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STEWARDS CORNER

Monthly Newsletter for Union Stewards

Ensuring Fair Discipline: A Union Steward's Guide to Challenging Unequal Enforcement

Part 2 in the Series: "Breaking Down the Tests of Just Cause"

In unionized workplaces, stewards are the first line of defense for justice and fairness under the contract. One of their most challenging and important jobs is to identify, document, and challenge situations where management enforces rules unfairly or in a discriminatory manner.

The principle of just cause is central to justice and dignity in our workplaces, and it is often put to the test in these cases. To succeed, stewards need to know what constitutes unequal or discriminatory enforcement and understand how arbitrators view these issues.

Why Does Equal Enforcement Matter?

For enforcement to be fair, management must apply rules and penalties consistently, without favoritism or discrimination. Consistent application is a key element of just cause.

Here are some criteria to check for unequal enforcement:

1. **Consistency:** Has management applied the rules uniformly across all employees without partiality?
2. **Notice:** Has management provided clear, advanced notice of the rules and consequences?
3. **Proportionality:** Do the penalties fit the crime?

Arbitrators generally accept that all employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis for variation exists in assessing punishment. Inconsistent discipline for similar offenses is a red flag for arbitrators.

For example, an arbitrator upheld the union's grievance when management terminated a long-term employee after an incident in which the employee failed to properly secure safety equipment during a hazardous repair. While other workers involved received suspensions, this employee was fired despite having no prior disciplinary record. The arbitrator concluded that the company treated the grievant far more harshly than other similarly situated employees for no apparent reason. Disciplinary action almost never stands unless the employer establishes valid and substantial distinctions that justify the differential treatment.

What Is Not Discriminatory or Unequal Enforcement?

There are several differences between equal and unequal enforcement. Arbitrators accept valid business reasons for treating similar cases differently if management can demonstrate them.

Material Differences in Circumstances: Employees might receive different penalties for similar infractions if their prior disciplinary histories diverge substantially. For example, Sam, who has two prior warnings for similar offenses, receives a more severe penalty than Alex, who has a clean record and received a lesser penalty for the same infraction.

- ✓ **Tip for stewards:** submit an information request for disciplinary records to determine the material differences.

Degree of Offense and Context: Misconduct varies in seriousness. If two workers break the same rule but one acted much worse, stronger discipline may be justified and is usually supported by an arbitrator.

Notice and "Rule Resets": An employer can avoid claims of unfair treatment by strictly enforcing rules going forward and giving workers clear advance notice. But sudden crackdowns without warning often do not meet the just cause standard.

Objective, Documented Business Necessity: If management provides a clear, well-documented business reason for different penalties, arbitrators are unlikely to overturn the discipline. The reason for the difference must be specific and based on facts.

Clues to Spotting Unequal or Discriminatory Enforcement

Arbitrators look for arbitrary decisions, favoritism, retaliation, or other improper motives to identify unequal or discriminatory enforcement: This can include:

Disciplining One, Not Others: When multiple workers violate a rule and only the union activist is disciplined,

arbitrators are highly suspicious of anti-union animus or selective enforcement. Arbitrators frequently set aside discipline unless management can demonstrate why the situation warranted such disparity.

Changing the Rules Midway: If management starts enforcing a rule that was previously ignored without warning or progressive discipline, arbitrators often view this as a violation of due process, unless management clearly informs workers that it plans to enforce the rule.

Retaliation and Animus: Giving stewards or known union supporters harsher discipline or extra scrutiny is a clear example of discriminatory enforcement. If the only difference between employees is union involvement, most arbitrators will support the grievance.

How Do Arbitrators Assess Unequal Enforcement Cases?

Arbitrators generally consider these factors when determining whether there is unequal treatment:

- **Reasonable Comparator:** Arbitrators look for employees in similar situations when deciding if there was unfair treatment. Ask yourself: Did other employees break the same rule under similar conditions? Did management know the same facts when discipline was given? If yes, and the discipline is different, you probably have a case.
- **Documenting Inconsistent Enforcement:** Many cases are won by showing that management has repeatedly ignored similar rule violations. If past records show that similar offenses were not punished harshly before, you should have a strong case for your grievance.
- **Progressive Discipline:** Going straight to severe punishment without giving a chance to correct the behavior is usually seen as unfair by arbitrators, unless the act was extremely serious. Trying to combine several minor issues into a single justification for firing someone usually does not hold up to review.
- **Reasonableness and Clarity of Rules:** Management needs to explain workplace rules clearly. Arbitrators rarely support discipline if the worker did not know, or could not reasonably have known, that the conduct was not allowed—especially if management has not enforced the rule consistently before.

Tips for Stewards

- ✓ **Demand and Review Disciplinary Records:** Compare the treatment of the grievant to that of others disciplined for similar conduct. Request full disciplinary files to review patterns or inconsistencies. If management withholds records, you may need to get your assigned USW Staff Representative involved to determine the next steps.
- ✓ **Establish a pattern of inconsistency:** Keep records of whether management has been relaxed, permissive, or inconsistent in enforcing certain rules. Use this information to argue that there is no just cause for suddenly enforcing a rule strictly against one person.
- ✓ **Investigate Thoroughly:** Talk to witnesses, gather evidence, and keep asking for information. If management has often ignored a rule but then disciplines one person, this is strong evidence of unfair enforcement.
- ✓ **Argue Context:** Share evidence that helps your case, like a worker's long service, good record, or proof that their actions were similar to those of others who were not punished.

Conclusion: Just Cause Is Union Power

Challenging unfair enforcement protects both individuals and the union contract as a whole. When there is clear evidence, arbitrators usually support cases that show unfair treatment. Fair rules are at the heart of union justice.

Stewards are encouraged to actively monitor and challenge instances of unfair enforcement. By doing so, they reinforce the vital role they play in upholding the principles of just cause and union solidarity.

TEACHING TUESDAYS

The Education Department is proud to present "Teaching Tuesdays" as a series of classes that USW members can attend from the comfort of their homes.

All classes are held at either 11 a.m. or 8 p.m. EST, so if you are interested in attending one of the classes please click on the time that you can attend. Sessions run for 90 minutes. Click on the link or use the QR code to see the upcoming calendar of events.

https://usw.org/get-involved/education/teaching-tuesdays/