The Seven Tests of Just Cause

The concept of “just cause” is central to any case of discipline arbitration. The term, however, does not have a universally accepted, clear definition. The just cause standard provides employment security rights and due process in the job setting. There are seven measurable criteria for just cause that may be used to determine the appropriateness of a disciplinary action for alleged misconduct. These criteria are:

1. Reasonableness of the Rule or Order
2. Clear and Unambiguous Notice
3. Timely and Thorough Investigation
4. Fair Investigation
5. Proof of Guilt
6. Equal Treatment
7. Fair Penalty

Pertinent Questions

1. **Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?**

   Note 1: Forewarning or foreknowledge may properly be given orally by management or in writing through rules and regulations.

   Note 2: A finding of lack of such communication does not in all cases require a "no" answer to Question No. 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of the property of the employer or of fellow employees are so serious that any employee may properly be expected to know already that such conduct is offensive and punishable.

   Note 3: Absent any contractual prohibition or restriction, the company may promulgate reasonable rules and given reasonable orders.

2. **Was the employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the employer's business and (b) the performance that the employer might properly expect of the employee?**

   Note: If an employee believes that the rule or order is unreasonable, he must nevertheless obey same (in which case he may file a grievance) unless he sincerely feels that to obey the rule or order would seriously and immediately jeopardize his personal health or safety. Given a firm finding to the latter effect, the employee may properly be said to have had justification for his disobedience.

3. **Did the employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order?**

   Note 1: This is the employee's "day in court" principle. An employee has the right to know with reasonable precision

the offense with which he is being charged and to defend his behavior.

Note 2: The employer's investigation must normally be made before its disciplinary decision is made. If the employer fails to do so, its failure may not normally be excused on the ground that the employee will get his day in court through the grievance procedure after the exaction of discipline, and by that time there has usually been too much hardening of positions. In a very real sense the employer is obligated to conduct itself like a trial court.

Note 3: There may of course be circumstances under which management must react immediately to the employee's behavior. In such cases the normally proper action is to suspend the employee pending investigation, with the understanding that (a) the final disciplinary decision will be made after the investigation and (b) if the employee is found innocent after the investigation, he will be restored to his job with full pay for time lost.

Note 4: The employer's investigation should include an inquiry into possible justification for the employee's alleged rule violation.

4. Was the employer's investigation conducted fairly and objectively?

Note 1: At the investigation the management official may be both "prosecutor" and "judge," but he may not also be a witness against the employee.

Note 2: It is essential for some higher, detached management official to assume and conscientiously perform the judicial role, giving the commonly accepted meaning to that term in his attitude and conduct.

Note 3: In some disputes between an employee and a management person there are not witnesses to an incident other than the two immediate participants. In such cases it is particularly important that the management "judge" question the management participant rigorously and thoroughly, just as an actual third party would.

5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

Note 1: It is not required that the evidence be conclusive or "beyond all reasonable doubt." But the evidence must be truly substantial and not flimsy. If the conduct is tantamount to a criminal offense, the standard of evidence may be by "clear and convincing" or "beyond a reasonable doubt."

Note 2: The management "judge" should actively search out witnesses and evidence, not just passively take what participants or "volunteer" witnesses tell them.

6. Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

Note 1: A "no" answer to this question requires a finding of discrimination and warrants negation or modification of the discipline imposed.

Note 2: If the company has been lax in enforcing its rules and order, and decides henceforth to apply them rigorously, the company may avoid a finding of discrimination by telling all employees beforehand of its intent to enforce hereafter all rules as written.

7. 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 company?

Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good," a "fair," or a "bad" record. Reasonable judgment must be used.)

Note 2: An employee's record of previous offenses may never be used to discover whether he was guilty of the immediate or latest one. The only proper use of his record

is to help determine the severity of discipline once he has properly been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, their respective records provide the only proper basis for "discriminating," among them in the administration of discipline for said offense. Thus, if employee A's record is significantly better than those of employees B, C, and D, the company may properly give A a lighter punishment than it gives the others for the same offense; and this does not constitute true discrimination.

Note 4: Suppose that the record of the arbitration hearing establishes firm "Yes" answers to all the first six questions. Suppose further that the proven offense of the accused employee was a serious one, such as drunkenness on the job; but the employee's record had been previously unblemished over a long continuous period of employment with the company. Should the company be held arbitrary and unreasonable if it decided to discharge such an employee? The answer depends of course on all the circumstances. The parties have bargained for the informal judgment of the arbitrator. However, he is empowered to modify penalties if mitigating circumstances exist.