The 7 Basic Questions for Determining Just Cause

“The employer shall not discharge or take other disciplinary action without just cause.”

The burden in disciplinary cases rests with the company which must "prove" that an employee was disciplined for just cause and the general "rules" of just cause only apply when there is no specific language dealing with discipline and discharge in the bargaining agreement.

If, for example, the agreement includes a no fault attendance policy, any disciplinary action related to the attendance policy is outside of the rules of just cause. The questions, or tests, are as follows:

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

An important point to consider here is whether proper notice was given either orally or in written form. Certain offenses, however, such as intoxication, insubordination, drinking or using drugs on the job, and theft may properly be deemed so serious that any employee is expected to know already that such conduct is likely to be punished. Thus, a "no" answer to this question does not necessarily imply that an employee was disciplined without just cause.

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

Most management rules and orders fit this test and, in general, the
old adage "work now, grieve later" applies. However, in cases where an employee sincerely believes that following a rule or order may seriously and immediately jeopardize his/her personal safety and/or integrity then the employee may be justified in her or his disobedience.

Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

In most cases, management is expected to investigate before rendering a disciplinary decision against an employee. In cases where immediate action is taken against the behavior of an employee, management should suspend an 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 or she will be restored to his/her job with full pay for lost time.

Was the company's investigation conducted fairly and objectively?

To conduct an investigation, a management official must in reality act as "prosecutor" and "judge," but must also attempt to search out witnesses and evidence pertaining to the particular case. Merely accepting at face value what participants or witnesses say is not necessarily enough to satisfy the requirement of a fair and objective investigation.

At the investigation did the company "judge" obtain substantial and compelling evidence or proof that the employee was guilty as charged?

It is not required that the evidence be "fully conclusive or beyond all reasonable doubt," but it should be truly "weighty and
substantial and not flimsy or superficial." The key for this test is
for management's "judge" to demonstrate that he or she scrutinized
the evidence obtained from his/her own people to the same degree
that he or she scrutinized the evidence obtained from the accused
and his or her witnesses.

**Has the company applied its rules, orders, and penalties even-
handedly and without discrimination to all employees?**

A "no" answer to this question requires a finding of discrimination
and the negation or modification of the discipline imposed. Issues
related to the lax enforcement of company rules and the
comparability of discipline given to employees found guilty of the
same offense might all be important in holding management to this
test.

**Was the degree of discipline administered by the company 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?**

The key to this test is generally referred to as the practice of
progressive discipline. That is, an overly harsh penalty is not
imposed for a first and/or trivial offense. It is also important that an
employee's past record be brought to bear upon this question as
long as said record is not used to "prove" the company's allegation
in the particular case at hand.

Discipline and discharge grievances are, by their nature, some of
the most difficult and important cases handled by union
representatives. Discharge is, of course, the equivalent of capital
punishment in the world or work. The seven tests can be an
effective guide for helping unions fight the unjust discipline of the
union members that they serve.