

Using Just Cause to Fight Unfair Discipline

Just Cause is the traditional standard for deciding if management has the right to discipline an employee.

What does it mean and how should you use it to win disciplinary grievances?

Labor attorney Robert Schwartz studied 20,000 arbitration cases to see how arbitrators use just cause to decide termination and suspension cases.

He outlines seven basic principles of just cause that shop stewards can use to help you present a strong defense and win disciplinary grievances.

You still have to gather the facts, prepare witnesses and documentation, and consult with your Business Agent but this gives you a framework that guides you to your strongest arguments.

1. Fair Notice

An employer may not discipline an employee for violating rule of standard whose nature and penalties have not been made known.

Are employees aware of the rule and the consequences of violating it? Sometimes the answer is obvious (theft, drinking on the job). But if the violation falls in a grey area that was never clearly spelled out by the employer, this may be a source of a just cause defense.

2. Consistent Enforcement

An employee may not be penalized for violating a rule or standard that the employer has failed to enforce for a prolonged period. Even if a rule is on the books, the employer can lose its right to terminate an employee if the rule has not been enforced over a long period.

In such cases of lax enforcement, management cannot suddenly reverse its course and crack down without first warning employees that the rule is in effect and violations will be punished.

3. Due Process

An employer must conduct an interview or a hearing before issuing discipline, must take action promptly, and must list charges precisely. Once assessed, discipline may not be increased.

Members' right to union representation and due process must be respected in the investigation. If the employer disciplines first and holds an investigative interview or hearing later, they have likely violated just cause.

4. Substantial Proof

Charges must be proven by substantial and credible evidence.

In a disciplinary grievance meeting, the steward should make the employer prove their case first. Management should be made to present the facts and be asked to present all of its evidence before the union presents its defense.

If management does not have substantial and credible evidence that an offense occurred, then they haven't met the "just cause" standard for discipline.



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5. Equal Treatment

Unless a valid distinction justifies a higher penalty, an employer may not assess a considerably stronger punishment against one employee than it assessed against another known to have committed the same or a substantially similar offense.

If other employees who commit the same offense have been treated differently, this may constitute "disparate treatment" which violates this test.

The union has the right to do an information request and obtain employer records for all employees who have been disciplined for the same offense in a given time period.

6. Progressive Discipline

When responding to misconduct that is short of egregious, the employer must issue at least one level of discipline that allows the employee an opportunity to improve. Except in extreme cases, discipline should be progressive. The goal should be to get an employee to understand and follow the rules, not to run them out the door.

7. Mitigating and Extenuating Circumstances

Discipline must be proportional to the gravity of the offense, taking into account any mitigating, extenuating, or aggravating circumstances.

Does the punishment fit the crime? An employee's past record can also be relevant. A bad past record cannot be used to prove guilt of a new violation. But a good past record and other mitigating circumstances can balance the scales and lessen a penalty.

Background on Just Cause & the Seven Tests of Just Cause

The "Seven Tests of Just Cause" were originally put forward by arbitrator Carroll Daugherty. He was trying to set a common standard for interpreting just cause.

But the seven tests were never binding on other arbitrators. In fact, many arbitrators out-and-out rejected key parts of Daugherty's seven tests.

Labor Attorney Robert Schwartz studied 20,000 arbitration cases to research how arbitrators actually use just cause to rule on termination and suspension cases.

He published a book called the "Seven Basic Principles of Just Cause" in detail, citing cases and reviewing the strengths and limitations of each rule.

To learn more, **check out Robert Schwartz's book**, the "Seven Basic Principles of Just Cause."

