The *specific* charge or charges that have been filed against the employe. If it is claimed that he has violated a particular rule, the notice should specifically refer to that rule by number or letter. In some cases reference to the rule without something more is inadequate and further identification of the incident should be made. Certain rules may contain several parts. When such a rule is involved, the particular portion of the rule on which the charge is based should be specified.
8. The charge must be so worded that, if proven, it supports the imposition of discipline.
9. The charges should be stated separately if more than one offense was committed in connection with a single occurrence.

Serving the Notice

It is entirely proper to serve trial notice Form G-250 on an employe in either of two ways:

1. It may be served on the employe personally. If this is done, the receipt portion of Form G-250 must be signed by him, preferably in the presence of a responsible witness. If the employe refuses to sign the receipt portion of Form G-250, the notice should be sent in accordance with Item 2 immediately following.
2. It may be sent by Certified United States Mail (return receipt requested) to his last known address.

The Waiver of Trial

Occasionally after receiving his notice to appear for trial on a specific charge, an employe will wish to voluntarily waive the

formality of a trial. When this happens, all of his rights must still be protected. Waiving a trial must be on the employee's own initiative and without urging or prompting. It must be in his own handwriting signed by him and bearing the signature of a witness and must quote the offense with which he was charged in order that there may be no doubt about what he is waiving. While a stereotyped form is not advisable, Attachment "D" offers a guide to use.

The waiver of the right to appear at the trial is not to be construed as an admission of guilt unless it includes such an admission. It is merely notification by the employee of his willingness to stand on the record to that point. We cannot stop the employee from waiving his right, but it may be deemed necessary to develop the record further by holding the trial. In such event, the employee should be notified that, notwithstanding his waiver, the trial will be held.

In case of a major offense, a trial should be held even though the employee has signed a waiver.

Postponing and Recessing

While it is seldom desirable to delay the handling of disciplinary matters, there are occasions when this is necessary. For example, there may be occasions when the accused employee can give a valid reason for being unable to attend the trial on the date set. Similarly, there may be occasions when the trial officer may find it necessary to postpone the trial. When this occurs, the trial should be postponed to another date and the accused employee should be given written notice of the postponement. (Attachment "E") This should be delivered to him in the same manner as the original notice to appear for trial. Trial proceedings, however, need not be unreasonably delayed by the unavailability of a particular representative chosen by the employee. Nor can the employee be permitted to avoid the application of discipline by the expedient of numerous trial postponements. Postponements should be given only for valid reasons and generally after three such postponements

the employe should be advised that there will be no further delay.

After a trial has commenced there are occasions when it is necessary or desirable to stop the proceedings and resume at a later time or date. After a trial has commenced, the accused employe may decide that he needs representation which he did not originally consider necessary. He must be given this right. Witnesses for either the company or the accused employe may not appear at the designated time. Developments at the trial may make it desirable to have additional witnesses. These are just a few of the possible reasons for recesses to assure a fair and impartial trial. If the conduct of any of the participants at the trial makes it necessary to restore order, the trial may, of course, be recessed. The trial officer should state for the record the reason for the recess and, if known, the time and date when the trial will be resumed.

A postponement or a recess should not be permitted if it appears to be for the purpose of delay only.

Refusal to Answer

If an employe refuses to answer questions at his own trial, either by reason of his own choice or upon advice of his representative, the trial officer should warn him that the company can only draw its own conclusions as to the reasons for refusal to answer and what the answers would be, if made.

In case of other witnesses refusing to answer pertinent and proper questions, the trial officer should warn them that they are subjecting themselves to possible disciplinary action by such refusal.

