CAUSE & JUST CAUSE: A TALE OF TWO STORIES

The History and Application of Cause & Just Cause

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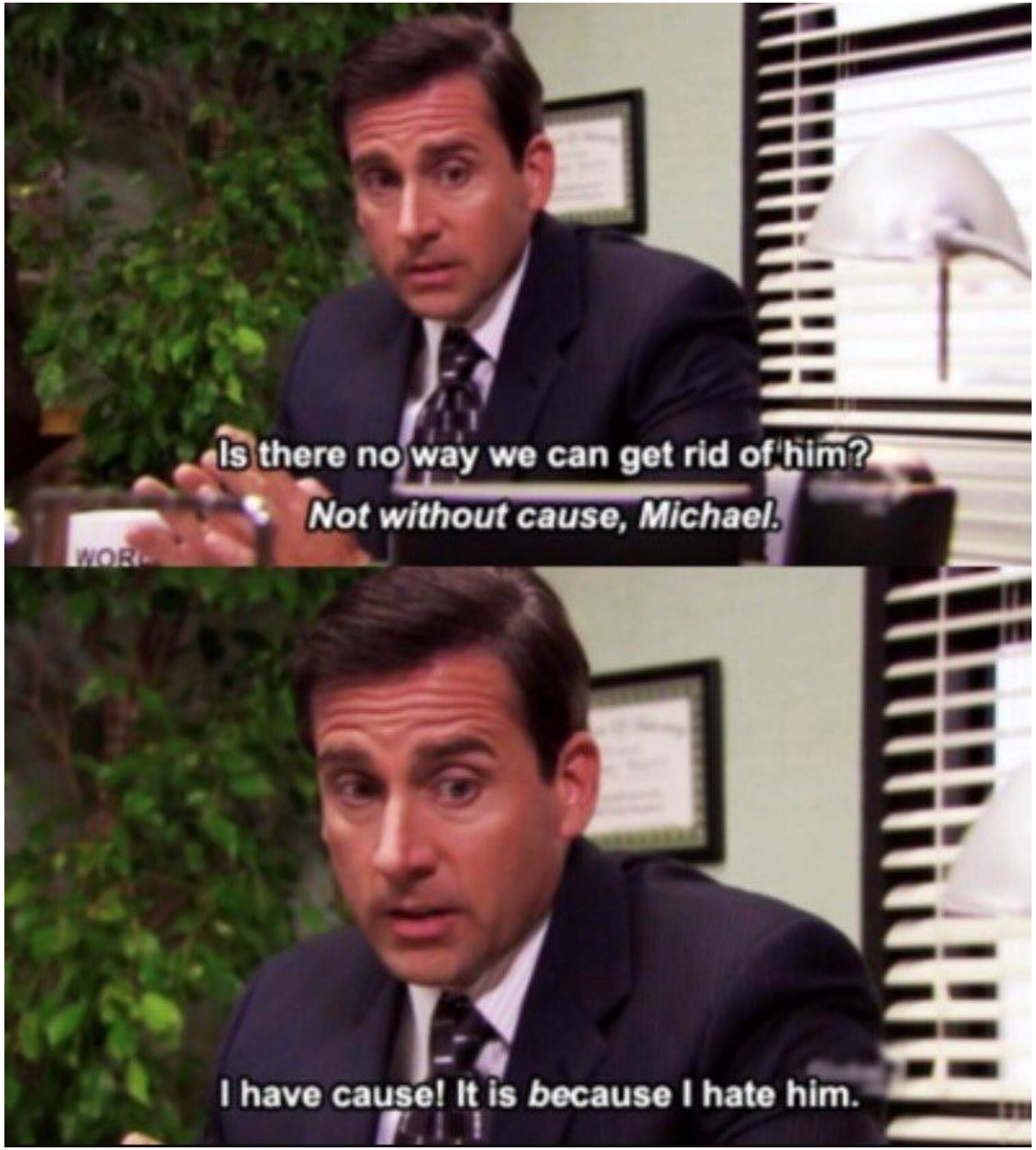
A Tale of Two Stories


Is there no way we can get rid of him?
Not without cause, Michael.
I have cause! It is because I hate him.

