

The Seven Elements of Just Cause

(Modified by Robert Schwartz from the original tests developed by Arbitrator Carol Daugherty)

1. Fair warning. The employee must be made aware of, or should be aware of, the rule or standard of conduct that he or she is alleged to have violated, as well as the possible penalties.

2. Past enforcement. The employer must have enforced the rule or standard of conduct against other employees known to have committed similar violations.

3. Investigation. Before imposing discipline, the employer must allow the employee to explain his or her actions.

4. Proof. There must be clear and convincing evidence that the employee is guilty of the offense charged.

5. Progressive discipline. In selecting a penalty, the employer must follow the principles of corrective and progressive discipline.

6. Individualized treatment. The employee must receive individualized treatment, with consideration of his or her years of service, work performance, and any other mitigating or extenuating circumstances.

7. Equal treatment. If one or more other employees received lesser punishments for the same offense, the employee's discipline must be modified, unless there are justifiable reasons for the differences.