

The Seven Steps of Just Cause

The 7-step test of just cause represent a practical and effective way to determine whether a proposed disciplinary action is firmly and fairly grounded. It is fair to assume that arbitrators will apply these tests in the event that disciplinary actions are challenged and it is therefore good practice to apply them prospectively when considering the imposition of progressive discipline.

Seven tests:

1. Notice
2. Reasonable Rules & Orders
3. Investigation
4. Fair Investigation
5. Proof
6. Equal Treatment
7. Penalty

1. Notice

- Prior to imposition of discipline, employee must have notice of rules and expectations.
- Establish through:
 - + New employee orientation
 - + Orientation checklists
 - + Receipts for departmental handbooks
- Periodic reinforcement/coaching.

2. Reasonable Rules & Orders

- Cannot be inconsistent with collective bargaining agreement(s).
- Cannot be arbitrary or capricious.
 - + Must be reasonably related to business necessity.

3. Investigation

- Must be thorough; consider all evidence, pro & con.
- Must be timely:
 - + Should be completed expeditiously.
 - + Occurs before discipline imposed.
- Give accused opportunity to respond (Loudermill Hearing).
- Allow union representation. (*Weingarten* rights).

4. Fair Investigation

- Result must not be forgone conclusion.
- Test assumptions/bias.

5. Proof

- Level of proof is normally “substantial evidence.”
- Greater proof required for more serious allegations.

6. Equal Treatment

Equal treatment must be balanced against just application:

- Rules must be applied even-handedly & without discrimination.
- Rules must be applied justly.

I.e., don't blindly apply same rule to all situations-managers/supervisors are expected to exercise judgment.

7. Penalty

- Must be fair, not arbitrary & capricious, or based on emotional response.
- Factor in length of service, prior performance history, and previous progressive discipline.