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Approved for posting,

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Every Member Needs to Know the Seven Tests of Just Cause

One of the main reasons workers join unions is to gain protection against unfair and unjust discipline. This is known as the □just cause□ requirement where an employer must show □just cause□ when issuing discipline. This is one of the most important rights of union membership.

But, what is □just cause□? Simply put: it means the employer must have a reason or □cause□ for imposing discipline and the reason must be fair and □just.□

It is commonly accepted that there are seven tests as to whether the boss used □just cause□ in handing out discipline. Below are the □Seven Tests of Just Cause:□

1. Was the employee adequately warned of the consequences of his conduct?

The employer is responsible for warning employees of acts of misconduct that can lead to discipline. A warning may be given verbally or it can be written. In either case, it should be clear, unambiguous and include any possible penalties.

An exception may be made for certain conduct, such as insubordination, coming to work drunk, drinking on the job, or stealing employer property, that is so serious that the employee is expected to know it will be punishable.

Example: If an employee is told to stop using vulgar language and told that if he continues he will be disciplined, that may be adequate warning. However if a boss comes up to an employee and says □I□m tired of your swearing, cut it out,□ and then the next day fires the employee for swearing again, that may not be adequate warning.

But the rule of thumb is that employees need to have known in advance that their conduct would result in discipline. This is especially true in suspension and termination cases.

2. Was the employer□s rule or order reasonably related to efficient and safe operations?

Rules or direct orders must not be arbitrary, capricious or discriminatory.

Example: A boss makes a rule that all employees must wear red tee shirts and they must be tucked in so they don□t get caught in machinery. An employee is fired for wearing a blue tee shirt that was tucked in. Making a rule that tee shirts must be tucked in so they won□t get caught in machinery may be reasonable and related to safety, but demanding the tee shirt be red isn□t related to safety or efficiency.

3. Did management investigate before administering the discipline?

The investigation normally should be made before the decision to discipline is made. Where immediate action is required, however, the best course is to suspend the employee pending investigation with the understanding that he will be restored to his job and paid for time lost if he is found not guilty. The employer is responsible to get all the facts before making the decision to discipline an employee.

When conducting an investigation, an employer must actively search out witnesses and look for evidence. Failure to investigate before handing out discipline violates just cause.

Example: The boss fires a worker for stealing and then demands evidence from the union that the worker isn□t guilty. At the grievance meeting the boss admits he never investigated the incident, just took another employee□s word. This probably wouldn□t hold up. If the union has facts to prove the employee□s innocence they should be presented to the boss, even though he failed to properly investigate the case.

4. Was the investigation fair and objective?

A fair investigation must be timely and thorough. Members□ right to union representation and due process must be respected in the investigation. The employer must evaluate the facts fairly and objectively without a rush to judgment. If the employer disciplines first and investigates later, they have likely violated just cause.

Example: If an incident happened does the employer interview everyone present or only management people who were present? If the employer refuses to interview non-management workers, it is not a thorough investigation or a fair investigation.

5. Did the investigation produce substantial evidence or proof of guilt?

In all cases, arbitrators will require substantial proof of guilt. The exact measure of that will depend on the facts of each case, but it will never be less than a preponderance of evidence and it may be as high as □beyond reasonable doubt.□ The good news for employees is that whatever standard is applied, it is a high burden the employer must meet. Speculation doesn□t cut it.

Example: Here it is obvious that workers have less rights inside the workplace than they would have in civil court, but still the boss must have real evidence, not guesses. Again the boss cannot just try to make a worker prove his or her innocence, without presenting proof of guilt.

Seven tests of just cause
1) Notice
2) Reasonable rule or order
3) Investigation
4) Fair investigation
5) Proof
6) Equal treatment
7) Penalty

6. Were the rules, orders, and penalties applied evenhandedly and without discrimination?

If enforcement has been lax in the past, management cannot suddenly reverse its course and begin to crack down without first warning employees of its intent. The union has the right to do an information request and obtain employer records of all employees who have been disciplined for the same offense in a given time period. If other employees who commit the same offense have been treated differently, this may constitute □disparate treatment□ which violates this test.

Example: This is the most common form of discrimination. An employer decides to suspend Mary for taking too long at lunch, but lets the employees who eat lunch with a supervisor take extra time every day. This would not hold up. However, if the employer tells everyone that starting on Monday employees will be disciplined for taking too long at lunch and on Tuesday Mary comes back late and everyone else has been on time, she may be disciplined.

7. Was the penalty reasonably related to the seriousness of the offense and the past record?

In other words, does the punishment fit the crime? Discipline should be progressive and it should be corrective. The goal should be to get an employee to understand and follow the rules□not to run them out the door.

If employee A□s past record is significantly better than that of employee B, the employer properly may give employee A lighter punishment than employee B for the same offense.

Example: The classic example is two employees get in an argument and shove each other. One has 25 years service with a clean record. The other has 3 years service with lots of warnings and discipline. Based upon the workers□ seniority and records, the employer may give the older worker less punishment than the other worker.