JUST CAUSE AT A GLANCE

Under the Discipline and Discharge Article in the contract it states that: "Disciplinary action may be imposed upon an employee only for JUST CAUSE."

The basic elements of JUST CAUSE have been reduced to seven tests by Arbitrator Carroll R. Daugherty. These tests, in the form of questions, represent the most specifically articulate analysis of the just cause standard.

The seven key tests or questions include:

1. NOTICE: "Did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?"

2. REASONABLE RULE OR ORDER: "Were the Employer's rules reasonably related to (a) the orderly, efficient and safe operation of the Employer's business; and (b) the performance that the Employer might properly expect of the employee?"

3. INVESTIGATION: "Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?"

4. FAIR INVESTIGATION: "Was the Employer's investigation conducted fairly and objectively?"

5. PROOF: "At the investigation, did the 'judge' obtain substantial evidence or proof that the employee was guilty as charged?"

6. EQUAL TREATMENT: "Has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?"

7. PENALTY: "Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense; and (b) the record of the employee in his/her service with the Employer?"

A "no" answer to one or more of these questions means that just cause either was not satisfied or at least was seriously weakened in that some arbitrary, capricious or discriminatory element was present.

Go through each of these in a grievance

2nd ORAL Warning
- steward
- Orville
- disciplinary officer
- hearing officer

9/05

TESTS FOR DETERMINING IF AN EMPLOYER HAS JUST CAUSE FOR DISCIPLINING AN EMPLOYEE

While there is no specific definition of "just cause," a sort of "common law" has developed from the decisions of arbitrators in discipline cases. The definition consists of a set of guidelines or criteria that are applied to the facts of any one case. The criteria are set forth below in the forms of questions.

A "no" answer to any one or more of the following questions normally signifies that just cause did not exist. In other words, "no" means that the disciplinary decision contained some element(s) of arbitrary capricious, unreasonable or discriminatory action to such an extent that the discipline is an abuse of managerial discretion and is either unwarranted or should be modified.

The answers to the questions must be well documented. Keep in mind that the facts in any particular case can vary a great deal. These questions are guidelines to be used in reviewing discipline cases and not hardened standards.

THE QUESTIONS

1. **Did the Employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?**

   A. Said forewarning or foreknowledge may properly have been given orally by management or in writing through the medium of typed or printed sheets or books of shop rules and of penalties for violation thereof.

   B. There must have been actual oral or written communication of the rules and penalties to the employee.

   C. A finding of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated; drinking intoxicating beverages on the job, theft of property of the Employer or of fellow employees are so serious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

   D. Absent any contractual prohibition or restriction, the Employer has the right unilaterally to promulgate reasonable rules and give reasonable orders, and same need not have been negotiated with the Union.

2. **Was the Employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the Employer's business?**

   A. If an employee believes that said rule or order is unreasonable, he/she must nevertheless obey same (in which case he/she may file a grievance there over), unless he/she sincerely feels that to obey the rule or order would seriously and immediately jeopardize his/her personal safety and/or integrity. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his/her disobedience.

3. **<u>Did the Employer, before administering discipline to an employee make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management</u>?**

A. This is the employee's "day in court" principle. An employee has the right to know with reasonable precision the offense with which he/she is being charged and to defend his/her behavior.

B. The Employer's investigation must normally be made **BEFORE** its disciplinary decision is made. If the Employer fails to do so, its failure may not normally be excused on the ground that the employee will get his/her day in court through the grievance procedure after the exaction of discipline. By that time there has usually been too much hardening of positions.

C. There may, of course, be circumstances under which management must react immediately to the employee's behavior. In such cases, the normal action is to suspend the employee pending investigation, with the understanding that (1) the final disciplinary decision will be made after the investigation; and (2) if the employee is found innocent after the investigation, he/she will be restored to his/her job with full pay for lost time.

D. The Employer's investigation must include an inquiry into possible justification for alleged rule violation.

4. **<u>Was the Employer's investigation conduced fairly and objectively</u>?**

A. At said investigation the management official may be both "prosecutor" and "judge," but he/she may not also be a witness against the employee.

B. It is essential for some higher, detached management official to assume and conscientiously perform the judicial role; giving the commonly accepted meaning to that term in his/her attitude and conduct.

C. In some disputes between an employee and a management person there are no witnesses to an incident other than the two immediate participants. In such cases, it is particularly important that the management "judge" question the management participant rigorously and thoroughly, just as an actual third party would.

5. **<u>At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged</u>?**

A. It is not required that the evidence be preponderant, conclusive or "beyond reasonable doubt." But the evidence must be truly substantial and not flimsy.

B. The management judge should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell him/her.

- Can sign disciplinary document to see they received it,
- May ask work space of other co-workers & witness if necessary
- Don't sign notice of confidentiality!

" " retaliation!

6. **Has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?**

A. A "no" answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

B. If the Employer has been lax in enforcing its rules and orders and decides henceforth to apply them rigorously, the Employer may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

7. **Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his/her service?**

A. A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offense(s) a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good," a "fair" or a "bad" record. Reasonable judgment must be used).

B. An employee's record of previous offenses may never be used to discover whether he/she was guilty of the immediate or latest one. The only proper use of his/her record is to help determine the severity of discipline once he/she has properly been found guilty of the immediate offense.

C. Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating" among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better than those of employees B, C and D, the Employer may properly give a lighter punishment than it gives the others for the same offense; does not constitute true discrimination?

Adapted from materials prepared by the AFL-CIO Labor Studies Center