The Trial Officer

In addition to understanding trial procedures, the trial officer must be able to be objective in his conduct. He must be able to exercise a high degree of self-control and have the ability to analyze and evaluate facts without regard to personal opinions. The trial officer should avoid any expression of his personal opinion regarding the case or the individuals in-

volved. Questions, such as, "You are guilty, aren't you?" are undesirable as leading the individual into giving an affirmative answer. The trial officer should not be a person who witnessed or was otherwise directly involved in the incident which led to the charge. He has the responsibility to see that the conduct of the trial is proper and orderly. He may question the accused employe or the witnesses. He permits the accused or his representative to produce and question witnesses at the proper time. He prevents interruptions in the testimony or questioning and rules on any objections that may be raised with respect to procedure. However, if the employe's representative insists upon acting in such manner as to impede the orderly progress of the trial and to interfere with the development of the facts, the attention of the employe should be directed to the situation and he should be notified he must control his representative or the trial will proceed without the presence of such representative. If necessary, the proceeding should be recessed to permit the employe to arrange for other representation.

Ordinarily, the trial officer is not subject to questioning as he should not have been a witness to the occurrence involved. However, he may answer questions involving procedure but must be cautious to avoid being drawn into a controversy. If he deems it desirable, he may produce witnesses with the technical knowledge to answer controversial questions.

Occasionally the employe or his representative will take exception to all or a part of the record. The exception should be considered carefully and if no proper basis exists, the trial officer should simply state, "Your exception is included in the record."

Witnesses Not Available

It is a requisite of a fair trial that witnesses who testify be made available for cross-questioning by the accused employe or his representative. This generally includes individuals whose written statements are introduced in support of the charge. However, in some cases the people making such written state-

ments are not always available or willing to testify. This is true of some patrons of the company who make unsolicited complaints against our employes and some professional people whose opinions are sought.

Statements from such people should not be disregarded and since the company does not have the power to enforce attendance at the trial, their statements, notarized if possible, should be attached to and made a part of the trial record. Effort should, however, be made to have such people attend the trial. If that cannot be done, their refusal to attend should be made a part of the record.

When it is intended to use such statements at a trial, the accused employe should be informed, in advance of the trial, the name of the individual making the statement. This is done to permit the employe, if he so desires, to contact the person making the statement. If the statement is used at the trial, the employe may request an additional reasonable period of time in which to contact the person. If such a request is made, it should be granted and the trial recessed.

Trials in Absentia

Even though reasonable effort has been made to locate an accused employe, it is sometimes impossible to notify him to appear for trial. In other cases an employe may have been notified of the trial but refuses to attend or fails to give a satisfactory reason for wanting a postponement. In such cases, the trial may be held with the accused employe absent. The trial officer should develop testimony to show that the accused employe was actually notified or that a reasonable attempt was made to notify him. He should have testimony showing that the accused employe did not appear for the trial, that no proper request was made for postponement, and that a representative did not appear in his behalf, if that is correct.

The trial should then proceed in the same manner as if the accused employe were present. Guilt may not be implied from

the absence of the accused. Witnesses must be called and testimony produced in such a manner that the guilt or innocence of the accused employe is established. Such a trial record should be signed by witnesses to the proceedings and the stenographer or clerk who took the transcript should make affidavit to that effect. (Attachment "C")

Guide for Conducting Trials in Absentia

Various practices have been followed in conducting trials in the absence of the accused employe. In some instances the trial officer has addressed questions to the chair which the accused employe would have occupied had he been present. This, of course, is unnecessary. The following outline may be used as a guide for handling trials in absentia:

Verbatim record of proceedings at trial of (name and occupation), in absentia, in connection with:

(Quote charge exactly as shown on Form G-250)

Trial conducted in the presence of:

(List name and title or occupation of those present)

The trial officer should then direct the following question to the individual who sent notification Form G-250 to the absent employe:

Q. Was Mr. (name) notified to attend this trial by letter sent to his last known address (Certified United States Mail with return receipt requested) on (date) ?

A proper answer would be:

A. I have in my possession a return receipt from the United States Post Office Department No. _____ indicating that proper notice of this trial was sent to him.