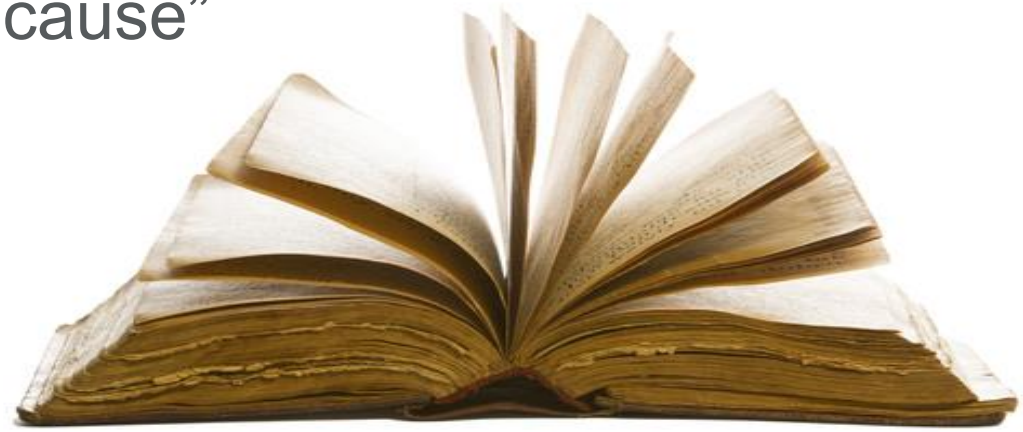
Overview For Today's Presentation

- Goal: To better understand the "Cause" requirements
  - Historical context
  - Court treatment of cause and just cause
  - Deeper dive into just cause today
  - Examination of when a just cause finding might not be determinative

Civil Service

Historical Context

- Pendleton Act of 1883 created the federal civil service system
- The intent was to:
  - End the “spoils” system
  - Base employment on merit rather than party loyalty
- The Act did not reference “cause” or “just cause”



Historical Context

- Local civil service provisions
- RCW 41.12 was enacted in 1937
  - "Its purpose is to establish a prototype law enforcement civil service system that protects employees against **arbitrary** and **discriminatory** discipline and ensures the public is served by qualified law enforcement officers by providing for merit-based promotion and tenure"

Historical Context

No person . . . shall be removed, suspended, demoted or discharged **except for cause** . . . Any person so removed, suspended, demoted or discharged may within ten days from the time of his or her removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made **for political or religious reasons** and **was or was not made in good faith for cause**. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made **in good faith for cause**, shall order the immediate reinstatement or reemployment . . . .” RCW 41.12.090.

Historical Context

- What does “cause” mean?
  - No definition for cause provided by the Legislature
  - No precise definition of cause crafted by Courts when interpreting the Civil Service statute(s)
- Earlier court decisions:
  - Whether there was “sufficient cause”
  - Whether charges were “utterly frivolous” and whether competent evidence tended to prove the charges
    - “So frivolous that all minds must necessarily agree that it is not a legitimate cause.”
  - Deference to commission decisions

Collective Bargaining

Historical Context

- In the 1930s, cause emerged in collective bargaining agreements
  - Response to the “at-will” doctrine that had taken shape in the late 1800s
- Terminology: cause, sufficient cause, reasonable cause, just cause
- No definition in most collective bargaining agreements

Historical Context

"It is ordinarily the function of an Arbitrator . . . not only to determine whether the employee involved is **guilty of wrongdoing** but also to safeguard the interests of the discharged employee by making reasonably sure that the causes for discharge were **just and equitable** and such as would **appeal to reasonable and fair-minded persons as warranting discharge**. To be sure, no standards exist to aid an Arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide **what a reasonable man, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community, ought to have done under similar circumstances** and in that light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just."

