

AWARD WRITING CHECKLIST
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This checklist contains many familiar ideas and a few new ones. All should help your award writing to address the ever-changing challenges to awards.

What ethical rules apply?

C. Awards and Opinions

The award should be definite, certain, and as concise as possible.

a. When an opinion is required, factors to be considered by an arbitrator include: desirability of brevity, consistent with the nature of the case and any expressed desires of the parties; need to use a style and form that is understandable to responsible representatives of the parties, to the grievant and supervisors, and to others in the collective bargaining relationship; necessity of meeting the significant issues; forthrightness to an extent not harmful to the relationship of the parties; and avoidance of gratuitous advice or discourse not essential to disposition of the issues. (<https://naarb.org/code-of-professional-responsibility/>)

What are your goals?

Do no harm.

First seek to understand, then seek to be understood.

Protect arbitration process.

Protect award from challenges

Avoid surprising advocates and parties, e.g., the mystery novel.

Strive for a decision within the range of expectation but not at the expense of doing the right thing, i.e., most advocates know if they have a winning, losing, or close case.

Write with conviction, i.e., avoid equivocation

To persuade, i.e., the reader concludes the Award's result is the only possible result

Be succinct

Have you reread Award writing guidance?

- 61 Behavioral Biases That Screw Up How You Think (<https://www.businessinsider.com.au/common-behavioral-biases-2012-5>)
- Stephen V. Armstrong (Author), Timothy P. Terrell, *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing* (3rd Edition) (reviewed at <http://www.k-plaw.com/pdf/2009-06-09/JHP-Book-Review.pdf>)
- Robert B. Dubose, *Legal Writing for the Re-Wired Brain* (https://www.texasbar.com/flashdrive/materials/managing_your_law_practice/Special_ManagingYourLawPracticeCLE_LegalWritingRewiredBrain_Dubose_FinalArticle.pdf)

- Charlotte Gold, *Opinions and Awards: Inadvertent Results* (<http://naarb.org/proceedings/pdfs/1990-227.pdf>)
- Ross Guberman, *The Seven Writing Strategies of Highly Effective Trial Judges*, (<https://www.legalwritingpro.com/blog/the-seven-writing-strategies-of-highly-effective-trial-judges/>)
- Federal Judicial Center 2013, *Judicial Writing Manual: A Pocket Guide for Judges*, Second Edition, (<https://www.fjc.gov/sites/default/files/2014/Judicial-Writing-Manual-2D-FJC-2013.pdf>)
- Joseph Kimble, *The Straight Skinny on Better Judicial Opinions*, 9 *Scribes J. Legal Writing* 1 (2003–2004) (<https://www.scribes.org/copy-of-volume-16-7>)
- Joseph Kimbel, *The Elements of Plain Language*, Mich. B.J., Oct. 2002, at 44 (https://www.michbar.org/file/generalinfo/plainenglish/pdfs/02_oct.pdf)
- Gerald Lebovits, *Advanced Judicial Opinion Writing*, (7.4 ed. 2004) (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406709)
- Gerald Lebovits, *Judicial Opinion Writing For State Tax Judges*, (Oct. 12, 2018) (https://www.lincolnst.edu/sites/default/files/sources/events/lebovits_judicial_opinion_writing.pdf)
- Herbert L. Marx Jr., *Who Are Labor Arbitration Opinions Written For? And Other Musings About Award Writing*
- Richard Miententhal *Invited Paper: The Heart of the Matter* (<https://naarb.org/proceedings/pdfs/2003-23.pdf>)
- Richard Miententhal, *Credibility—A Will-O'-The-Wisp* (<http://naarb.org/proceedings/pdfs/1978-61.pdf>)
- William Strunk, *The Elements of Style*, (www.gutenberg.org/files/37134/37134-8.txt)

Have you considered the impact of your Award?

