

SECTION 19

INVESTIGATION AND DISCIPLINE

A. Preliminary Matters

1. Discipline is defined as Letters of Warning, Suspensions, Terminations and any other action taken by flight management resulting in a loss of pay or benefits to which the pilot would otherwise be entitled.
2. Counseling sessions and Advisory Letters do not constitute disciplinary action and may not be grieved. An Advisory letter is a non-disciplinary form letter issued to a pilot to communicate policy, procedures or work rules, which if violated in the future, could lead to discipline.
3. Standard for Discipline
 - a. The discipline standard for non-probationary pilots shall be "just cause."
 - b. Probationary pilots shall be considered to be employed on an "at will" basis for purposes of administering and reviewing discipline.

B. Documentation

1. The Company shall provide a pilot with a copy of any written record of disciplinary action or advisory letter within 10 days after that record is placed in his personnel file.
2. A pilot shall have 60 days from the date on which the written record is received or reasonably should have been received, to place a written response concerning that action in his personnel file.
3. A pilot may examine his personnel file on any business day during normal business hours with adequate notice to his Chief Pilot.
4. An irregularity report or documents referring to an irregularity report (except for Advisory or Disciplinary Letters) shall not be placed in a pilot's personnel file.

C. Consideration of Prior Disciplinary Action

An Advisory Letter or a Disciplinary Letter (e.g., a letter of warning, suspension, or termination) may be used to establish that a pilot was given notice of a policy, procedure or work rule, and/or that discipline could result from future violations of such policy, procedure or work rule, no matter the date of issuance of such Letter.

An Advisory or Disciplinary Letter shall not serve as a basis for discipline after a period of 1 year during which the pilot receives no further Advisory or Disciplinary Letters. However, an Advisory or Disciplinary Letter may be considered in assessing future discipline involving similar misconduct for up to 2 years after the receipt of the most recent Advisory or Disciplinary Letter.

D. Investigation

1. The Company shall investigate and understand a pilot's performance and conduct before taking any disciplinary action against that pilot. Part of a proper investigation may include management talking or meeting with a pilot or group of pilots to determine the facts and circumstances surrounding a situation. Depending on the circumstances of the particular case, some or all of the necessary fact gathering may occur prior to or without the need for a hearing of any type.
2. A pilot may request Association representation at a Company investigatory interview/meeting. When a pilot makes such a request, the Company shall either:
 - a. afford the pilot the opportunity to secure Association representation before initiating or continuing the interview/meeting;
 - b. refrain from or discontinue the interview/meeting immediately; or
 - c. offer the pilot the choice of either continuing the interview/meeting without Association representation or rescheduling the interview/meeting within a reasonable period of time, to allow the pilot the opportunity to arrange for Association representation.

3. Under no circumstances shall flight management require a pilot to submit to a psychological or psychiatric examination. However, a pilot may be required to undergo a psychological/psychiatric examination if directed by the Company's aeromedical advisors, in accordance with Section 15.

E. Discipline

A pilot shall not be disciplined without first being afforded the opportunity for a hearing.

1. Hearing

a. Notice of Hearing

- i. The Company shall send the pilot and the Association a Notice of Hearing setting forth the date, time and place of the hearing, together with a statement of facts and specific subject matter(s) to be addressed. The Notice of Hearing shall be sent to the pilot and Association a reasonable amount of time prior to the hearing considering the time needed to prepare as well as the interest in concluding the matter without undue delay.

Intent: The following example applies to Section 19.E.1.

Example:

The Company believes a pilot may have falsified his employment materials by significantly overstating his flight hours and by indicating that he had never received any discipline from a former employer. The following notice would satisfy this paragraph: "You are directed to attend a hearing on April 2 at 10:00 in my office. It has been alleged that you may have falsified your employment materials. If true, these allegations could warrant discipline."