-*Riley Stoker Corp.*, 7 LA 764 (Platt, 1947)

Historical Context

- In 1966, Arbitrator Carrol Daugherty distilled “just cause” into 7-tests
  1. Did the Company give forewarning of possible/probable disciplinary consequences? **(Notice)**
  2. Was the rule/order reasonably related to orderly, efficient, and safe operation of the business and the performance the company might properly expect of the employee? **(Reasonable Rule)**
  3. Before administering discipline, did the company make an effort to discover whether the employee in fact violated the rule? **(Investigation)**
  4. Was the company’s investigation conducted fairly and objectively? **(Unbiased Investigation)**
  5. Was there substantial evidence/proof the employee was guilty as charged? **(Sufficient Proof)**
  6. Has the company evenhandedly and consistently applied its rules/orders and penalties? **(Consistent Application)**
  7. Was the degree of discipline reasonable related to the seriousness of the employee’s proven offence and the employee’s work record? **(Appropriateness of Penalty)**

Enterprise Wire Co., 46 LA 359 (Daugherty, 1966)

Courts Address the Two Stories

City of Kelso

- Facts:
  - Negligence during a high-speed chase caused a traffic accident
  - Originally suspended for 2.5 days
  - No election of remedies provision in the CBA, so initiated civil service appeal and grievance
  - Civil Service Commission **increased** discipline to a 10-day suspension, finding the original suspension in sufficient in light of the violations of traffic laws and department policies
  - Arbitrator **decreased** the discipline to a written reprimand
- Civil Service Commission filed a complaint asking the court to declare its order final and binding on all parties
- Issue: Was the arbitrator precluded from issuing a decision (under the theory of *res judicata*) because the Civil Service Commission had already determined there was cause for a 10-day suspension?

Civil Service Com'n of City of Kelso v. City of Kelso, 137 Wn.2d 166 (1999)

City of Kelso

- Conclusion:
  - Res judicata did not apply
- Reasoning:
  - *Res judicata*, among other elements, requires that the two causes of action relate to infringement of the same right and substantially similar evidence
  - Proceedings dealt with different rights & different standards
  - Both rights were entitled to be enforced

City of Kelso Case

- Civil Service Requirement
  - "Although this court has yet to give a precise definition to this standard, the statute has not previously been interpreted to require the Commission to consider any factors apart from the **particular allegation of wrongdoing** and the **employer's motivation for the disciplinary action**." The civil service hearing was based on a statutory right
  - The commission evaluated the reason for the discipline (violation of policy) and whether suspension was motivated by political or religious reasons

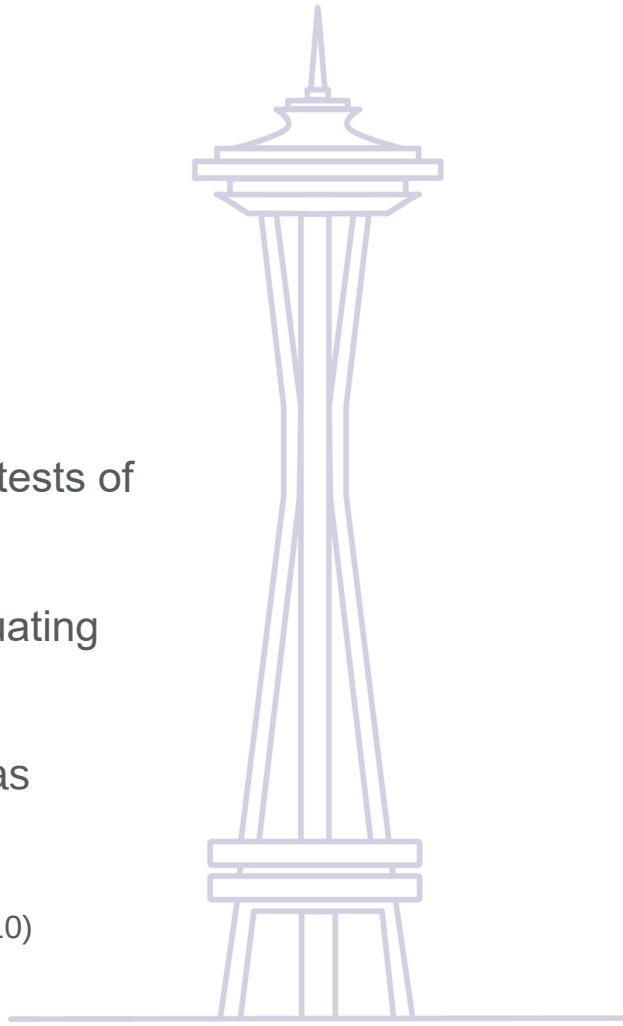
- Collective Bargaining Requirement
  - "'Just cause' is a term of art in labor law, and its precise meaning has been established over 30 years of case law. Whether there is just cause for discipline entails **much more than a valid reason**; it involves such elements as **procedural fairness**, the presence of **mitigating circumstances**, and the **appropriateness of the penalty**."
  - The labor arbitration was based on a "**more expansive**" contractual right
  - The arbitrator evaluated whether the misconduct occurred AND whether there was procedural fairness, by applying Daugherty's 7-tests