Q. Did he appear at this trial, request postponement, or to your knowledge give any satisfactory reason for his absence or did a representative appear on his behalf?

A proper answer would be:

- A. He (did or did not) give a reason for his absence, did not request postponement, and a representative (did or did not) appear in his behalf.

The trial officer will proceed with the trial, calling in all witnesses and entering into the record all pertinent evidence in the same manner as in any other trial.

The trial should then be closed by the following:

STATEMENT OF _____ (trial officer)

"Inasmuch as Mr. _____ (name) was not present at this trial, the stenographer who has transcribed this record will make affidavit to the effect that he (or she) was present at the trial, took verbatim notes of the proceedings and copy to which the affidavit will be attached is a true and correct copy of the trial record."

Confinement to Prison

Imprisonment shall not be considered an acceptable reason for failure to attend a trial. However, if an employee's confinement is for 60 days or less, the trial should be postponed until he is released from prison and is free to attend. But, if his sentence is longer than 60 days, and it is considered advisable to go ahead with the trial, there are three courses of action open. The first two must be considered before resorting to the third. They are:

1. Conduct the trial at the prison in the presence of the accused employee.
2. Arrange to have the accused employee released temporarily in the custody of the police to attend the trial.

If it is impossible to hold the trial in the prison, and the prison authorities will not release the employee, even in the custody of police, to attend the trial elsewhere, the following procedure should be followed:

3. Serve notice on the imprisoned employee by Certified United States Mail (return receipt requested). Notice

should contain the same information that would normally be provided any employee charged with a disciplinary offense:

- a. The specific charge (s) against the employee.
- b. Date, time and place of trial allowing employee reasonable period to prepare for his defense.
- c. Information that the employee may, if he wishes, be represented by one or more persons of his own choosing, subject to the terms of the applicable agreement, without expense to the company.
- d. Information that the employee's representative (s) may produce witnesses in his behalf, and cross-examine witnesses.

Statement to be Signed by Imprisoned Employee

When a trial notice is sent to an employee who is confined in prison, a stamped self-addressed envelope should be enclosed for use in returning a statement that has been prepared for his signature. (See Attachment "F")

When the accused employee has returned his statement designating a representative, the trial may proceed on the date and time and at the place indicated in the notice. The trial must be conducted in the presence of the employee's representative who has the right to present evidence and to cross-examine witnesses just as the accused employee would have if he were there. However, if the employee does not name a representative, it may be taken as a waiver of his right to do so. He has in effect given his "consent" to proceed with the trial in the absence of both himself and his representative.

Beginning the Trial

Before beginning the actual transcript of the trial, the heading should show the basic information such as the time, date and place of the trial, name and identification of the accused, name and identification of the trial officer and others present

at the beginning of the trial. The questioning should then begin by establishing basic information as a part of the permanent record.

The preliminary questions are for the purpose of establishing that notice of trial specifying the charge was sent by the company, received by the employee and that advice was given him concerning his rights to representation, (if present, his representative must be identified) and his right to produce witnesses and cross-examine witnesses. He must identify himself for the record by such information as name, address, age, occupation, length of service and qualifications, if pertinent. He is also advised that his presence throughout the entire trial is expected. He should then be asked if he is willing to proceed with the trial. This permits him to offer any objections he may have or state any reasons why he feels that he should not be charged and tried. If he expresses an unwillingness to proceed with the trial, every effort should be made to determine his reasons, then take such action as is deemed appropriate, keeping in mind that the trial officer must insure fairness to the employee.

Developing the Case

After the preliminary inquiries, the trial is continued by developing facts relating to the specific occurrence through questioning witnesses and the accused employee. In developing the case, the following points should be kept in mind:

1. The rights of an employee to representation and other matters pertaining to representation are covered on page 3. That section should be consulted if any questions arise.
2. The trial officer should avoid the use of "leading" questions such as, "You didn't see the car, did you?" "You were absent without permission, weren't you?"
3. Locations should be clearly identified and sufficiently described.

