Just Cause Standard

The collective bargaining contracts between the State and VSEA, and between the State Colleges and the VSEA, provide that no employee shall be discharged except for just cause. In application, the meaning of this short, simple clause is not easily ascertained. The Vermont Supreme Court has defined just cause for dismissal as:

> ...some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for dismissal... The ultimate criterion of just cause is whether the employer acted reasonably in discharging the employee because of misconduct... a discharge may be upheld as one for 'cause' only if it meets two criteria of reasonableness: one, that it is reasonable to discharge employees because of certain conduct and the other, that the employee had fair notice, express or implied, that such conduct would be ground for discharge.[1]

The Court has indicated that just cause analysis should "center upon the nature of the employee's misconduct."[2] In deciding whether there is just cause for dismissal, it is appropriate for the VLRB to determine the substantiality of the detriment to the employer's interests.[3]

The standard for implied notice is whether the employee should have known the conduct was prohibited.[4] This is an objective standard.[5] Knowledge that certain behavior is prohibited and subject to discipline is notice of the possibility of dismissal.[6]

In carrying out its function to hear and make final determination on whether just cause exists for discipline, the VLRB determines *de novo* and finally the facts

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[1] In re Grievance of Brooks, 135 Vt. 563, 568 (1977).
[2] In re Morrissey, 149 Vt. 1, 13 (1987). Grievance of Merrill, 151 Vt. 270, 273 (1989).
[3] Merrill, 151 Vt. at 273-274.
[4] Grievance of Towle, 164 Vt. 145 (1995). Grievance of Brooks, 135 Vt. 563, 568 (1977).
[5] Grievance of Towle, 164 Vt. at 150. Grievance of Hurlburt, 175 Vt. 40, 50 (2003).
[6] Grievance of Towle, 164 Vt. at 150. Grievance of Gorruso, 150 Vt. 139, 148 (1988).

of a particular dispute, and whether the penalty imposed on the basis of those facts is within the law and the contract.[7] In large measure, this is an objective standard requiring review of the penalty imposed on the basis of facts actually found by the Board.[8] The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence.[9]

Once the underlying facts have been so proved, the Board must determine whether just cause exists for the discipline imposed by the employer based on the proven facts. The Board determines whether the action taken by the employer was reasonable based on the proven charges.[10] If the employer establishes that management responsibly balanced the relevant factors in a particular case and struck a reasonable balance, its penalty decision will be upheld.[11]

Failure of the employer to prove by a preponderance of the evidence all the particulars of the dismissal letter does not require reversal of a dismissal action.[12] In such cases, the VLRB must determine whether the remaining proven charges justify the penalty.[13]

The Board has applied the just cause standard for dismissal to a grievance filed by a non-unionized University of Vermont employee, where such standard was contained in a binding rule of the University.[14]

Also, the Board has held that there is no substantive difference between a "cause" standard for discipline and a "just cause" standard. The analysis the Board employs when "cause" is the operative standard is the same the Board applies when

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[7] Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983).
[8] Id.
[9] Id.
[10] Grievance of Simpson, 12 VLRB 279, 295 (1989).
[11] Colleran and Britt, 6 VLRB at 235.
[12] Grievance of Regan, 8 VLRB 340, 366 (1985).
[13] Grievance of Colleran and Britt, supra.
[14] Grievance of Lightburn, 15 VLRB 372, 392 (1992).

reviewing disciplinary actions against state employees covered by the "just cause" standard.[15]

The collective bargaining contracts between the State and VSEA distinguish between the progressive sanctions that are available in misconduct cases and the progressive sanctions that are available in performance cases, leading the VLRB to conclude that the parties intended a distinction between misconduct and nonperformance. The Board stated that "consistent with this intent, and as a matter of logic, neither of the two requisite elements of just cause – 'reasonableness' and 'fair notice' – can be determined without first categorizing the employee's underlying actions as a question of misconduct or a question of performance."[16]

In one case, the Board concluded that the State did not meet the burden of proving that a social worker knew, or should have known, that judgments he made could lead to discipline. The Board determined that any deficiencies were matters of judgment, and therefore of performance, rather than instances of misconduct.[17]

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[15] Grievance of Morrissey, 7 VLRB 129, 161 (1984). Grievance of Russell, 7 VLRB 60, 81 (1984).
[16] Grievance of Roy, 13 VLRB 167, 182 (1990).
[17] Id. at 182-185.