Two Distinct Standards and Stories – Got It!

City of Seattle

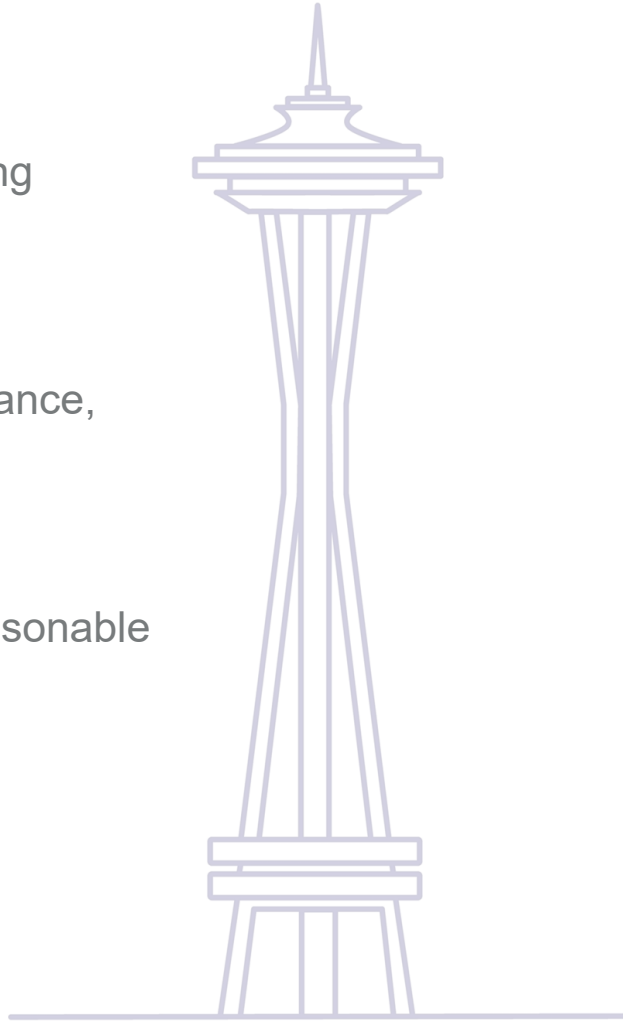
- Facts:
  - Three incidents of misconduct:
    - Failure to investigate an attempted theft
    - Mishandling and failing to safeguard evidence
    - Insubordination and lack of professionalism
  - Originally suspended for 30 days
  - Commission reduced discipline to a 7-day suspension, after applying Daugherty's 7 tests of just cause
- City challenged the Commission's decision to apply the "just cause" standard when evaluating whether the discipline was "in good faith for cause" under the Civil Service rules
- City argued for a standard that focused on whether there was a legitimate reason that was supported by substantial evidence that the employer believed to be true

City of Seattle v. City of Seattle, 155 Wn. App. 878 (2010)



City of Seattle

- Conclusion:
  - The Civil Service Commissions could apply the “just cause” standard when evaluating “cause” in the civil service context
- Reasoning:
  - “In good faith for cause” was not defined in RCW 41.12, the City’s civil service ordinance, and the Commission rules
  - No court had required the Commission to adopt any particular test
  - Commissions have discretion to define “cause,” so long as their determination is reasonable
  - “[W]e cannot say that adoption of the stricter test is not reasonable.”



