

The 7 Tests of Just Cause

Many UPSEU Local 1222 collective bargaining agreements contain a just cause provision, yet very few of them adequately define what it means. This has been left to the arbitrators.

In 1964, Arbitrator Carroll Daugherty established a singled standard to determine if the discipline or discharge of an employee can be upheld as a just cause action. In the **Seven Tests of Just Cause**, 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 and 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?

While maintaining the contractual right to manage it's workforce by establishing the rule and orders necessary, the employer is responsible for informing the employees as to their meaning and application. The employer must advise the employee that any act of misconduct or disobedience would result in discipline. This statement should be clear, unambiguous and inclusive of any possible penalties.

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. The employer is prosecutor, judge and jury in discipline cases, and must bear 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 judgement.

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. 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.

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. Though 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 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.

UPSEU 1222 stewards who approach disciplinary hearings with the above **Seven Tests** in mind can often detect weaknesses in the employer's case.