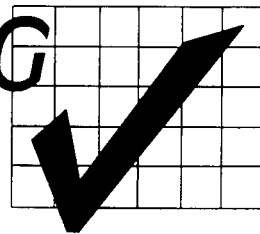


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# GRIEVANCE HANDLING

## **The Three-Part Formula**



**The** formal claim or grievance probably is the most common form of written Union communication.

Understandably, many Union reps hate to write letters; words are sometimes hard to come by and then there is the thought of putting something down on paper for all the world to see. But grievance writing is not something to be afraid of or to avoid like the plague; and, like it or not, grievance writing is a big part of your job as a union rep. It is a skill which can be acquired through study and practice. If you can argue your point verbally---and none of you would be Union reps if you couldn't---then you can learn to write effective formal grievances.

The major focus of grievance preparation and writing is to produce a grievance which will present TCU's position in the best way so as to convince any reader that you are right. Essential to the process is an understanding of the basic elements of a grievance, i.e., what you absolutely must include. You cannot even begin to write a grievance without knowing what it has to contain and in what order.

Let's start at the very beginning of the grievance writing process. That's what goes on in your head before you put pen to paper or hit the keyboard. *First, gather all the facts.* With the passage of time, witnesses retire, move to other locations or otherwise become unavailable. Likewise, evidence disappears and documents get destroyed, so it is critical that you do a thorough job of fact gathering at the outset. After you have gathered all the facts, you must *define the issue, determine what rules of your agreement apply, who the claimant is and what he or she is entitled to should the claim be paid.*

But how will you know what information is required? A good way for you to clarify what information you need to include in a grievance is for you to adhere to the grievance format which is standard in railroad arbitration. Most importantly, you should learn to arrange your thoughts in terms of this standard format because this format is *required* by the National Railroad Adjustment Board.

Each and every grievance is composed of:

- Statement of Claim**
- Statement of Facts**
- Position of Employes**

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*This article was condensed from the grievance writing segment of TCU's Leadership Development Course for local representatives which is conducted at the George Meany Center for Labor Studies. It cannot take the place of a full day's instruction including written exercises, but does provide some helpful guidelines when preparing grievances. Local reps should understand that the policies of the System or Joint Protective Board prevail when preparing grievances and should check with their General Chairman before modifying a different grievance format currently in use.*

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*Note--to those local reps who submit a "time slip" as the initial claim and subsequently forward declined claims to their General Chairman for further handling: you may apply the guidelines and **format** explained in this article to your appeal letter to your General Chairman.*

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Note that we only show three elements. That is because there are *only* three main parts to a grievance and every last thing *you* write in support of the claim has to fit into one of those three categories.

Of course, *you also need to remember to include the date, the file number, your signature and to direct copies of the grievance to the appropriate parties.* Copies can be particularly important if a copy of the grievance is used to notify a carrier officer that his or her decision is being rejected, as required in many grievance rules.

This standard claim format is logical and will help you, as a TCU representative, to better understand what information and argument is required for you to produce sustaining claims. Adherence to the format also makes it easier to convert thoughts into words. You must also remember that each of the three elements is linked to the others, and no claim is likely to be sustained if any element is defective or is just plain wrong.

There are other reasons why the use of this standard claim format makes good sense. First, if your claim is to be taken to arbitration it absolutely must be in this format. This means that your General Chairman or whoever writes submissions for your Board must make all the information in your claim fit into the three categories. This can be very difficult to do if a claim is written free style---that is, in letter form, without regard to format. It is also very time-consuming and tedious, and there is always the chance that a very valid or important point that you made will get left out of the submission. Picture someone having to transfer several pages of free style text sentence by sentence into this format.

Another reason for using the same format in all your grievances is the growing use of personal computers. If any of you use word processing programs, you know that it is a simple process to copy or cut and paste text from one document to another. It is also very easy to edit documents. If you have your own computer, you may also find it convenient and a great time-saver to store files containing the text of various rules or even "canned" arguments in a central directory so you can call up and insert text into your grievances in the appropriate place. So it just makes good sense to put the claims in the same format every time. And if you have a number of repetitive claims, using the standard format will save you a lot of precious effort; just call up the basic format and change the specifics. You can't do that as easily with a free style letter.

