

## **Basics of Just Cause**

Just Cause is the default standard for discipline in the collective bargaining context. The major building blocks of just cause are **due process** and **progressive discipline**.

In a 1964 case called *Grief Bros. Cooperage*, Arbitrator Carroll Daugherty articulated a just cause standard that has come to be widely accepted and applied by arbitrators since then. The standard consists of seven questions, all of which must be answered affirmatively to establish just cause for discipline:

1. Did the employer actually communicate to the employee the possible or probable disciplinary consequences of the employee's conduct?
2. Was the rule in question reasonably related to the orderly, efficient and safe operation of the business?
3. Did the employer investigate to determine whether the employee violated a rule or disobeyed management before imposing discipline?
4. Was the employer's investigation fair and objective?
5. Did the investigation yield substantial evidence that the employee was guilty as charged?
6. Has the employer applied its rules and penalties uniformly?
7. Was the degree of discipline imposed reasonably related to the seriousness of the employee's proven offense and the employee's record of service.

**Progressive discipline** is the expectation that the employer will impose successively more severe penalties, aimed at correcting the employee's behavior. Penalties imposed, in order of severity, include: verbal warning (documented in writing), written warning, short suspension(s), longer suspension(s), termination.

**Due process** requires that an employee be made aware of the employer's specific expectations and be given a genuine opportunity to satisfy those expectations. This applies to both conduct issues (the way an employee behaves at work) and artistic performance.

Employers should keep the tests of just cause in mind as they contemplate discipline for any employee.

Unions should demand that employers handle all discipline in a manner that satisfies these tests.

## **The Investigatory Interview and “Weingarten” Rights**

- The investigatory interview is the “front line” in protecting the musician’s job. It can affect the entire course of events and even fend off discipline if handled well.
- Employees are entitled to union representation and should be trained to ask for it at any interview the employee reasonably believes might lead to discipline.
- Weingarten statement: “If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I request that my steward/orchestra committee representative/union officer be present at the meeting. Without representation, I choose not to answer any questions.”

## **Before and During the Investigatory Interview**

- Employee and union rep have a right to know the subject matter of the meeting before attending and to consult with each other.
- The union rep can and should take an active role in the investigatory meeting.
- Try to get the employer to talk as much as possible and the employee as little as possible until the facts are clear.
- Keep in mind that if employee is disciplined, employer will have the burden of proving just cause.
- Ask questions to find out what employer knows. Get details. Ask for accusers to attend and ask for written statements from accusers. Get copies of documents the company refers to.
- Employer will try to get employee to talk first—avoid this and intercede for the employee. Tell the employer the employee cannot respond until she knows all the facts and what she is accused of.
- Take notes!
- After you get all the facts and documents, take the employee outside and find out what s/he knows. Evaluate credibility of facts from both employer and employee perspective.
- Remember that this is the best moment to resolve the matter—before discipline has been imposed. Try to convince employer not to impose discipline, to reduce the discipline or to hold off pending further investigation
- Think through possible defenses

## **Defenses to Discipline**

- I didn’t do it!
- It didn’t happen quite that way!
- The employer’s facts are inaccurate or incomplete.
- I had a good reason/excuse!
- Mitigating or extenuating circumstances: not feeling well, extreme weather
- I didn’t deserve that much discipline!
- Past record, long service, lesser discipline given for comparable offenses, not in accordance with company’s written policy.