


**ILLINOIS ASSOCIATION  
OF SCHOOL PERSONNEL  
ADMINISTRATORS**

January 27, 2017  
Lisle, Illinois

LISA R. CALLAWAY  
TAMARA B. STARKS  
[www.EnglerLawGroup.com](http://www.EnglerLawGroup.com)




---

---

---

---

---

---

---

---

**JUST CAUSE OR 'JUS' CUZ'  
EMPLOYEE DISCIPLINE**

---

---

---

---

---

---

---

---

**WHAT WE WILL DISCUSS**

- The origin of Just Cause
- What are the Just Cause tests?
- How to get managers/supervisors on board before they discipline
- Role of the CBA in the Just Cause analysis
- When Just Cause becomes Jus' Cuz in an arbitrator's or hearing officer's eyes

---

---

---

---

---

---

---

---

### THE GENESIS OF JUST CAUSE

- Standard created by virtue of an employee’s specific status
- Not all employees have this extra protection
- How is it created?
  - ✓ Collective Bargaining Agreement
  - ✓ Administrator Contract
  - ✓ Performance Evaluation Reform Act (PERA)

---

---

---

---

---

---

---

---

### JUST CAUSE DEFINED

- No absolute definition of Just Cause
- Often Just Cause = what the arbitrator/hearing officer thinks is fair
- Two principles common to every definition
  - Industrial due process
  - Progressive discipline
    - Including notice and opportunity to improve
    - Notice to remedy/remediation plan




---

---

---

---

---

---

---

---

### SEVEN TESTS OF JUST CAUSE

- Originates with Arbitrator Carroll Daugherty
  - Enterprise Wire Co. and Enterprise Independent Union, 46 LA 359 (1964)
- If answer to any of the seven questions is “No” - just cause is lacking




---

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

1

Did the employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee's conduct?

---

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

2

Was the employer's rule or managerial order reasonably related to orderly, efficient and safe operations?

---

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

3

Did the employer, before administering the discipline, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?

---

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

4

Was the employer's investigation conducted fairly and objectively?

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

5

During the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

6

Has the employer applied its rules, orders and penalties evenhandedly and without discrimination to all employees?

---

---

---

---

---

---

---

SEVEN TESTS OF JUST CAUSE

7

Was the degree of discipline related to:

- The seriousness of the employee's *proven* offense; and
- The record of the employee in his service with the employer?

---

---

---

---

---

---

---

---

TO SUMMARIZE ...

- Are employees on notice?
- Is the rule reasonable?
- Did the employee do it?
- Was the investigation fair?
- Is there enough evidence?
- Are the rules consistent?
- Does the discipline make sense?



If so... Just Cause! (Probably)

---

---

---

---

---

---

---

---

JUST CAUSE TIPS FOR MANAGERS

- Make sure written policies are clear.
- Don't assume employees "know" what is right.
- Don't ignore bad behavior. Correct it immediately.




---

---

---

---

---

---

---

---

JUST CAUSE TIPS FOR MANAGERS

- Document everything!
- Keep track of prior discipline and be consistent.
- Don't get tripped up by procedure. Know the CBA.




---

---

---

---

---

---

---

---

JUST CAUSE - YOU HAVE THE BURDEN

- The employer always carries the burden of showing Just Cause
- "Preponderance of the evidence" in most cases involving normal work rules
- "Clear and convincing evidence" in cases involving behavior that may be subject to criminal prosecution
- "Proof beyond a reasonable doubt" - rarely required

---

---

---

---

---

---

---

---

WHAT'S THE APPROPRIATE PENALTY?

- If the employer can establish just cause, most arbitrators/hearing officers will give substantial deference to the administration regarding the appropriate penalty
- The union has the burden to show any mitigating circumstances
- Progressive discipline doesn't always mean starting with a reprimand

---

---

---

---

---

---

---

---

**JUST CAUSE - HOW DOES THIS APPLY TO CERTIFIED STAFF?**

- PERA standard - "dismissal for reason or cause"
  1. Failure to complete a remediation plan with a performance evaluation rating of "satisfactory" or "proficient" or better; or
  2. A remediation plan is successfully completed but the certified staff member receives a subsequent performance evaluation rating of "unsatisfactory" anytime during the 36 months following the completion of the remediation plan.

---

---

---

---

---

---

---

---

**JUST CAUSE - HOW DOES THIS APPLY TO CERTIFIED STAFF?**

- PERA standard - "dismissal for reason or cause"
  3. For any tenured teacher who is being dismissed due to conduct that the board does not consider remediable
    - a. incompetency
    - b. cruelty
    - c. negligence
    - d. immorality
    - e. other sufficient cause
    - f. not qualified to teach
    - g. the interests of the schools require dismissal

---

---

---

---

---

---

---

---

**JUST CAUSE - HOW DOES THIS APPLY TO CERTIFIED STAFF?**

- Detailed Procedure for Certified Staff:
  - Board approval of a motion containing specific charges by a majority vote of all its members.
  - Written notice of such charges, including a bill of particulars and the teacher's right to request a hearing.
  - Written notice of right to request a hearing before a mutually selected hearing officer.

---

---

---

---

---

---

---

---