4. If time is stated, it should be specified as standard or daylight time.
5. The record should be kept free of irrelevant testimony.
6. As participants enter or leave the trial room, the record should so state.
7. Effort should be made to obtain clear and responsive answers to any questions asked. If evasive answers are given, the trial officer should call attention to this fact for the record.
8. It is not necessary to ask the accused if he is guilty of the charge. However, even if an employee admits his guilt, a record still must be made sufficient to support discipline, if discipline is to be assessed.
9. Sufficient witnesses, as determined by company officers, should be called to establish the facts. The accused employee may provide additional witnesses if he so desires. (See page 17)
10. Witnesses should be properly identified for the record.
11. Witnesses should not be permitted to question the accused employee.
12. Witnesses should be brought into the trial separately unless there is a conflict of testimony or unless the accused or his representative requests otherwise.
13. When necessary, testimony should be refuted or challenged, otherwise it will be accepted as factual.
14. Transcript of investigations, photographs, and other documentary evidence must be made a part of the trial record after being properly identified. The trial officer should state that such evidence is "attached to and made part of the trial record."
15. If the accused employee, either voluntarily or on advice of his representative, refuses to answer a question, or if the representative answers for the accused, the record should so state. (See page 16)

16. Refusal to answer questions does not afford immunity from a finding of guilt if the charge is proven.
17. Every person whose statement or testimony (with exceptions that are referred to elsewhere) is made a part of the official record of the trial, must be offered for cross-examination.
18. After all other evidence has been presented, the past discipline record of the accused employe should be read into the trial record. This prior discipline record may not be used to determine the guilt or innocence of the accused but may only be used for the purpose of determining the degree of discipline, if any, that may be assessed. Any other personnel records having a bearing on the degree of discipline may be introduced.
19. The trial may be recessed if there is sufficient reason for doing so. (See page 15)

Closing the Trial

When the trial record is complete including all testimony, cross-examination, documents, or other records, the trial officer should ask the accused employe:

“Have you any comments or criticisms of the way this trial has been conducted?”

If the accused employe answers “yes,” the trial officer should develop whether, in the employe’s opinion, the trial has been conducted in a fair and impartial manner and, if his reasons are valid, effort should be made to remove the objection. If he declines to specify, his failure to do so should be made a part of the record. He should be asked whether he has been permitted to answer all questions in his own words and to question any witnesses who testified.

Some employes or their representatives attempt to summarize the entire trial as a conclusion. This should be permitted although, if the record is otherwise complete, it has no value other than to make the trial officer aware of the attitude of the

employee or his representative. The trial officer should not summarize the case.

The Verbatim Record

When the stenographic record has been prepared and completed, the accused employee should be shown a copy of the record and permitted to read it. He must then be asked to sign his name at the bottom of each page of the record and to sign the following statement at the bottom of the last page:

"My signature on this and the preceding (number of) pages of this record signifies that I am satisfied that it is an accurate record of my trial."

If the employee takes exception to any part of the transcript, an effort must be made to develop whether his exception is based on—

1. A stenographic error.
2. A question of fact, i.e., the employee contends he did not make the statement shown in the record.
3. A statement which the employee actually made but which he now wishes to rescind.

If exceptions are based on items 1 or 2, an effort should be made to determine whether the employee's objections are valid. If so, all copies of the record should be corrected and initialed in ink by the employee.

If exceptions are based on item 3, or if the employee refuses to sign any sheet of the trial record (including the statement at the end), or if he was not present at the trial, the stenographer who took and transcribed the record must make affidavit to the effect that he (she) was present at the trial, took verbatim notes of the proceedings, transcribed the notes accurately, and that the copy to which the affidavit is attached is a true and correct copy of the trial record. (See Attachment "C")

Preparation of the official record of the trial is a company responsibility. However, if an employee wishes to make his own

record, we should not refuse to let him do so unless it interferes with the conduct of the trial.