**The first element of the formal grievance is the Statement of Claim.** This portion of your claim is *critical* because it is the foundation of your claim and it is time-sensitive. Here you must set out:

1. When and where the Carrier did something wrong which violated the TCU Agreement and affected the TCU member
2. What the Carrier did
3. The Claimant's name and the remedy requested.

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**The Statement of Claim** must be an affirmative assertion that the carrier violated the Agreement on a certain date when its actions adversely affected the named claimant, and that as a result the claimant must be awarded a specific remedy.

The remedy may be money or it may be a particular act, such as requiring the carrier to award a position to the claimant. It should also be in line with contractual entitlement. In other words, it serves little purpose to claim a \$100,000 penalty for a one-shift overtime run-around claim. Don't short the Claimant, but keep the claim in line with what we call the "make whole" philosophy. In plain terms, ask that the Claimant be compensated for what he would have earned had the Agreement not been violated. You may demand in a scope/classification of work claim that some disputed work be returned to the Claimant, but you should know that many arbitrators are hesitant to do this, believing that they have no power to tell a carrier how to run its business. Instead, most arbitrators prefer to rule that the carrier must pay a price for each day or tour that it violates the Agreement, thus stopping short of ordering the carrier to reestablish a position, etc.

*The Statement of Claim has to be 100% correct.* If not, and if it is not corrected within the time limits provided for in the Agreement, the General Chairman cannot correct the error and salvage the claim. For example, if you make a material error in the Statement of Claim---let's say you name a Claimant who was on vacation when a runaround occurred---and your Agreement contains a 60-day time limit provision, if you attempt to correct the improperly filed claim you are in effect filing a new claim and can only do so within the number of days specified in the Agreement.

You also may discover after having filed a claim that the magnitude is much greater than you thought, involving more claimants or occurring on more dates than you originally specified. This is one of the main reasons why you have to promptly and thoroughly research your claims so you do not file for the wrong date or the wrong claimant. Therefore, the utmost care and attention must be devoted to preparing your Statement of Claim because it may not be altered or expanded once the time limit for filing claims has passed.

**Here is a sample Statement of Claim ►**

Before we move on to the next element of a grievance, let's talk briefly about *named* and *unnamed claimants*. Generally speaking, the identity of the claimant should be readily discernible from the

*SAMPLE  
STATEMENT OF CLAIM*

Claim of the Local Protective Committee of TCU that:

1. Carrier violated the TCU Agreement at Huntington Yard, TX, on Saturday, November 24, 1990, when it failed to call and use Janitor T. C. Fogerty to perform the work of general cleaning in the Huntington Shop offices, restrooms and locker room, instead assigning the work to employes of Property Maintenance Company, an outside contractor.
2. Carrier shall now be required to compensate T. C. Fogerty one day's pay (eight hours) at the time and one-half rate of the Janitor position (\$92.00) for Saturday, November 24, 1990, which he would have received had he been properly called.

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carrier's records. That does not mean that you always have to specifically state the individual names of the claimants. The term "senior idle" or "senior available employe" has been used in railroad arbitration proceedings for decades and is especially appropriate in cases where the relief requested extends over a lengthy period of time and involves different employes on different dates.

*If you do name a claimant, make sure you have the right one.* You cannot amend a specific claimant's name after the time limits have expired for filing the initial claim.

Carmen Division claims sometimes name several specific Claimants, such as selected names from the overtime equalization list. It is perfectly OK to name several Claimants and to state the amount or portion of the relief to which each is entitled, if you are able to do so.

**The Statement of Facts is the second of the three component parts of a grievance.** The Statement of Facts is simply the story of what happened. And like any story, it helps to begin by introducing the cast of characters.

