Seven Tests of Just Cause

Following the Seven Tests for Just Cause can help protect members from discipline or discharge.

One of the main benefits of being a union member is protection from unfair discipline.

In most contracts, employers are prohibited from disciplining an employee without "just cause." What just cause means is rarely spelled out in union contracts. That's been left to the arbitrators.

Most arbitrators follow the Seven Tests for Just Cause—a standard laid out by arbitrator Carroll Daughtery in 1964.

Under the Seven Tests for Just Cause, the employer must be able to answer YES to the following questions. If not, they have failed to meet the just cause standard and discipline has to be reduced or thrown out altogether.

Arbitrators and grievance panels are not strictly bound by the Seven Tests. But they are the most common standard for determining just cause—and an excellent guide to investigating a disciplinary grievance.

Holding management to the Seven Tests can help you present a strong defense and win disciplinary grievances at all levels of the grievance procedure.

Reasonable Rule:

Was the rule or an order given to an employee "reasonably related to the orderly, efficient and safe operation of the business" and "the performance that the employer might properly expect of the employee"?

Rules or direct orders must not be arbitrary, capricious or discriminatory.

Notice:

"Was the employee adequately warned as to possible discipline or consequences of his or her action?" The employer is responsible for warning employees of acts of misconduct that can lead to discipline. A warning may be given verbally or it can be written. In either case, it should be clear, unambiguous and include any possible penalties.

Exceptions can be made for certain misconduct that is so serious that the employee is expected to know it is punishable—such as violence, stealing, or drinking on the job.

But the rule of thumb is that employees need to have known in advance that their conduct would result in discipline. This is especially true in suspension and termination cases.

Investigation:

The test here is: Did management investigate before administering the discipline?

The employer acts as prosecutor, judge and jury in discipline cases. For that reason, it has the responsibility to get all the facts before making the decision to discipline an employee.

When conducting an investigation, an employer must actively search out witnesses and look for evidence. Failure to investigate before handing out discipline violates just cause.

Fair and Objective Investigation:

Was the employer's investigation fair and objective? A fair investigation must be timely and thorough. For example, did the employer interview only the supervisors who witnessed an incident or did it interview union members as well?

Members' right to union representation and due process must be respected in the investigation. The employer must evaluate the facts fairly and objectively without a rush to judgment. If the employer disciplines first and investigates later, they have likely violated just cause.

Proof:

Did the investigation produce substantial evidence or proof of guilt?

The burden of proof is on the employer. Management does not have to prove "beyond a reasonable doubt"—but its evidence must be "substantial." Speculation doesn't cut it.

In a grievance meeting, the steward or union rep should make the employer prove their case first. They should be made to present the facts and asked to present all of its evidence before the union presents its defense.

If management does not have enough evidence to prove an offense occurred, then no punishment can meet the just cause standard.

Equal Treatment:

Were the employer's rules, orders and penalties applied evenhandedly and without discrimination?

The union has the right to do an information request and obtain employer records of all employees who have been disciplined for the same offense in a given time period.

If enforcement has been lax in the past, management cannot suddenly reverse its course and crack down without first warning employees of its intent.

If other employees who commit the same offense have been treated differently, this may constitute "disparate treatment" which violates this test.

Penalty:

Was the degree of discipline administered by the employer reasonably related to the seriousness of the employee's proven offense, and the employee's past record?

In other words, does the punishment fit the crime? Discipline should be progressive and it should corrective. The goal should be to get an employee to understand and follow the rules—not to run them out the door.

An employee's past record is also relevant. A bad past record cannot be used to prove guilt of a new violation. But a good past record and other mitigating circumstances can balance the scales and lessen a penalty.

If employee A has a better record than employees B or C, it is not discriminatory for employee A to receive a lighter penalty.