THE SEVEN TESTS OF JUST CAUSE
and their associated
REFERENCES

(Taken from Arbitration: The Seven Tests of Just Cause,
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Just Cause Standards were originally formulated by Arbitrator Carroll Daugherty in (*Enterprise Wire Co*., 46 LA 359 [1966]).

1. Reasonable Rule or Order

"Was the Employers rule or managerial order reasonably related to (a) the orderly, efficient and safe operation of the Employer's business, and (b) the performance the Employer might properly expect of the employee?"

Arbitrator Sisk has defined a reasonable rule as follows: "If a rule is related to the attainment of the goals and objectives of a company, and if the rule is not arbitrary, capricious or discriminatory, it is generally considered to be reasonable." (Pullman Trailmobile Corp., 238 AAA 12 [1978])

2. Notice

"Did the Employer give the employee forewarning or foreknowledge of the possible consequences of the employee's disciplinary conduct?"

3. Investigation

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

Arbitrator Kates states: Investigation before imposing discipline "tends to diminish the likelihood of impulsive and arbitrary discussions by supervisors and permits tempers to cool and deliberate judgment to prevail; it encourages careful investigation of the facts by both the Company and the Union; it provides an opportunity whereby the accused may be heard; it permits the presentation, sifting and weighing of all relevant factors; it provides an opportunity to measure the proposed penalty against the alleged offense in light of the grievants history, the past treatment by the employer of similar offenses and other relevant circumstances."

4. Fair Investigation

"Was the Employer's Investigation considered fairly and objectively?"

"In common parlance, a "fair" investigation is one that is complete, timely and conducted in accordance with an employee's due process rights (i.e. the right to

defend himself, the right to Union Representation, right to a speedy hearing, etc.). However, Arbitrator Daughtery means something more specific that at some point in the disciplinary process, in order for there to be a fair investigation, an upper level management official, who has direct interest in the outcome of the situation, assumes a quasi judicial role and evaluates the cause for discipline as fairly and objectively as would a neutral outside third party." (*Just Cause: The Seven Tests*, pp 191-196)

5. Proof

"At the investigation, did the "Judge" obtain substantial evidence that the employee was guilty as charged?"

Arbitrator Witney states: "As countless arbitration decisions demonstrate, in a disciplinary case the employer bears the burden of proof. In short, the employer must supply convincing evidence that the employee committed the offence for which he was discharges. It is up to the employer to prove the employee "guilty"; and not the employee who must prove himself "not guilty". (Midwest Telephone Co., 66 LA 311 [1976])

"Subjective observations of guilt (e.g. by "the look on the face of the grievant" are not enough nor is suspicion the same as proof" (*Arbitration: The Seven Tests of Just Cause*, [Award and Opinion] pp. 16, 17 Koven, 1985).

6. Equal Treatment

"Has the Employer applied its rules, orders and penalties evenhandedly and without discrimination to all employees?"

Arbitrator Koven states: "Within the context of just cause, "discrimination" (the opposite of equal treatment), means the unequal treatment of one employee, as compared with others, for any reason that is not directly related to his performance as an employee." (*Arbitration: The Seven Tests of Just Cause,* [Award and Opinion] p. 18 Koven, 1985)

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 service with the employer?"

Arbitrator Platt states: "It is not socially desirable that disciplinary penalties be regarded strictly as punishment for wrong doing. Rather, the object of the penalty should be to make employees recognize their responsibilities so that they might become better workers in the future." (The Arbitration Process in the Settlement of Labor Disputes, *Journal of the American Judicature Society*, 31 [1947], p. 58)

The aforementioned "Seven Point Test of Just Cause" is the most often quoted and applied criteria of Just Cause, written by Arbitrator Carroll Daughtery. It was

designed as a series of questions to be addressed at a hearing and in the post-hearing study by the Arbitrator. Arbitrator Daughtery goes on to state that a "no" answer to any of the questions posed above normally signifies that just cause for discipline probably did not exist.

Should you have any questions, please don't hesitate to call.

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