

## Why Arbitrators Overturn Suspensions and Discharges

According to a 1994 study, just five reasons account for more than 71 percent of the suspensions and discharges reversed by arbitrators.

1. **Lack of supporting evidence.** The most common reason for a reversal (26% of cases) was that the employer did not provide sufficiently persuasive evidence.
2. **Mitigating circumstances.** The next most common reason (18% of cases) was the presence of mitigating circumstances.
3. **Procedural due process errors.** In 13% of cases, reversal resulted from management committing “procedural faults serious enough to prejudice the rights of the grievant to a fair defense.” Denial of union representation was included among these errors.
4. **Harsh punishment.** In about 8% of cases, the arbitrator reduced penalties because they were deemed overly harsh.
5. **Management partly at fault.** In just over 7% of cases, reversal occurred because management—not just the employee—was partly at fault.

Bohlander, George W. “Why Arbitrators Overturn Managers in Employee Suspension and Discharge Cases.” *Journal of Collective Negotiations* Vol. 23, No. 1 (1994).

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## UNDERSTANDING THE BASICS

# Discipline and “Just Cause”



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## About “Just Cause”

Many collective bargaining agreements include a clause on employee discipline and discharge, and most of these clauses state that management cannot discipline employees **without “just cause.”**

When unions dispute employee discipline, they generally argue that management in some way “lacked just cause.”

What does “just cause” mean?

In 1966, arbitrator Carroll Daugherty issued a decision in a case called *Enterprise Wire Company* (46 LA 359, 1966), and presented a definition of “just cause” based on **seven criteria or “tests.”** Since then, most arbitrators have adopted his “seven tests” as the definition of “just cause.”

When management disciplines an employee, these criteria must be met. In a disciplinary dispute, the **burden of proof** is on management to prove that they had just cause for the disciplinary action. The more of these tests management fails, the more likely it becomes that the union will successfully overturn the disciplinary action.

# The “Seven Tests” of Just Cause

## 1. Was the employee aware of the rule or order?

Did the employee know they were breaking a rule? Did they know their conduct could have consequences?

## 2. Was the employer’s rule or order reasonable?

Was the rule or order reasonably related to safe and efficient operations?

## 3. Was there an investigation?

Did management investigate the situation before they disciplined the employee? Or can it be shown that they made up their minds before they even checked the facts?

## 4. Was the investigation fair?

Did management purposefully slant the investigation in order to find the worker guilty? Did they ignore evidence that helped the worker’s case?

## 5. Did they find proof of guilt?

Was actual proof found, or are they acting upon suspicions and assumptions?

## 6. Has this been applied consistently?

Has management always disciplined employees for this? Or never? Have other employees received lighter penalties for this offense? What were the circumstances?

## 7. Did the “punishment fit the crime?”

Was the penalty reasonably related to the seriousness of the offense and the employee’s past work record? Was discipline appropriately progressive?

*What is progressive discipline? “For all but the most serious types of misconduct (e.g., theft), progressive discipline functions as a graduated system of penalties for continued rule infractions.”*

*Adolph M. Koven and Susan L. Smith, Just Cause: The Seven Tests. Coloracre Publications (1985), p. 55.*

