

Seven Tests of Just Cause

**2024 IAFF-WSCFF Jointly Sponsored
Educational Seminar**



Presented by

Danielle Franco-Malone & Jennifer L. Robbins
Barnard Iglitzin & Lavitt LLP

Alex Skalbania
Skalbania & Vinnedge, PSC

Mike Tedesco
Tedesco Law Group

Dennis Lawson
WSCFF, Moderator

Discipline and Discharge Cases

- The “Seven Tests of Just Cause”
 - Reasonable rule or order
 - Notice
 - Sufficient Investigation
 - Fair investigation
 - Proof
 - Equal treatment
 - Appropriate discipline

Reasonable Rule or Order

- Is the rule or order reasonably related to the orderly, efficient, and safe operation of the business?
- Is the rule or order part of a standard of performance that the employer might properly expect of the employee?
- Is the rule or instruction straightforward and stated in language that is easy to understand?

Notice

- Did the employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct?
- Is the violated work rule or performance standard published? Is it up to date and relevant to the business needs of your unit?
- Has this issue been raised in performance appraisals or previous disciplinary actions? If so, how recently?

Prior notice may not be necessary in cases of serious misconduct such as theft, insubordination, or job abandonment.

Sufficient Investigation

- Did the Employer conduct an investigation before making a decision about taking disciplinary action?
- Is there a history of successful performance, or could the employee need additional training?
- Are there witnesses? Were they interviewed?
- Is there equipment that should be examined?

Fair Investigation

- Was the employer's investigation fair and objective?
- How long ago did the alleged infraction occur? Were there unnecessary delays?
- Did the employer make any effort to reconcile conflicting statements or other conflicting evidence?
- Did the employer give the employee a chance to appear (with a representative) to tell their side of the story and respond to the evidence the employer gathered?

Proof

- Did the employer find proof of misconduct?
- What conclusions are clearly supported by the evidence?
- Remember that evidence must be substantial, not flimsy or slight, to form a basis for taking disciplinary action.

Equal Treatment

- Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?
- Are work rules applied consistently?
- Are all employees held accountable for the performance standards established for their positions?
- Have similarly situated employees (similar records and infractions) received the same discipline?

Appropriate Discipline

- Was the degree of discipline administered by the Employer reasonably related to the seriousness of the employees' *proven* offense?
- Was the degree of discipline administered by the Employer reasonable given the employee's record (length of service and overall performance)?

THE PROBLEM WITH THIS ELEMENT OF THE 7 TESTS

- Originally, the seven tests were seen more designed for a substantial evidence review of the record that management created at the time of the decision.
 - This contemplates that the decision of management is reviewed by the arbitrator much in the way that an appeals court might review a trial court
- However, the arbitrator's review of discipline is de novo. A first impression review of the case by the neutral third party.
 - The usual arbitration standard of proof is either a preponderance of the evidence or clear and convincing evidence.

Case # 1:
How Much Process Is Due?

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- The County's road crew historically consisted of males until 2015 when the County hired female workers. The Grievant is a 20-year male employee who resented the female workers, treated them rudely, called them sexist nicknames, and played practical jokes on them. Finally, two of the female workers complained to the County. The County investigated the complaints and terminated the Grievant for violating the work rule and for just cause.
- Before the pre-disciplinary hearing, the Union's lawyer requested the names and statements of the Complaining workers. The County refused to provide this information to the union because it feared the grievant would retaliate against the complaining workers. The Union objected because the Grievant was not given procedural due process. The grievance was filed based on just cause.

Case # 1:

How Much Process Is Due?

- Throughout the grievance process, the Union reiterated its objection, The matter proceeded to arbitration, and the County attempted to introduce the two complaints with the names of the complainants redacted. When the arbitrator sustained the Union's objection, the County called the two complaining workers as witnesses. How should the arbitrator rule?

Case # 2:
Sex, Drugs, and Rock 'n Roll

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Sex, Drugs, and Rock 'n Roll

- Striptease video at non-work party goes viral
- Second employee gets DUI on the way home
- Crew texts video on work time
- Code of conduct requires employees to *“act with integrity and moral character at all times”*
- Anti-harassment policy prohibits *sharing “lewd, pornographic, or offensive content”*

Case # 2:

Sex, Drugs, and Rock 'n Roll

- Off Duty Conduct – “workplace nexus”
 - Harm to Employer’s business
 - Employee fitness to work
 - Other employees unwilling to work with grievant
- Unique issues arising from violating the “public trust”
- Disparate treatment

Case # 3:
Scratching the Surface

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Scratching the Surface

- Minority group FF accuses fellow FF of making inappropriate slurs relating to that minority group while they are arguing on duty
- Fire Chief recommends terminating accused FF after only getting info from the accuser
- Accused FF denies making slur at his Loudermill Hearing and the employer uses that denial as evidence of dishonesty when finalizing termination
- Terminated FF is long-term employee with relatively good disciplinary record
- Employer has “no tolerance” policy re: slurs and has recently enforced that policy with multiple summary terminations
- Local conducts its own investigation, which, with some exceptions, supports the accuser’s version of events

Case # 4:

**Does the Punishment Fit the
Crime?**

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Does the Punishment Fit the Crime?

- 12-year employee with no discipline fired for performing work for real estate job while on the clock
- Rule prohibits outside employment while on the clock
- Other employees regularly take personal calls/texts during downtime
- Employer alleges timecard theft + policy violation

Questions?



**BARNARD
IGLITZIN &
LAVITT LLP**

ATTORNEYS AT LAW
18 WEST MERCER STREET, STE. 400
SEATTLE, WASHINGTON 98119-3971
TEL 800.238.4231 | workerlaw.com

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