Copy of the true and correct trial record must be given to the accused employee. It should be given to his representative, if any, to the extent required by the applicable agreement.

Guide for Conducting Trials

The following may be used as an outline to be followed in conducting trials:

Trial of _____ (name) _____, _____ (occupation)
conducted by _____ (trial officer's name) _____, _____ (title)
at _____ (location) _____ on _____ (date) _____ in connection
with the following charge:

(Quote charge exactly as shown on Form G-250.)

Present at trial:

(List names, titles, and role of each person in attendance at beginning of trial.)

Questioning by _____ (name of trial officer) _____ :

Q. Mr. _____, did you receive proper notice to report to this office today to stand trial on the following charge (s) ?

(Quote exactly as shown on Form G-250.)

A.

Q. Were you also notified that you could be accompanied by an individual or individuals of your own choice, subject to the terms of the applicable agreement without expense to the company?

A.

Q. Are you accompanied by such individual or individuals and if so, please identify him or them? (If the applicable agreement restricts the employee's choice of representatives, he should be asked to identify his rep-

representative sufficiently to insure compliance with the agreement.) (See page 3)

A.

Q. Do you understand that you will be expected to be present during the entire trial and that you and your representative may question any witness who may testify at this trial?

A.

Q. Do you and your representative understand that you may present or have presented in your behalf any evidence that is pertinent to the offense with which you are charged?

A.

Q. Are you willing to proceed with this trial?

A.

Q. State your full name, age, home address, length of service, and occupation on (date of alleged offense) ?

A.

(The questioning and cross-examination of the accused and witnesses may continue. When the trial officer wishes to enter the transcript of an investigation into the record, he should do so as follows:)

Q. Mr. _____, you attended an investigation held at _____ (place) on _____ (date) _____ in connection with the following subject:

(Repeat wording as quoted in the investigation transcript.)

At this investigation you gave certain testimony and a copy of your testimony was given to you. Is that correct?

A.

STATEMENT OF _____ (trial officer)

Mr. _____ (name) _____, a copy of the statement and testimony which you gave at the investigation referred to will be made a part of this trial.

(After all other evidence has been presented, the employee's previous discipline record should be entered by the following:)

STATEMENT OF _____ (trial officer)

Mr. _____ (name) _____, I quote from our records the discipline that has been imposed upon you since your employment.

(The entire discipline record should be read into the trial record.)

(When all testimony and evidence is in the record, the trial may be closed as follows:)

STATEMENT OF _____ (trial officer)

Mr. _____ (name) _____, a transcript of your testimony at this trial will be prepared for your signature. After reading the testimony, will you kindly sign your name on each page, provided, of course, that you take no exception to the record of the trial as submitted for your signature.

Q. Mr. _____ (name) _____, have you any comments or criticisms of the way this trial has been conducted?

A.

IV IMPOSITION OF DISCIPLINE

Before any formal discipline may be applied, a Form G-32, Notice of Discipline (Attachment "G") must be served on the employee. This notice must be served in duplicate either personally or by Certified United States Mail (return receipt requested). The employee should sign both copies, returning the original. His signing the Form G-32 is merely an acknowledgment that he has been notified of the discipline that will be imposed upon him. Even so, some employees refuse to sign the Form G-32 feeling that somehow they are concurring in the action taken. If, after having been served personally and after having received the above explanation, the employee still refuses to sign the Form G-32 it should be forwarded by Certified United States Mail (return receipt requested), or if witnesses were present when the Form G-32 was served on the employee, they should sign a notarized statement that proper notice of discipline was given. However, an employee cannot properly be charged and disciplined for refusal to sign the Form G-32.

Preparation of Notice

The Form G-32 shows only basic information, but even this occasionally leads to some controversy. Considerable care should be taken and no erasures should appear on the Form G-32. If corrections are necessary, a new form should be prepared.