- ii. Accompanying the Notice of Hearing, the Company shall attach the relevant document(s), excluding witness statements and notes, which prompted the flight manager to send the Notice of Hearing.
- b. The hearing shall be conducted by a Regional Chief Pilot or a Chief Pilot. A written decision shall be issued within 15 days following the close of the hearing. If the decision is to discipline the pilot, the decision shall state the discipline and specific grounds for that discipline.
- c. After an initial discussion in which the Company may ask questions and receive answers from the pilot, if requested by the pilot or the Association, the Company shall produce documentary information (including written witness statements and information in electronic format), known and in its possession, but excluding notes except to the extent that the notes contain information from fact or expert witnesses, and names of witnesses excluding confidential witnesses.
 - i. Disputes whether a witness shall be considered confidential shall be resolved by referring the issue to the arbitrator hearing the underlying case, or an arbitrator selected from the panel of arbitrators by mutual agreement. The parties shall present the issue to the arbitrator so that the System Board hearing on the underlying dispute is not delayed.
 - ii. Information provided along with the Notice of Hearing, as provided in Section 19.E.1.a.ii., need not be reproduced under this paragraph.
- d. The pilot shall be afforded the opportunity to respond to information described in Section 19.E.1.c. (above) before a decision is rendered. If necessary, the hearing shall be delayed or continued in order to provide the pilot with adequate time to prepare and/or respond. The Company may continue to investigate the circumstances of a particular case and to gather additional documentation after the close of the hearing.
- e. If a pilot is unavailable due to his arrest and detainment by government officials, the Company shall notify the Association, and shall take reasonable steps to notify the pilot of the hearing and to accommodate his participation to the extent permitted under the circumstances. After those prerequisites have been met, the pilot's unavailability shall not prevent the Company from conducting a hearing regarding the pilot.

2. Internal Appeal

- a. If the decision is to terminate the pilot, the case shall automatically be appealed to the Vice President, Flight Operations. The appeal hearing shall be conducted by the Vice President, or his designee, within 15 days after the decision to terminate the pilot.

- b. If the decision imposes discipline less than termination, the pilot or the Association may appeal the decision to the System Chief Pilot. Appeals shall be in writing and shall be filed within 15 days after the pilot receives notice of the decision. The appeal hearing shall be conducted by the System Chief Pilot, or his designee, within 15 days after his receipt of the appeal.
 - c. The hearing officer for the appeal shall be different from the hearing officer for the initial hearing.
 - d. After an initial discussion in which the Company may ask questions and receive answers from the pilot, if requested by the pilot or the Association, the Company shall produce documentary information (including written witness statements and information in electronic format but excluding notes maintained by management personnel) gathered since the close of the initial hearing.
 - e. [RESERVED]
 - f. The hearing officer shall issue a written decision within 15 days following the close of the hearing. If the decision is to discipline the pilot, the decision shall state the discipline and specific grounds for that discipline. If the hearing officer fails to issue a written decision in a timely manner, the pilot and/or Association shall not be deemed to have waived any arguments to the System Board regarding any claim for relief based on the untimely decision. Nothing in this paragraph diminishes the Company's obligation to issue a timely decision.
3. The Association has the right to have a representative present at any disciplinary hearing. The Association shall be given notice prior to any disciplinary hearing in accordance with Section 19.F.5.
4. Appeal To System Board of Adjustment
- If the pilot disagrees with the decision at the internal appeal level, the pilot may appeal the decision, through the Association, to the System Board of Adjustment as described in Section 21. The appeal shall be in writing and shall be made within 15 days following the date on which the pilot received notice of the decision. Copies of the appeal shall be sent to the Association, the Vice President, Flight Operations and the designated official in the Company's Labor Relations Department.

F. General

- 1. If, as a result of any hearing or appeal, the original discipline imposed on a pilot is reduced or rescinded, the pilot's pay, benefits, seniority and longevity shall be restored consistent with the hearing officer's decision, and the pilot's file shall reflect such resolution.
- 2. Time limits and hearing/appeal dates may be modified, orally or in writing, by agreement of the parties. Oral agreements shall be confirmed in writing as soon as practicable. Requests for modifications shall not be unreasonably denied.
- 3. For the purpose of computing the time limits stated herein, an appeal shall be deemed "filed," and a decision shall be deemed "issued," on the day in which the appeal or decision is postmarked, or if Federal Express is used, on the day in which the appeal or decision is submitted to the Company for shipment, or if a facsimile machine or electronic mail is used to transmit the appeal or decision, on the day in which the appeal or decision is transmitted by such means.
- 4. For the purpose of Section 19, the term "day" means business day. However, if the last day of a time limit falls on a Corporate or ALPA Holiday (currently including New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day and the following Friday, Christmas, or the day on which such holiday is observed by the Company or ALPA), the time limit shall be extended through the first business day following the holiday. The parties shall advise each other expeditiously of any changes to ALPA or Corporate holidays.
- 5. Delivery of all notices, Advisory Letters, Disciplinary Letters, decisions and appeals pursuant to Section 19 shall be made in person, by Federal Express Overnight Letter, by certified mail, return receipt requested, Company electronic mail, or by other methods which provide verification of receipt. Such correspondence shall be made to the pilot's Company electronic mail address and to the pilot's permanent, primary address. Such correspondence shall also be sent to the MEC Representation Department and the MEC Grievance Committee Chairman. A pilot shall be deemed to have received notice upon the earlier of the pilot's actual receipt of notice or 20 days after transmission of the electronic mail message.

