

JUST CAUSE STANDARDS

The following questions should be asked to establish whether a situation meets the standards of Just Cause. The questions reflect the seven standards frequently applied by arbitrators.

1. **Was the employee warned in advance that certain behavior could result in discipline?** The rule and penalty must have been communicated to the employee in advance. Employee must be told of the consequences of his or her actions. Certain offenses, i.e. major theft or violence on the job, may not require forewarning.
2. **Were the employer's rules reasonable?** Could an employee be expected to follow the rule or policy in question or would this be impossible? Are the rules available and understandable? Remember, unless you believe obeying a rule or order will seriously and immediately jeopardize your personal safety and/or someone else's, it's best to "obey now, grieve later."
3. **Was there an investigation before the discipline?** Did the employer, before administering the discipline, make an effort to discover whether the employee did in fact violate or disobey a rule or employer's order?
4. **Was the investigation conducted fairly?** Was the investigation done fairly and impartially or was there evidence of an effort to "burn" or "trap" an individual employee for practices that are generally unchallenged? Did the employer talk to all witnesses? Was the grievant given a chance to explain the incident? Are there extenuating circumstances behind the employee's action? There might be physical or medical reasons underlying absenteeism or poor work performance. A fight might have been provoked.
5. **Did the investigation turn up substantial evidence of wrongdoing?**
6. **Are the rules enforced uniformly and consistently?** Is there evidence of discrimination or harassment? There may be others with similar or worse work records who have not been disciplined. This can often, but not always, be used to show unequal treatment. The employee's past disciplinary record, however, may be used to justify a more serious penalty.
7. **Does the punishment fit the "crime" and the past record of the employee?** Discharging an employee for a single absence or for a minor violation of management rules is generally considered inappropriate. Was there progressive discipline? An employee's record of good behavior may form the basis for a lesser penalty. The burden of proof shifts to the union to demonstrate that a penalty is too severe.