The Date of the Notice

In order to avoid making a hasty judgment, no decision should be made with respect to discipline on the same date the trial is completed. The date to be shown on the top of Form G-32 must be a date subsequent to the trial. If the discipline is dismissal, the date on the Form G-32 must be the same date the form is served upon the employee personally or the date placed in the United States Mail.

The Outline of Offense

This portion of the Form G-32 must be an exact statement of the original charges insofar as they have been sustained at the trial. For example, if all charges have been proven and it is desired to apply discipline to cover the entire charge, the outline of offense must be worded exactly as shown on the notice to appear for trial (Form G-250). If the employe was charged, for example, with reporting late on three dates and it has been proven that he was late on only two of the dates, only those two should be shown. If the employe was charged with three separate offenses so shown on the Notice of Trial, and one has not been proven, only the proven charges may be shown on Form G-32. Of course, the unproven charges cannot be used as a basis for applying discipline. Briefly stated, a portion of a charge can be eliminated from the outline of offense shown on the Form G-32 but nothing can be added.

If the trial record discloses that the accused employe is guilty of some offense that was not shown on the original charges, it must not be shown on the Form G-32. However, if the trial record contains evidence which would support a different charge, a new trial procedure on such different charge may be initiated.

The Effective Date

In the lower part of the Form G-32 are two blocks followed by these notations:

_____ days from the date of receipt of
this notice or as soon thereafter as may be arranged.
_____ immediately.

If the discipline is dismissal, the latter block should be checked as dismissal must always be effective "immediately". If the discipline is other than dismissal, the top block should be checked and in the blank space beside the block should be shown the number of days within which an appeal, if made, must be filed, except where the applicable agreement defers the application of a suspension. Reference should be made to the

applicable agreement so that the correct number of days is shown. Where the agreement defers the application of discipline, neither block should be checked; but just below the second block the following notation should be made:

"Subject to (applicable rule or regulation)."

Beneath the two blocks or the notation referred to above is the following:

"Put into effect _____."

If the discipline is dismissal, the date corresponding to the date at the top of the Form G-32 must be shown. If the discipline is other than dismissal, this portion of the Form G-32 must be left blank until the time limit for appeal has expired. If no appeal is made within that time, most of our agreements provide that discipline may be placed in effect and this portion of the Form G-32 completed to show the correct date or dates. For example, if the discipline of two days suspension has not been appealed within the time limit, the dates on which the employee actually served the two days suspension should be shown.

However, attention must be paid to specific discipline rules as they vary. When an employee has begun serving suspension after being notified by Form G-32 he may not be returned to service and later required to serve the balance of the suspension.

Discipline

In cases where an employee is dismissed from service and it is intended that he shall not work for the company in any capacity, the Form G-32 should state specifically,

"Dismissed in all capacities."

If the employee's discipline record has been introduced at the trial, made a part of the trial record, and used in determining the degree of discipline, a statement to that effect should follow the actual discipline assessed as shown on Form G-32. This may be done as in the example:

Two days suspension—*previous discipline record considered.*

If the discipline to be applied is suspension, the time the employe may have been held out of service prior to serving of the Form G-32 must be applied against the period of suspension.

Fixing the Amount of Discipline

To be of any real value, discipline must be based on sound judgment and must be determined in each individual case. In doing this, due consideration must be given not only to the circumstances in a particular case but also to the type of individual concerned, his past record, and to any extenuating circumstances. Discipline should not be applied in a routine manner as each employe wants to be treated as an individual and to have consideration given to any circumstances in his case that may tend to lessen the seriousness of the offense. Discipline that is too lenient does not serve the purpose of deterring future offenses and can undermine the morale of the working group. Discipline which is too severe may, by its very harshness, cause its reversal when and if reviewed by others. It takes good judgment to decide how strict the penalty will be in every case and good judgment is possible only when personal prejudices have been set aside. The discipline must be based on substantiated facts and not unproven suspicions. The degree of discipline should not be assessed with a view to escaping payment for time held out of service.

