

SEVEN TESTS OF JUST CAUSE

The basic elements of just cause which different arbitrators have emphasized have been reduced to seven tests. These tests, in the form of questions, represent the most specifically articulated analysis of the just cause standard as an extremely practical approach. A "no" answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weakened.

- 1) **NOTICE:** Did MCO give the employee forewarning or foreknowledge of the possible or probably disciplinary consequences of the employee's conduct?
 - a. Forewarning/foreknowledge: orally by Management, in writing through typed or printed sheets or books of work rules & of penalties for violation thereof.
 - b. Certain offenses don't require written or oral warning due to their seriousness that any employee in today's work environment may properly be expected to know already such conduct is offensive & heavily punishable.
 - c. MCO has the right to unilaterally promulgate reasonable rules & give reasonable orders and the same need not have been negotiated with the union.

- 2) **REASONABLE RULE OR ORDER:** Was MCO's rule or managerial order reasonable related to (a) the orderly, efficient, and safe operation of MCO's business, and (b) the performance that MCO might properly expect of the employee?
 - Even if an employee sees a policy as unreasonable they nonetheless must obey unless they feel that obeying would seriously or immediately jeopardize their personal safety/integrity.

- 3) **INVESTIGATION:** Did MCO, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of Management?
 - a. The employee's "day in court": Employees have the right to know the offence with which they are being charged with reasonable precision so that they can explain their behavior.
 - b. MCO's investigation should normally be made before a disciplinary decision is made.
 - c. In certain circumstances under which Management must react immediately to the employee's behavior, the proper action is to suspend the employee pending investigation with the understanding that the final disciplinary decision will be made after the investigation. If the employee is found innocent, they should be restored to their job with full pay for the time lost.

- 4) **FAIR INVESTIGATION:** Was MCO's investigation conducted fairly and objectively?

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- 5) **PROOF:** At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
- a. "Proof" has three requirements: 1) the charge against the employee must be reasonably clear and specific; 2) there must be proof that supports the charge; and 3) the proof of the charge must be collected and demonstrated at the time of disciplinary action, not after the fact.
 - b. MCO must prove just cause for its disciplinary action on the basis of the facts and evidence it knew of at the time the decision was made. After the fact additions cannot be expected to make up for the original lack of just cause.
 - c. In discipline, the employer bears the burden of proof. It is MCO who must prove the employee "guilty", not the employee who must prove themselves "not guilty".
 - d. In all cases, the evidence must be truly substantial and not flimsy. For example, the proof must not include any suspicions, assumptions, possibilities, unsupported opinions, and funny coincidences. Even the strongest showing of good faith cannot make up for the absence of solid proof. In cases of discharge and gross misconduct, beyond a reasonable doubt is a common standard.
 - e. Actively seek out witnesses.
- 6) **EQUAL TREATMENT:** Has MCO applied its rules, orders and penalties evenhandedly and without discrimination to all employees?
- a. A "no" answer may require negation or modification of the discipline imposed (policy vs. practice).
 - b. To correct a past practice, tell the employees beforehand of your intent to enforce rules as written.
- 7) **PENALTY:** Was the degree of discipline administered by MCO in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in their service with MCO?
- a. A trivial proven offense does not merit harsh discipline unless the employee has been properly found guilty of the same or other offenses a number of times. *Reasonable judgment* is key.
 - b. If employee "A's" record is significantly better than those of "B" and "C", MCO may properly give "A" a lighter punishment than it gives the others for the same offense.
 - c. Reasonableness is always the key in decisions made by Management regarding discipline. The penalty of dismissal for a really serious first offense does not in itself warrant a finding of MCO's unreasonableness.