- Your award may be published even if you do not submit it.
- Civil service awards are often public record.
- Researchers are using algorithms to predict arguments you prefer and your ruling. (Arbitrator Analyzer LexisNexis). Of course, advocates have been doing this for years by studying your awards.
- Advocates may seek to create errors to overturn your award.
- Your awards may be cited to you by advocates.
- If you do not write it, you do not have to explain it later.
- You inadvertently used dog whistles in advocates' submissions.
- An award is not a court decision, but a court may review it.
- Is your writing an interim ruling or a final award?
- Do you need to include alternative grounds for your decisions?
- Are there issues you should not address?
- Do you rely upon evidence in the record not mentioned by the advocates?
- Do you rely upon evidence in the record not mentioned by any witness, i.e., a document?

- Do you rely upon arguments not raised by the advocates? (Does the argument flow from a party's position?)
- How do you treat the decision maker that lead to the dispute?
- Do you include profanities or obscure them with asterisks?
- Do you have a surprise ending?

Who is your audience?

- Losing Party
- Losing Party's Spouse (in a discipline case)
- Losing Advocate
- Grievant and immediate supervisor
- Witnesses
- Judge or administrative body (if the award is challenged)
- Journalists (civil service case)
- New labor arbitrators
- University students (introduction to labor arbitration)
- Public (civil service case)

Are there words to avoid?

Always
 Frankly
 Imbecile
 Jargon
 Liar
 Never
 Obscenities
 Snowflake
 Stupid
 Undefined acronyms
 Unnecessary words
 Vulgarly

What else should you avoid?

Advocacy
 Accusations of impropriety
 Anger
 Clichés
 Cryptic analysis
 Embellishment
 Exaggeration
 Humiliation
 Innuendo

Insults
Limericks
Obscure words
Passive voice
Pomposity
Pretension
Ridicule
Sarcasm
Scorn
Surprises
Threats

Does your Award's appearance make it easy to read?

Will the Award be read on paper, on a screen, or both?

Font
Footnotes
Headings
Bolding
Italics
Links to external material, e.g., FLRA decisions, statute, regulation, etc.
Paragraph numbers
Short paragraphs
Short sentences

What do you need to include in your Award?

Parties Identified
Advocates Identified
Attendees Identify
Witnesses Identified
 In person
 Via telephone
 Rebuttal
Arbitrator Identified
CBA Identified
Date of Grievance
Hearing Date
Award Date
Hearing Location
Exhibits
 Admitted
 Excluded
 Not relied upon
Decision summary first page
Issues Identified

- Parties agreed
- Arbitrator framed
- Procedures
 - Appointing Agency
 - Jurisdiction
 - Full opportunity to present
 - Award due date
 - Witness rule invoked, i.e., witnesses sequestered
- Transcript
 - Stenographer present but not transcribed
 - Stenographer present and transcribed
 - Transcript contained errors, e.g., “under ward” instead of “untoward”
- Unusual events, e.g.,
 - CBA arbitration provisions modified or waived, e.g., award due date extended
 - Party does not attend
 - Advocate and party do not attend
 - Witness testified remotely
 - Witness testified over objection
- Key CBA provisions, i.e., used in analysis
- Key Employer policies, i.e., used in analysis
- Key Statutes, e.g., used in analysis of federal sector or civil service cases
- Key Regulations, e.g., used in analysis of federal sector or civil service cases
- Stipulations
- Relief requested

What needs to be in the background?

Introduction to reader, e.g., Company employed Grievant as a mechanic for 12 years. He had no disciplinary history before the Company fired him. The Company fired him for clocking in and out for a coworker.

- All parties [or witnesses] agreed that _____
- Chronological order?
- Only facts used in analysis?
- Discharge letter specifics?
- Investigation?
- Signal Award’s result?

Record

- References are illustrative not exhaustive
- Ask for correction to numbers

What do you include in the parties’ positions?

- All arguments?
- All quoted witnesses?
- All cited facts?

All quotes from treatises?
All cited Awards?
Introductory phrases, e.g., the Union urged, the Company argued?

What do you include in the analysis?

Witnesses

Use names, initials, or positions?
Use numbers, e.g., school district case with students as witnesses
Other personally identifiable information?