Dismissal is the most extreme discipline that may be assessed. For this reason, it should be considered only as a last resort. Special caution must be used in the handling of a case that involves the employe's honesty or character. In such cases, every effort should be made to handle the entire matter confidentially including serving of notices and discussion of the case with persons other than those directly involved. The Labor Relations and Personnel Department should be consulted in such cases for advice on wording the charge, determining whether the charge has been proven by the record, and whether the handling of the case is procedurally correct.

V THE APPEAL

An employe, who has been notified by Form G-32 that discipline is to be assessed, may believe that the discipline is improper. He may appeal the discipline shown on the Form G-32 by requesting the Superintendent, Personnel or corresponding officer, as provided in the applicable agreement, to hear his appeal. Most labor agreements provide that this appeal may be made within a specified number of days after the employe has been notified of the discipline assessed. If not made within the time limit, the person presenting the appeal must be notified that it is barred and the reason therefor.

If the appeal is properly made within the time limit and in accordance with the labor agreement, discipline may not be placed in effect except when the discipline is dismissal. The Superintendent, Personnel (or corresponding officer as provided in the applicable agreement) will advise the employe the date, time and place where the appeal will be heard. At the appeal hearing, the employe may, if he chooses, be accompanied by one or more persons of his own choosing, subject to the terms of the applicable agreement, without expense to the company. It is not necessary to keep a verbatim record of the appeal hearing.

Following the appeal hearing, the employe should be promptly notified, in writing, of the decision. When the decision is made by the Superintendent, Personnel (or corresponding officer as provided in the applicable agreement), most of our agreements provide that discipline may then be placed in effect without regard at that time to any subsequent appeals. However, specific rules vary and they should be consulted.

If, after receiving the decision of the Superintendent, Personnel (or corresponding officer as provided in the applicable agreement), the employe still feels that the discipline is unwarranted or improper, he may appeal his case further, in accordance with existing agreements and the Railway Labor Act.

ATTACHMENT "A"

NOTICE FOR HOLDING EMPLOYEES OUT OF SERVICE

(Location)

(Date)

Mr. _____
(Name)

(Occupation)

Notification is hereby given that you are held out of service
beginning _____, in connection with
(Date and Time)

(Explain plainly and concisely the circumstances surrounding the occurrence, with date, time and place.)

You will be advised subsequently whether you will be charged and, if so, the specific charge or charges on which you will be tried.

(Signature of Officer)

(Title)

ATTACHMENT "B"

NOTICE OF TRIAL OR INVESTIGATION
G 250

Date

Region or System Office

Location

To Employee:

This is a notice for you to attend ☐ A TRIAL ☐ AN INVESTIGATION

You may, if you desire, arrange to be accompanied by a representative as provided in the applicable schedule agreement, without expense to the company.

If this is notice for trial, you may produce witnesses on your own behalf, without expense to the company, and you or your representative may cross-examine witnesses. You are expected to be present throughout the entire trial.

Employee Name

Occupation

Address

Place Trial or Investigation to be held

Time

Day and Date

This notice is issued in connection with the ☐ CHARGE(S) ☐ OCCURRENCE outlined below:

Signature

Title

Note: If above notice is mailed, it must be sent U.S. Certified or Registered Mail. Return receipt requested.

RECEIPT OF NOTICE
G 250

The following to be completed by employee notified, and returned to officer or supervisor whose signature and title appear above.

To officer or supervisor (name)

Title

Location

Date of notice

This is to acknowledge receipt of notice requesting me to attend proceedings in connection with the subject referred to in notice.

