

# Seven Tests For Just Cause

The requirement for an employer to show just cause when issuing discipline is usually found embedded in the "Managements Rights" section of a Labor Contract. Those two little words have probably become the most argued phrase in employment disputes.

The meaning of just cause is derived from the Constitutional Right to Due Process. [U.S. Const. Amend. V](#). However, no such guarantee is afforded employees without an express written statement or state law. Most states remain "work-at-will" states, implying that quitting or being fired is at the will of the employee or employer, respectively.

When the right to due process (i.e., just cause) has been bargained for, the process has been reduced to seven categories:

1. Adequate warning
2. Reasonableness
3. Completeness of investigation
4. Objectivity of investigation
5. Proof of infraction
6. Uniformity of the Rules application and
7. Reasonableness of discipline.

When any one of these requirements are not met, the discipline should be dismissed. Unlike the Legal System, however, precedent has only persuasive authority in the labor dispute context. Each contract and working environment is viewed to stand alone in the disciplinary arena. With that in mind, we'll look at each category of just cause a little closer.

## 1. Adequate Warning

Did employees know the Rule existed? For example, the Employee may sell raffle tickets in the breakroom. A supervisor objects and discharges the employee for violation of a Nonsolicitation Policy. Was the Policy clearly posted anywhere? If it was in an Employee Handbook, did the employee sign anything saying he read and understood the Handbook? If the answer to these questions is "No," how would the employee know about the Policy?

Even if the policy was posted or an employee signed a Handbook or other document, the nonprecedential nature of disciplinary dispute resolution will require an arbitrator or panel (depending on the nature of your particular grievance procedure) to agree that the employee had adequate warning of the discipline he faced, including expected degree of discipline. On the other hand, if the Employer produces witnesses to show that the employee was adequately warned, then the employee's case becomes much weaker.

## **2, 7. Reasonableness**

A Labor Contract is a legal document, subject to legal definitions. Black's Law Dictionary, 7th Ed., 1999, defines "reasonable" as "Fair, proper, or moderate under the circumstances." It has been convincingly argued by some that reason is in itself an emotion. I tend to agree. And looking to the legal definition only offers the opportunity for circular argument. Is it reasonable to fire someone for selling raffle tickets in the breakroom? Is it reasonable to have a rule against solicitation in the breakroom? People have been fired for eating discarded food. People have kept their jobs after [threatening a supervisor](#). Which is worse? Reasoning comes down to attitude. The attitude of the arbitrator. I recommend arguing for unreasonableness only in concert with other tests for just cause, or as a last resort.

## **3. Completeness of Investigation**

How does the Employer know that the employee committed the infraction? Was an informant involved? Was he observed by a third party? We have had much discipline tossed because Management didn't have their ducks in a row at hearing. For example, if a product was damaged and records indicate that the accused was the last to handle the product, is that adequate to show guilt? We have shown many times that it isn't. In the damaged product example, we look at when the employee was last in the area, when the damage was discovered, and who else had access to the area. We look at surrounding circumstances to establish reasonable doubt. Generally, if the employer cannot produce a "smoking gun," the employee should be ok.

## **4. Objectivity of investigation**

Did Management look at this situation more closely than when the same or similar infractions occurred? Producing evidence that the infraction was treated lightly in the past places the burden on the employer to show why the employee is being closely observed now. Unlike classic discrimination claims, where singling out must be shown in the context of membership in a protected class, Just Cause defense only requires showing that the employee was unduly scrutinized. The second prong of the Fair Investigation Doctrine is whether other employees were investigated, and whether other explanations were considered. The crux of the Doctrine is to assure that the employee isn't being targeted.

## **5. Proof of Infraction**

Related to Completeness of Investigation, Proof of Infraction is a cornerstone of Due Process. Defining proof, however, isn't necessarily held to the strict Rule of Law. As in Reasonableness of Rule, the "proof" rests in what the arbitrator accepts as fact. On the other hand, when the Union chooses not to pursue your claim you have the right to your day in court. Discussion of the 301 Suit in the Disciplinary Context is beyond the scope of this paper.

## **6. Uniformity of the Rule's Application**

As with Objectivity of Investigation, Uniformity of Application exists to assure that the suspect isn't singled out. If you can show that others did the same thing, Management knew or should have known about it, and discipline was nonexistent or less severe, then you can show a violation of the Just Cause Test.

Just Cause is the single most powerful employee protection against job loss due to discipline. Know and understand the Seven Tests. Job depend on it.