

TEST FOR JUST CAUSE

What is just cause? The definition of just cause varies from case to case, but arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the basic considerations that the supervisor must use before initiating disciplinary action.

1. **Is there a rule?** Is the rule clear and understandable? Was the employee informed of the rule? Has the rule been enforced in the past? Was the employee advised of the disciplinary consequences if he or she failed to follow the rule.
2. **Is the rule a reasonable rule?** Was the rule related to the orderly, efficient and safe operations of the employer's business? Does the rule create an undue hardship for the majority of the employees?
3. **Is the rule consistently and equitably enforced?** Have other employees received discipline for violating the rule? If so, was the discipline issued to those employees as severe as that issued to the grievant?
4. **Was a thorough investigation completed?** Was the employee given an opportunity to explain himself before discipline was issued? Was the investigation conducted fairly and objectively?
5. **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** Was the punishment too severe for the infraction? Was the grievant's years of service taken into consideration?
6. **Was the disciplinary action taken in a timely manner?** Was disciplinary action taken when the infraction occurred or did management wait for an extended period of time prior to issuing the discipline? Was the discipline punitive and vindictive?

STANDARDS DETERMINING PAST PRACTICES

It is difficult to identify standards by which arbitrators determine if a practice exists and how much weight it should be given insofar as their decision and award is concerned. However, there are some very definite ingredients, when the question of past practice is taken under consideration by the arbitrator.

- **Consistent** – The practice has been granted or applied consistently, uniformly, regularly and without break.
- **Clearly stated** – The practice has been observed by the parties and is followed without protest or objection from one party or the other.
- **Duration** – The policy has existed and been followed over a reasonably long period of time. Was a practice under one agreement continued unchanged and not protested into a renewed agreement?
- **Jointly accepted and acted upon** – Both parties, through their line representatives, have operated as though the practice, in fact, existed and was a guiding rule.

SPECIAL NOTE: Proof of past practice requires documentation and evidence. It is essential that when a past practice exists and is grieved, all possible documentation and facts be submitted along with the allegation of a violation of the past practice.

In order to be binding, past practice should have one or all of the aforementioned elements.