6. Every participant in disciplinary proceedings shall be free to discharge his duty without fear of retaliation by the Association or the Company. No participant shall be coerced or harassed by the Association or the Company.
7. Copies of recordings or other transcriptions made at any meeting or hearing conducted pursuant to this Section shall be provided to all parties, upon request, without undue delay, after it has been finalized. Failure to respond to a request without undue delay shall render that recording or transcript inadmissible until the requesting party has had sufficient time to review the recording or transcript.
8. Grievants and a reasonable number of witnesses and Association representatives involved in the resolution of disputes pursuant to Section 19 may be released from Company duty, if necessary, as provided in Section 18 of this Agreement. Expenses and flight pay loss, if any, for line pilot witnesses called by any party, shall be borne by the party who called the witness or otherwise incurred the expense.
9. Letter of Warning In Lieu of Hearing
 - a. Absent the Association's prior assent to the waiver of a preliminary hearing, the Company shall send the Disciplinary Letter, including the hearing waiver language, to the pilot and the Association without first obtaining the pilot's signature.
 - b. The letter will instruct the pilot to indicate his intentions within 7 business days, either by signing and returning the letter to his flight manager (measured from postmark/drop-off), or by communicating to flight management his desire not to waive the hearing.
 - c. If the pilot signs the letter and there is no correspondence from the Association within the same 7 day period indicating the Association's disagreement, no further action is necessary, and the discipline will be fully precedential in accordance with Section 19.C. absent a specific agreement to the contrary.
 - d. If the pilot declines to sign the hearing waiver, then the Company may elect to conduct a Section 19.E hearing on the matter.
 - e. If the pilot signed the hearing waiver, but the Association timely indicates its disagreement in writing by overnight delivery, facsimile, or electronic mail, the Company has two choices:
 - i. The Company may accept the hearing waiver, in which case the discipline will have precedential effect only with regard to the pilot to whom the discipline was issued; or
 - ii. The Company may conduct a preliminary hearing under Section 19.E, in which case, any discipline, and the precedential effect thereof, would be determined in accordance with Section 19.C.
 - f. In any case, if the Company offers discipline in the context of a hearing waiver, but ultimately holds a preliminary hearing on the matter (whether under the process described in paragraph d. or e., above), the offer of discipline and the hearing waiver, and any discussions pertaining to that offer, shall be considered settlement discussions and shall carry the same evidentiary protections that normally accompany such discussions.
10. When mutually agreeable, the Company may conduct disciplinary hearings pursuant to Section 19.E. by telephonic and/or video conference.
11. Removal From Service
 - a. If a pilot is removed from flying during the disciplinary process set forth in this Section, prior to any disciplinary action being taken, his access to Company communications systems (e.g., e-mail, VIPS, etc.) shall not be restricted or eliminated, and he shall continue to accrue all pay and benefits (e.g., seniority, longevity, retirement, vacation, sick leave), as if he had not been held out of service.
 - b. During the disciplinary process set forth in this Section, if (i) a pilot's use of Company jumpseats has been restricted by the Company and (ii) the pilot does not have a residence within 100 nautical miles of the location of the disciplinary hearing, the Company shall provide him with travel to and from the disciplinary hearing and, if necessary, 1 night's stay in a hotel room in the location of the disciplinary hearing.

- c. After a pilot has been withheld from service with pay for more than 2 full bid periods, he is not eligible to bid a flying line. Instead, he must bid a pay-only line and shall be paid the BLG/RLG for his awarded pay-only line. The pilot may elect that he instead be paid the average of his awarded lines' credit hour values, plus carryover, during the previous 12 bid periods.
12. Nothing in this Section shall be construed so as to waive or limit any privilege, provided under applicable law, that would protect information from disclosure, including the attorney-client privilege.