

DUE PROCESS IN THE POSTAL SERVICE

It is an honor and a privilege to serve as the attorney designated by the UPMA to defend its members when they are subjected to an adverse action. This article discusses the concept of “due process”. It is not a scholarly discourse. It is a common sense description of what due process is.

Due process comes from our U.S. Constitution. It is all about fairness to the accused, something we did not have under British law in the Colonies. The Fifth Amendment states in part, “No person shall be . . . deprived of life, liberty, or property, without due process of law . . .” The Fifth Amendment applies due process to the federal government. The Fourteenth Amendment applies it to the states. Your life, your liberty, or your property, cannot be taken by the government without “due process of law”. What qualifies as due process and how much is required depends on what is being taken. If your life is being taken (the death penalty), you get maximum due process including the right to a jury trial, effective assistance of counsel paid for by the government if necessary, and appeal rights all the way up to the U.S. Supreme Court. If it is your liberty, you get much due process but maybe not as many appeal rights. If it is your real property, your house or land, that is being taken, for example to expand a highway or build a public facility, you get just compensation and due process in the form of a trial, if need be, to determine what the amount of that just compensation should be. But what, you say, does due process have to with my job at the Postal Service?

It is established law that you, as an employee of the government, have a *property interest* in your permanent federal position. By law, your position with the Postal Service cannot be taken from you by the government without due process. That is not the case for persons in private employment who as a rule can be fired for any reason that is not illegal or contrary to the terms of a written contract of employment. You have rights most private employees do not have. What does this all this mean if your boss wants to fire or demote you in the Postal Service?

If you are a permanent employee and management proposes to fire you (the word used is “remove”), or to reduce your grade or pay, that is called an “adverse action”. When an adverse action is proposed for you, the following due process rights are guaranteed to you by law:

- (1) To be notified of the charges and reasons upon which management bases its proposal to take the adverse action against you;
- (2) To be given a fair opportunity to see and study the evidence that management has to support the reasons for the proposed adverse action;
- (3) To be allowed a meaningful opportunity to respond to and refute the charges before a decision is made on the proposal, and to make your response to the person designated to make the decision on whether to implement the adverse action proposed; and
- (4) To have an appropriate legal procedure by which you can appeal from a decision to implement an adverse action, which appeal requires management to prove the charges and the basis for the punishment imposed.

How the due process is provided depends on what type of position you hold. If a craft employee, your collective bargaining agreement provides a grievance process that includes due process. If you are a Postmaster, manager, or a supervisory employee in the Postal Service, or are a veteran, you have certain procedural and appeal rights at your disposal. What can you do to ensure you get all these rights to which you are entitled? You must act promptly and not delay at any stage of the process.

The first sign that you may be given an adverse action is your boss telling you to come in for an investigative interview and mentioning that you can bring your representative. Upon hearing that you must immediately contact your UPMA representative. He or she will be able to determine if you are eligible as a member to obtain UPMA assistance in exercising those rights. You have the right to representation at all stages of the process, starting with that initial investigative or pre-disciplinary interview. Use that right like you own it - because you do. You also have the following rights at your disposal:

- (1) At the investigative or pre-disciplinary interview you are *not required* to provide any written statement and are not required to review or sign the interviewer's notes of your answers to questions. You are only required to attend the interview and answer the questions asked. Allow your representative to speak for you whenever possible and have your representative present for all meetings or phone calls about the matter. Avoid being questioned about it without your

representative present. Do not agree to any lie detector tests as they are unreliable and you are not required to submit to a lie detector test.

(2) Once a proposal of adverse action is issued, you and your representative have the right to obtain copies of all documents and information upon which management bases the reasons for the charges in the proposal. Your representative should immediately submit a written request for copies of that documentation. You must have the documents and information *before* you respond to the charges.

(3) You have the right to prepare a written response to the proposal and submit it to the manager designated in the proposal as the official who will decide whether to implement the proposed adverse action. That person is the so called “deciding official”. It is important that your representative contact the deciding official early on. That will avoid any perception by the deciding official that you do not intend to respond. It will also allow your representative to schedule the response to occur after you have time to receive and review the documents upon which the proposal is based.

(4) You and your representative also have the right to meet with the deciding official in person to present your position. In some cases you may be informed of the right to mediation before meeting the deciding official. Use it and attend the mediation. If mediation is not offered or does not resolve the matter, you still have right to meet with and present a written response to the deciding official. Stay in touch with the deciding official and make sure that meeting get scheduled. You and your representative should carefully consider what to say to the deciding official the meeting, and also what to put in the written response.

(5) Once you receive the deciding official’s written decision, immediately notify your UPMA representative. The written decision should inform you of what appeal rights you have if the decision is to take an adverse action. The appeal rights given may include an appeal to the U.S. Merit Systems Protection Board (the “MSPB”), an EEO complaint with the Postal Service, or an appeal under applicable sections of the Employee and Labor Relations Manual (the “ELM”). The ELM route is generally not favorable to the employee. Confer with your representative respecting what appeal path to follow and whether you are eligible for representation in the appeal process through UPMA.

There are additional rights of appeal beyond the appeal to the MSPB or filing an EEO. They include seeking review by the MSPB Board in Washington, by the EEOC, or by filing an action at law in a federal court depending upon the particular issues raised. Consult with legal counsel before proceeding.

Your position with the Postal Service is a valuable property asset. Defend and protect it! Your due process rights are your weapon. Use those rights!
