ARBITRATOR DEFINITIONS OF JUST CAUSE/RULE OF REASONABLENESS

Arbitrator Jules Justin defines three tests for just cause. They are:
1) Did the employee commit the offense or breach the rule? If so,
2) Did his misconduct warrant any disciplinary action? If so,
3) Is the penalty just?

Additionally, Arbitrator Justin cautioned that disciplinary action was often overturned by arbitrators because prior to deciding disciplinary action, management failed to answer or examine two additional critical questions:

1) Does the discipline fit the offense/misconduct/violation/poor performance?
2) Does the discipline fit the employee? (Consult the personnel file. Discuss past instances for this employee with his/her previous supervisor and attempt to determine what form of corrective action works best for this employee.)

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Cite/Reference

Jules Justin, *How To Manage With A Union, Book One*, 1987, page 366 and page 384, Kendall/Hunt
Publishing Company, Dubuque, Iowa.

Arbitrator A. M. Koven writing with Susan L. Smith defines seven tests for just cause as discussed by Arbitrator Carrol R. Daugherty. They are:

1) NOTICE: "Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct?"
2) REASONABLE RULE OR ORDER: "Were the employer's rules 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?"
3) INVESTIGATION: "Did the employer, 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?"
4) FAIR INVESTIGATION: "Was the employer's investigation conducted fairly and objectively?"
5) PROOF: "At the investigation, did the 'judge' obtain substantial evidence or proof that the employee was guilty as charged?"
6) EQUAL TREATMENT: "Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?"
7) PENALTY: "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 to the employer?"

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Reference: pages 9, l0 JUST CAUSE, THE SEVEN TESTS by A.M. Koven and S.L. Smith. Coloracre Publ., Inc., San Francisco Kendall/Hunt Pub., 1985
Specific Case Cites: Gardner-Richardson Co., 11 LA 957 (1948) Enterprise Wire Co., 46 LA 359 (1966).

Both Arbitrators Justin and Koven predict that "no" answers to any of the major tests they cite would mean that just cause was either not satisfied or weakened sufficiently to indicate that some arbitrary, capricious, or discriminatory element was present in making the disciplinary decision.

One of the most often quoted arbitrator statements that has influenced the general definition of the just-cause concept is attributed to Arbitrator Harry H. Platt and is often called "the reasonable man test" or the "rule of reasonableness." (Gender selection for test label is the arbitrator's.)

"To be sure, no standards exist to aid an arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what reasonable men, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community, ought to have done under similar circumstances and in that light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just."

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Cite: 7 LA 764

STEPWISE DISCIPLINE / A SUPERVISOR'S CHECKLIST
THE "SEVEN TESTS OF JUST CAUSE"

The following "seven tests of just cause" were compiled by Arbitrator Carrol R. Daugherty and are explained by Arbitrator A. M. Koven writing with Susan L. Smith in the book JUST CAUSE, THE SEVEN TESTS. This list should be reviewed by the supervisor prior to conducting the fact-finding, pre-discipline investigation/interviews with the employee, and it should again be considered in "+/-/? Just-cause analysis" fashion following completion of the investigation/interview (See pp. D-3 and D-4.)

1) NOTICE: Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct?

2) REASONABLE RULE OR ORDER: Were the employer's rules 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?

3) INVESTIGATION: Did the employer, 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 from management?

4) FAIR INVESTIGATION: Was the employer's investigation conducted fairly and objectively?

5) PROOF: At the investigation, did the 'judge' obtain substantial evidence or proof that the employee was guilty as charged?

6) EQUAL TREATMENT: Has the employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?

7) PENALTY: 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 to the employer?

Reference: Pages 9, 10 JUST CAUSE, THE SEVEN TESTS by A.M. Koven and S. L. Smith. Coloracre Publ., Inc., San Francisco Kendall/Hunt Pub., 1985.

Specific Case Cites: Gardner-Richardson Co., 11 LA 957 (1948)
Enterprise Wire Co., 46 LA 359 (1966)