

JUST CAUSE STANDARDS

Elements of Just Cause

Arbitrator Carroll Daugherty established a single standard of “just cause” to be used in the discipline or discharge of a unionized employee. In the often quoted Seven Tests of Just Cause, the Employer must be able to answer **YES** to the following seven questions:

- Notice: Did the Employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee’s disciplinary conduct?
 - The employer must advise the employee that any act of misconduct would result in discipline. This statement should be clear, unambiguous and inclusive of any possible penalties.
- 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.
- Investigation: Prior to administering discipline, did the employer conduct an investigation to determine whether the employee did violate or disobey a rule or order?
 - The employer’s investigation must be made BEFORE any disciplinary action is invoked.
 - The employer is responsible for collecting any and all facts that are relevant to the final decision.
- 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 facts are gathered, all facts must be evaluated with objectivity, and without rush to judgment.
- Proof: Did this investigation uncover substantial proof or evidence that the employee was guilty of violating or disobeying a direct rule or order?
 - There is not a requirement of being preponderant, conclusive, or “beyond a reasonable doubt.” However, any proof or evidence must be truly substantial.

- While conducting the investigation, the employer must actively seek out witnesses and search for evidence.
- Equal treatment: Did the employer apply all rules, orders and penalties equitably and without discrimination to ALL employees?
- If other employees who commit the same offenses are treated differently, there may be concerns raised regarding potential discrimination or disparate treatment.
 - Review and consider the employer's past practice in any similar or comparable situations prior to deciding on appropriate action.
- Penalty: Was the degree of discipline administered, reasonably related to either the seriousness of the employee's offense and/or the record of past service?
- If the employee has been disciplined for the same (or other similar) offenses several times, a stronger level of discipline may be considered.
 - An employee's past record can be used in determining the severity of discipline, if wrongdoing was established in the current case.
 - If two or more employees are found to have committed the same wrongdoing, their respective records will be used to determine their individual discipline. If Employee A has a better record than Employees B or C, then the employer may have justification to provide a less severe penalty to Employee A without being discriminatory.