Place trial or investigation to be held

Time

Day and date

Date notice received

Employee signature

ATTACHMENT "C"

AFFIDAVIT TO BE PREPARED BY STENOGRAPHERS

(Location)

(Date)

This is to certify that I was present at the trial (or investigation) of _____ (name) _____ in connection with

(Quote charge or occurrence exactly as shown on Form G-250.)

which trial (or investigation) was conducted by _____ (name) and _____ (title) _____, Pennsylvania Railroad, at _____ (location) _____ (time) _____, _____ (date) _____. I took verbatim notes of the proceedings, transcribed those notes accurately, and copy to which this affidavit is attached is a true and correct copy of the trial (or investigation) record.

(Signature)

(The following portion is to be filled in by a Notary Public only.)

Sworn to and subscribed before me, _____,
a Notary Public, in and for _____ by _____,
The Pennsylvania Railroad Company at _____
this _____.

(Notary Public)

My Commission Expires _____

ATTACHMENT "D"

GUIDE FOR VOLUNTARY WAIVER OF TRIAL— MUST BE IN EMPLOYEE'S OWN HANDWRITING

I hereby waive any right I may have to a trial by the Pennsylvania Railroad Company for the following offense (s) with which I am charged.

(The charge must be quoted exactly as shown on the Notice to Appear for Trial, Form G-250.)

I am guilty of the charge as stated. (If the employee desires to admit his guilt.)

(Signature)

(Date)

(Signature of Witness)

ATTACHMENT "E"

LETTER FOR POSTPONING TRIAL

(Location and Date)

Mr. _____
(Name)

(Address)

Trial originally scheduled to be held on _____ (date)
at _____ (time) in the office of _____ (name & office) at
_____ (location) charging you with the following offense:

(Quote charge exactly as shown on Form G-250.)
has been postponed.

Trial will now be held on _____ (date) at _____ (time) in
the office of _____ (name & office) at _____ (location).

All charges and other particulars pertaining to the original
trial notice, except as above, continue in effect.

(Signature)

(Title)

Mr. _____
(Name)

(Title)

Receipt is acknowledged of your letter dated _____ (date)
postponing my trial and notifying me to report to _____ (location)
on _____ (time) at _____ (date) to stand trial as charged on
original notice dated _____ (date).

(Signature)

(Date Received)

ATTACHMENT "F"

LETTER ENCLOSED WITH NOTICE OF TRIAL (FORM G-250) WHEN EMPLOYEE IS CONFINED IN PRISON—
ENCLOSE STAMPED, SELF-ADDRESSED ENVELOPE

Mr. (Name of Person Signing Form G-250)

(Address)

I understand that the Pennsylvania Railroad Company will conduct a trial on (date) at (time and place) in connection with the following offense with which I have been charged.

(Quote offense exactly as shown on Form G-250.)

I desire to be represented at the trial by (*)
and I shall notify him to be present.

(*)

(Signature)

(*)

(Date)

(*) Spaces so marked are to be left vacant to be filled in by the employe who is confined. All other information should be shown on the form at the time it is attached to Form G-250 and sent.

ATTACHMENT "G"

THE PENNSYLVANIA RAILROAD

G-32 Rev.

Notice of Discipline For Offense Occurring

on _____ Region

No. _____, 19____

Name _____ Occupation _____

Home Seniority District _____

or Headquarters _____

Discipline _____

Date of _____

Occurrence _____ Engine _____ Train _____

Place _____

OUTLINE OF OFFENSE:—

EMPLOYEE MUST SIGN THE FOLLOWING:

This certifies that I was notified _____, 19____
that I would be disciplined in accordance with the above order,
and I understand that same will be put into effect:

☐ _____ days from the date of receipt of this notice or as
soon thereafter as may be arranged.

☐ _____ immediately.

Date _____

Put into effect _____

Officer's Signature

Forwarded to _____ by _____ Date _____

Forwarded to _____ by _____ Date _____

Original to be returned to _____

Copy to be retained by employee.

If discipline is for employee of another region, forward Superintendent of Personnel of that region three copies of this form.