Evidence Weighed

Substantial
Preponderance
Clear and convincing
Beyond a reasonable doubt

Standard applied

Just cause
Proper cause
Contract interpretation

Evidence

Credibility (Implicit in every factual determination is an evaluation of the witnesses' credibility.)

Credibility Assessed

Clear?
Direct?
Consistent
 Grievant's hearing testimony consistent?
 Grievant's prior statements consistent with hearing testimony?
 Other witnesses?
Opportunity to observe?
Plausible?
Behavior at hearing, e.g., an hour late to hearing and discharged for reporting late to work
Demeanor?

Explain credibility assessment?

Photographs/Video

Reliable?
Accurate?
All?

Drug/medical test?

Medical records?

Site visit?

Issue: Did the Company have just cause to discipline Grievant?

The Company [did, did not] provide notice that *

The Company's rule [is, is not] reasonable under the circumstances.
The alleged conduct [is, is not] covered by the work rule.
The work rule [is, is not] reasonable under the circumstances.
The Company [conducted, did not conduct] a reasonable investigation.
The investigation [was, was not] fair and objective.
The Company [did, did not consider] the following mitigating factor.
The Company's proof [did, did not] establish the alleged misconduct.
The Company [did, did not] establish it took consistent and evenhanded discipline.
The discipline [did, did not] comply with progressive discipline.
The CBA [permitted, did not permit] the Company to skip progressive discipline.

Issue: Did the Company violate the CBA when it _____

The * [did, did not] establish a past practice.

The * [did, did not] establish an applicable MOU applied.

What do you include in the relief?

Reinstatement?

Back pay?

Mitigation of back pay?

Interest?

Future action?

Relief denied?

Apportionment of fee?

Retain jurisdiction?

Do you make use of easy to understand statements?

- The parties did not agree upon the issue, and the parties agreed that the Arbitrator had the authority to frame the issues.
- Generally, just cause requires the employer to reasonably, fairly, and objectively investigate and then to consider the applicable circumstances, such as the nature of the offense, the employee's conduct, the employee's knowledge of the rules, the conduct covered by the rules, the reasonableness of the rule, prior warnings, the investigation, any mitigating facts, and management's acts or omissions and their impact.
- The Arbitrator considered the entire CBA and generally gave the parties' words their plain, grammatical, and customary meaning.
- Above all, the Arbitrator only interpreted and applied the CBA provisions and did not add to, subtract from, modify, or delete any of its provisions.
- The Arbitrator gave full and careful consideration to the general principles of contract interpretation and the entire record, including the credibility of the witnesses, the CBA, the exhibits, and all arguments.
- Citations to decisions or awards are not exhaustive but instead are illustrative.
- References to exhibits, testimony, arguments, or other material are not exhaustive. Rather, references are representative samples.
- Implicit in every factual determination is an evaluation of the witnesses' credibility.

- The Arbitrator did not rely on misconduct described at the hearing or in the Company's post-hearing brief and not in the discharge notice. Alternatively, if the Arbitrator should have relied upon such misconduct, the decision would have been the same.
- An error may exist in the date or number in a date, transcript pages, CBA Articles and Sections, and exhibits, and cross references to paragraphs. The parties may ask for a clarification or correction for any reference.
- While the County's investigation need not be perfect, it must be fair and objective.
- Based on the record, including the credibility of the witnesses, the Company [did, did not] prove that it had just cause to discipline Grievant.

Has your writing style evolved?

