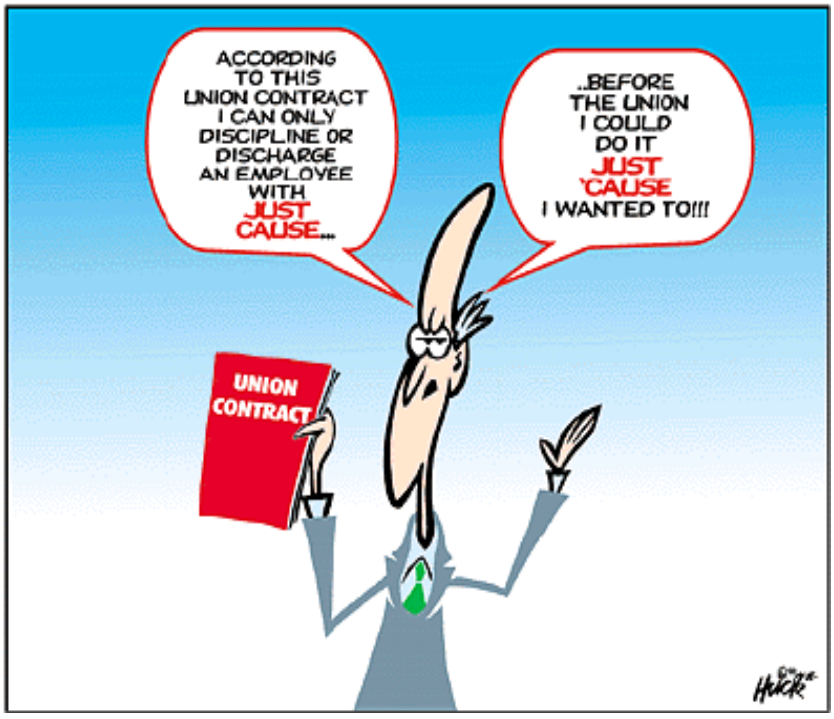
Just Cause - Using the Seven Tests

One of the main reason workers join unions is to gain protection against unfair and unjust discipline from employers. Stewards must be ready to handle all sorts of discipline cases, from warnings to suspensions to firings. Stewards must be ready to deal with discrimination issues by the boss from who gets disciplined to dealing with union members who sometimes seem to go out of their way to get fired.

Our main contractual weapon is oftentimes summed up in one short sentence, "Employees shall be disciplined or discharged only for just cause." In some contracts the words used are "proper cause" or "fair cause." The importance of a sentence like this binds the employer to imposing discipline not just for any reason (cause), but for a "just" reason. Many arbitrators have gone so far as to hold all employers to a "just cause" standard, whether the contract uses the words or not.



Issues:

- Our main contractual weapon in **discipline and discharge** cases is usually the requirement that the boss must have "**just cause**" (or "fair cause" or "proper cause") to **take action** against an employee. Even if these words are missing from the contract, many arbitrators use this standard anyway.

- But, **what is "just cause"**? Simply put: it means the employer must have a reason (he or she must have "cause") for imposing discipline and the reason must be fair ("just").

- It is commonly accepted that there are **seven tests** as to whether the boss has used "just cause" in handing out discipline.

What is a "just cause" standard? It is commonly accepted that there are seven tests as to whether a boss has used "just cause" in handing out discipline. The Bureau of National Affairs lists them as follows:

1. Was the employee adequately warned of the consequences of his conduct?
The warning may be given orally or in printed form. 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 that if he continues he will be disciplined, then that may be adequate warning. However, it may not be adequate warning if a boss says to an employee, "I'm tired of your swearing, cut it out," and the next day fires the employee for again swearing.

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

> **Example:** A boss makes a rule that all employees must wear red t-shirts, tucked in so they don't get caught in machinery. An employee is fired for wearing a blue t-shirt that was tucked in. Making a rule that t-shirts must be tucked in so they won't get caught in machinery may be reasonable and related to safety, but demanding the t-shirt be blue 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. However, where immediate action is required, 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.

> **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?

> **Example:** If an incident happened, did the employer interview everyone present or only management people who were present. If the employer refuses to interview non-management workers then the investigation may not be fair.

5. Did the investigation produce substantial evidence or proof of guilt?
It is not required that the evidence be preponderant, conclusive, or "beyond reasonable doubt," except where the alleged misconduct is of such a criminal or reprehensible nature as to stigmatize the employee and seriously impair his chances for future employment.

> **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.

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.

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

> **Example:** The classic example is two employees getting into an argument and shoving each other. One has 25 years of service with a clean record. The other has 3 years of service with numerous warnings and discipline. Based upon the workers

seniority and records, the employer may give the senior worker less punishment than the other worker.

Tips for Handling Discipline & Discharge Cases

Here are some basic tips for stewards handling discipline and discharge cases:

- **Use the "seven tests" as an outline**. Did the employer meet the seven tests? Remember that just because an employer messes up on one of the seven tests, this doesn't mean we automatically win, but proving they screwed up helps a lot.

- **Make sure that an employee's Weingarten rights** aren't or weren't violated during the employer's investigation.

- **Try to stop the employer from suspending or firing a worker.** Try to get a cooling off period if necessary. The case becomes harder once a worker is out the door, now we not only have to fight about what happened but over back pay, etc.

- **Ask for all the employer's notes and records** they used to make a decision. Get any notes or records a foreman or supervisor might keep, even informal records. The union has a right to them. On the other hand the employer has no right to the notes or records that the union makes when investigating a case.

- **Do a thorough investigation of the case.** DON'T take the employers word on anything.

- **In a grievance meeting** make the employer prove their case first. Make them present all the facts and don't assume anything. Don't let the boss start the meeting by saying to the union, "OK tell me why I shouldn't fire Joe". Make the boss justify firing Joe.

- **There are two parts to every discipline case.** Did the employee violate a known rule and what should the punishment be? Sometimes we lose the first part but then we have to make sure the punishment fits the offense.

- **If the employer refuses to back down** from a written warning and the case doesn't merit arbitration, make sure the employer receives from the union a written statement disputing the facts and the discipline. Have this letter also put into the employees personnel file.