LiUNA!

Feel the Power

Seven Tests of Just Cause

Most collective bargaining agreements state that an employer must show "just cause" in order to discipline an employee. "Just cause" means the employer must have a reason ("cause") for imposing discipline and the reason must be fair ("just").

Although most contracts include a "just cause" provision, very few of them adequately define what it means. In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action. The test is known as the "Seven Tests of Just Cause." To show that discipline was justified, the employer must be able to answer YES to the following seven questions:

1. Reasonable Rule or Order - *Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the business?*

This rule or order must not be arbitrary, capricious or discriminatory and must be related to the employer's stated goals and objectives. Even if this order is unreasonable, the member MUST obey, except in cases when doing so would jeopardize health or safety.

2. Notice - *Did the employer give any warning as to any possible discipline or consequence that could result from that employee's action or behavior?*

Warnings can be in writing or oral. Note that management does not need to provide a warning to the employee for some very serious offenses for which the employee should know they will be subject to discipline (example: commission of a crime at work – theft, assault, etc.). The employee must have at least *constructive* notice of the rule alleged to have been violated (this would not apply to the capital crimes of theft, etc.). The employee may win the arbitration if he/she did not know the conduct was prohibited, even if his/her conduct breached the rules.

3. Investigation - *Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did in fact violate or disobey a rule or order?*

The employer's investigation must be made BEFORE any disciplinary action is invoked. Where immediate action is required, however, the best course is to suspend the employee pending investigation with the understanding that he will be restored to his job and paid for time lost if he is found not guilty. The employer bears the full responsibility for collecting any and all facts that are relevant to the final decision.

4. Fair Investigation - *Was this investigation fair and objective?*

The employer has the obligation to conduct a fair, timely and thorough investigation that respects the employee's right to union representation and due process. Once gathered, all facts must be evaluated with objectivity, and without a rush to judgment. Example: if management only interviews management witnesses but no union witnesses, an arbitrator would likely find that the investigation was not fair or objective.

5. Proof - *Did this investigation uncover any substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?*

Although there is no requirement of being preponderant, conclusive, or "beyond a reasonable doubt," any proof or evidence must be truly substantial. Employees have less rights in the workplace then in court, but the employer must still have real evidence to discipline the employee. While conducting the investigation, the employer must actively seek out witnesses and search for evidence. If an offense cannot be proven, then no penalty could ever be considered just.

6. Equal Treatment - *Did the employer apply all rules, orders and penalties evenhandedly and without discrimination to ALL employees?*

If other employees who commit the same offense are treated differently, there may be discrimination or disparate treatment, both of which would automatically violate this test. Likewise, if management has never or rarely or unevenly enforced this rule in the past, they cannot suddenly reverse course and "crack down" on an employee for the same action.

7. Penalty - *Was the degree of discipline administered reasonably related to either the seriousness of the employee's offense or to the record of past service?*

A proven offense does not merit a harsh discipline unless the employee has been proven guilty of the same (or other) offenses several times in the past. Although an employee's past record cannot be used to prove guilt in a current case, it can be used in determining the severity of discipline if guilt is established in the current case.

Should two or more employees be found guilty of the same offense, their respective records will be used to determine their individual discipline. Thus, if employee A has a better record (or more seniority) than employees B or C, then the employer has a right to give a lighter penalty to employee A without being discriminatory.

The employee's offense may be excused through mitigating circumstances. For example, a warehouse employee found asleep on the job may be excused by the mitigating circumstance of being under medication by the company doctor. Or, an employee with domestic troubles may be proven incompetent rather than negligent, the latter indicating a willful deliberation.