First, start with the claimant, identified by seniority date, assigned position, working hours and rest days, etc. If other employes are involved, their seniority dates and assignments (if pertinent to the dispute) should be stated. Then give a chronological statement of what happened. Be brief and factual. This is not the place for allegations or arguments; just the facts. *Unlike the Statement of Claim, the Statement of Facts can be expanded during the handling on the property.* Note that *we* specify *during* the handling on the property. It is important for you to remember that when the General Chairman docketed a claim for arbitration at the Adjustment Board or a Public Law Board, that action closes the record. You can make amazing discoveries about the case and develop fantastic new facts and evidence, but once the record is closed, such information is barred from the case---even from the arbitration proceeding. Again, once the claim has been docketed for arbitration, the opportunity to present facts is gone. But so long as the parties continue to attempt to resolve the claim on the property, either side may present additional facts supporting their position.

When you write the Statement of Facts, keep in mind that Board members and the neutral referee will have never heard of the case, and that *the clarity with which they first learn of the case will materially contribute to their impressions as to the appropriateness of the claim.* Nothing is more irritating to a referee than to read a statement of facts and not have any idea of what the claim is about. He or she will then probably look through the correspondence on the property and settle on the Carrier's version, which is usually well set out in its final denial letter on the property. This, we do not want to happen. so you must learn through practice and experience what to include.

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The Statement of Facts is also a good place to introduce evidence which sets up the case. But you must know enough about the grievance to have an idea as to what facts the arbitrator will need. In a scope rule case, for example, you might identify the Claimant and state that he is “assigned to position so-and-so and a copy of the bulletin establishing his position is attached as Exhibit “A.” Another example might be the introduction of a carrier instructional bulletin with which you take issue. You might also introduce in a non-argumentative manner your version of a conference you might have had with Carrier prior to filing the claim. The key is to limit this element of the grievance to stating the facts as you understand them. Do not call names, and do not be argumentative or sarcastic.

A good grievance writer knows how to present the facts in a manner so as to draw the conclusion that the agreement has been violated before the position of the employes has even been read. While it takes a some practice, it is possible to present even inarguable facts in a manner which complements TCU's position. The argument comes next.

### **The final component of a grievance is the Position of Employes.**

This is your opportunity to present argument to support your claim. As with the Statement of Facts, this component of the claim can be refined during the handling on the property. Here you should cite the relevant rules, quoting word for word those portions which specifically apply to the claim.

If you have them, you may also want to try your hand at quoting from arbitration awards which interpret the Rules in support of your position. Arbitral support, when available, will be added by the System or Joint Protective Board in subsequent handling, but if you have an award on point or if similar claims have been paid in the past, the inclusion of this information adds professionalism to your claims. and forces the carrier to address the awards you cite.

Your arguments and any citations designed to prove the intent, purpose and effect of the Rules on which you rely must be sufficient in detail so as to be convincing. Remember, it is not sufficient to merely quote from awards which you think sound good; no, you have to establish that the awards decided cases which were similar or identical in facts and rules to the claim you are writing. And read the whole award before you cite any language. Some award language may look great on page 2, but on the final page the Board denies all facets of the claim. Also, make sure you are citing from the Opinion of the Board, not a partisan position.

The Position of Employes must link directly to the facts which you established in the Statement of Facts. There is no point in arguing long and hard or quoting from various awards on an issue which you didn't even mention in your Statement of Facts. What you must do is link by argument, evidence or award citation the rules which have

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been violated with the circumstances which you set out in the Statement of Facts.

There you have it: the three key elements of a grievance. **And remember, we are not talking about invisible separations of thought and expression: you must actually write on the paper *and underline* Statement of Claim, Statement of Facts, Position of Employee, just as we show in the example below which follows this article.**

If you can present your case to a local carrier officer in a written grievance which is positive, professional and convincing, he or she might just decide to settle the claim, particularly where the grievance is so well set out and so clearly in violation of the agreement as to prove embarrassing if appealed to the next higher level. Even if the grievance is not settled locally, a well-written initial claim is essential to those who progress the claim.