Sample 1

The parties agreed that the Arbitrator had jurisdiction to determine the issues as framed by the Arbitrator. Further, the parties agreed that all notices had been timely and properly given, that all deadlines had been met, that all statutory requirements had been met and all requirements of the Formal Dispute Resolution Procedure contained in Article 13A of the Collective Bargaining Agreement (CBA) had either been met or waived, e.g., the parties waived the requirement that the hearing occur within 30 days of the assignment of an arbitrator. [word count 87]

The parties agreed that no issues of arbitrability existed. They also agreed the Arbitrator had the authority to frame the issues and the jurisdiction to issue a final and binding Award and to fashion an appropriate remedy. The parties waived the requirement that the hearing occur within 30 days of the assignment of an arbitrator. [55 words]

The parties agreed all conditions of the CBA have been met or waived. Also, the parties agreed the Arbitrator had jurisdiction and the authority to determine the issues, to issue a final and binding award and to fashion an appropriate remedy. [41 words]

Sample 2

Full and careful consideration was given to the factual record, the cited provisions of the CBA and other documents, the exhibits, the stipulations, and all arguments. Not every theory, standard, policy, definition, allegation or fact is recited, but all were considered. Further, while every one was considered, not every fact or reason in support of a statement is recited. While the testimony did not reference every admitted exhibit, every admitted exhibit was considered. References to exhibits, arguments, or other material do not necessarily list every one which supported the statement. Rather, references are intended to be representative samples. Not every time that a witness corrected or altered his/her testimony, and not every time a witness refreshed his/her recollection has been noted but all were considered. Not all contradictions in the evidence are recited, but all were considered. Implicit in every factual determination is an evaluation of the witnesses'

credibility. Any evidence admitted for a limited purpose was considered only for that purpose. Any evidence to which an objection was sustained was disregarded as was any evidence which was presented but subsequently determined to be inadmissible. *Government of Canal Zone v. Jimenez*, 580 F.2d 897, 898 (5th Cir. C.Z. 1978) ("[a] judge, sitting as a trier of fact, is presumed to have rested his verdict only on the admissible evidence before him and to have disregarded that which is inadmissible."). [229 words]

Full and careful consideration was given to the entire record, including the credibility of the witnesses. References to exhibits, testimony, or other material are not exhaustive. Rather, they are representative samples. Implicit in every fact determination is an evaluation of the witnesses' credibility. The Arbitrator did not rely on misconduct not in the discharge notice.[55 words]

What software writing tools are you using?

Caution: Use of software make expose the Award's contents to the vendor.

Consistency Checker	Free	http://www.techtoolsforwriters.com/consistency-checker-free-proofreading-tool/	Check for consistent use of abbreviations, numbers, spelling in Google Docs
Greenshot	Free & Paid	https://getgreenshot.org/	Windows and Mac software to take a screenshot and convert to text
Grammarly	Free & Paid Versions	https://app.grammarly.com/	Grammar checker for Word, Chrome, Safari, Firefox, and Edge
Hemingway	Free	www.hemingwayapp.com	The app highlights lengthy, complex sentences and common errors
LibreOffice Writer Language Tool	Free	https://extensions.libreoffice.org/extensions/language-tool	Style and grammar proofreading software
LibreOffice Writer After the Deadline	Free	https://extensions.libreoffice.org/extensions/after-the-deadline-grammar-style-and-misused-word-detector	English grammar, style, and contextual spelling checker
PDF-XChange Editor	Free & Paid	https://www.tracker-software.com/product/pdf-xchange-editor	View, OCR, sign, and comment on pdf
PerfectIt 3 one-time fee PerfectIt 4 subscription	Paid	https://intelligentediting.com/	Locate undefined abbreviations, Check consistency for capitalization, hyphens, numbers, etc.

ProWritingAid	Free & Paid	https://prowritingaid.com/	The app highlights lengthy, complex sentences and common errors and suggests solutions
Word Dictate	Paid	https://dictate.azurewebsites.net/	Part of Word that allows dictation
Word Editor	Paid	https://support.office.com/en-us/article/editor-is-your-writing-assistant-91ecbe1b-d021-4e9e-a82e-abc4cd7163d7	Part of Word, Editor spots misspellings, grammatical mistakes, and writing style issues
Word Ideas	Paid	https://www.techrepublic.com/article/microsoft-word-online-to-add-ideas-ai-to-help-you-improve-your-writing/	Part of Word, Ideas is to be added in late 2019 and is supposed to recommend more concise or inclusive words, better structure, and better organization