Today’s “Just Cause”

Application of Just Cause by Labor Arbitrators Today

- Less common to see arbitrators use Daugherty's 7-tests
- Many have moved to a more "systemic" theory, which is a less structured approach that examines universal obligations and interests

Proof of Misconduct

Evenhanded Application of Rule

Legitimate Employer Interest

Progressive Discipline

Just Cause

Mitigating Factors

Loudermill Hearing

Union Representation, if requested

Notice of Rule

Unbiased Investigation

Notice of Potential Discipline

Typical Arbitrator Analysis

1. Did the employer prove, factually, that the misconduct occurred?
2. Is the level of discipline reasonable?
3. Are there any other fairness factors that should modify the imposed discipline?

Fairness Factors

- Proportional discipline
- Progressive discipline
- Equitable discipline
- Corrective discipline

- Prompt, objective, reasonably thorough investigation
  - Employee interview, with union present (upon request)
- Notice of expectations
- Mitigating facts
- If involves off duty conduct, is there some link or legitimate reason for the employer to care?
- Employer also at fault
- Pre-disciplinary meeting
- Other contractual requirements

Alyssa's Just Cause Statement

As in many collective bargaining agreements, the labor contract in this case does not define "just cause." The parties have instead decided to rely upon the robust body of arbitral cases for the definition. Arbitrators frequently describe just cause as "a broad and elastic concept, involving a balance of interests and notions of fundamental fairness." While arbitrators have employed many tests and standards to determine when just cause exists, it is axiomatic that just cause requires the employer to prove (1) the grievance engaged in the alleged misconduct, (2) the penalty was reasonable and appropriate under the circumstances, and (3) the employer "complied with all applicable procedural requirements, including the norms of industrial due process commonly followed by labor arbitrators.

Deference Provided to the Employer

- If the discipline is within the general vicinity of fair and reasonable, arbitrators tend to uphold an employer's disciplinary decision

Just Cause vs. Public Policy

City of Seattle

- Facts:
  - Officer punched a handcuffed women after she kicked him in the head
  - Use-of-force policy violation
  - Originally terminated by the Employer
  - Arbitration panel reduced discipline to a 15-day suspension, removal of training duties, option to reinstate outside of patrol
- Arbitration Panel's reasoning:
  - There was a serious violation of SPD's use-of-force policies
  - But:
    - The seriousness was mitigated by facts of case: just kicked in the head, was in pain, used de-escalation tactics for quite some time
    - "Disturbing" training by the employer
    - Many other employees and supervisors believed the force complied with training and policy
    - Inconsistent discipline when compared with like use-of-force policy violations
    - Work history
  - 15-day suspension was substantial discipline and intended to send a message among police force

City of Seattle v. Seattle Police Officers' Guild, 17 Wn. App. 2d 21 (2021)

City of Seattle

- Court vacated the arbitration award, which was affirmed on appeal, for violation of public policy
- Reasoning:
  - Explicit, well-defined, and dominant public policy against excessive force in policing
  - Discipline was insufficient to deter future instances of misconduct (too lenient)
- Court dived into the arbitration panel's reasoning and found it flawed (without having benefit of hearing all the evidence)

City of Seattle

- Conclusion:
  - Where there's an **explicit, dominant, and well-defined public policy**, an arbitrator's "just cause" determination might not be the end of the road
  - Examples:
    - Discrimination/harassment
    - Use of force

Questions?

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