### **Sample Grievance**

File: HS-31-90(F)

Mr. John Smith, Mechanical Superintendent  
North American Transportation Company  
2170 Railroad Drive  
Hub City, TX 33146

Dear Sir:

Presented here for your consideration and adjustment is a claim arising at Huntington Yard, Texas.

#### **STATEMENT OF CLAIM:**

Claim of the Local Protective Committee of TCU that:

1. Carrier violated the TCU Agreement at Huntington Yard, TX, on Saturday, November 24, 1990, when it failed to call and use Janitor T. C. Fogerty to perform the work of cleaning and supplying the Huntington Shop offices, restrooms and locker areas, instead assigning the work to employees of Property Maintenance Company, an outside contractor.
2. Carrier shall now be required to compensate T. C. Fogerty one day's pay (eight hours) at the time and one-half rate of the Janitor position (\$92.0000) for Saturday, November 24, 1990. which he would have received had he been properly called.

#### **STATEMENT OF FACTS:**

During the time frame relevant to this dispute, Claimant T. C. Fogerty, seniority date July 13, 1954, was regularly assigned to the position of Janitor, Diesel Shop, Huntington Yards, Texas, with assigned hours from 8:00 A.M. to 4:00 P.M., Monday through Friday. This is a five-day position and is not relieved ON rest days of Saturday and Sunday, The bulletined duties of the position of Janitor include the following: clean offices in Huntington Shop, clean and supply restrooms and locker area, empty trash from all shop areas; sweep and mop office restroom and locker floors. See Job Bulletin 318-86 dated November 17, 1986, attached.

On Thursday and Friday, November 22 and 23, 1990, Claimant's job was annulled account the Thanksgiving Day and the Friday following Thanksgiving holidays. The shop was in operation on those days, however, because of the need to service Amtrak locomotives. As a result, the offices, restrooms and locker areas were in use and accumulated substantial trash. In addition, the restrooms and locker areas became depleted of sanitary supplies.

By Saturday, November 24, 1990, the first of Claimant's two regularly scheduled rest days, Mechanical Superintendent Wolfe determined that the shop could not wait until the following Monday to have the now totally depleted restroom and locker room supplies replenished and the overflowing trash removed. However, rather than call Claimant to perform the necessary janitorial duties which he exclusively performs during his normal work week, Carrier contracted the services of Property Maintenance Company (PMC) to perform the janitorial work. A PMC two-man crew performed the disputed duties from 10:30 A.M. to 2:30 P.M. on Saturday, November 24, 1990, as reflected by PMC's invoice No. 902035, copy attached, billing Carrier for such service. See also attached statement of D. Henley attesting to the foregoing facts.

POSITION OF EMPLOYEES:

It is the position of the Employees that Carrier violated Rule 1--Scope/Classification of Work when it failed to call and use Claimant to perform janitorial duties which it deemed necessary on Saturday, November 24, 1990. Rule 1 provides as follows, in pertinent part:

(a) \*\*\* Positions or work within the scope of this Agreement belong to the employees covered thereby and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules.

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(g) Employees working in and around.. diesel facilities performing work of.. Janitors..

The work in dispute is assigned to Claimant by both Rule 1 and by bulletin, as well as custom and practice, and Claimant has historically performed such work to the exclusion of all others. The work of cleaning offices and cleaning and supplying the restrooms and locker rooms which was performed by PMC on November 24, 1990, is clearly and inarguably work coming under Rule 1 of the Agreement and the performance of such work by PMC constitutes a removal of work which is expressly forbidden by the literal language of Rule 1.

Claimant was available on Saturday, November 24, 1990, and was entitled by Rule 35(b) to be called to perform the janitorial work in dispute. Had Claimant been called as required, Rule 34 provides that such service would have been at the time and one-half rate. PMC's invoice reflects eight man-hours of work performed and Claimant must be made whole for his loss of work opportunity in the same eight hour quantum.

Please advise as to pay period in which claim will be settled.

Yours truly,

Local Chairman

cc: T. C. Fogerty, Claimant  
Protective Committee