

DUE PROCESS

IN RAILROAD INDUSTRY ARBITRATION

© Jeanne M. Vonhof

Railroad Referee

NARR Meeting September 25, 2024

Due Process – Where Does it Come From?

**“JUST CAUSE” = IS THERE JUST CAUSE TO DISCIPLINE
OR DISMISS THIS EMPLOYEE?**

JUST CAUSE = 2 QUESTIONS

- 1) IS THERE SUFFICIENT EVIDENCE THAT EE “DID THE DEED”?**
- 2) IS THE DISCIPLINE REASONABLE?**

***DUE PROCESS ENSURES FAIRNESS
IN ANSWERING THESE QUESTIONS***

WHERE DOES “JUST CAUSE” COME FROM?

“JUST CAUSE” = TERM OF ART
DEVELOPED OVER YEARS OF ARBITRATION

RAILROAD INDUSTRY= IN THE FOREFRONT OF DEVELOPING
JUST CAUSE AND DUE PROCESS

“7 TESTS OF JUST CAUSE” DEVELOPED IN THE RAILROAD
INDUSTRY

NRAB THIRD DIVISION AWARD NO. 8431

- ESTABLISHES THE STANDARDS FOR JUST CAUSE
 - INCLUDING DUE PROCESS
- BHD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS AND THE NORTHERN PACIFIC TERMINAL CO OF OR.
- CARROLL R. DAUGHERTY, REFEREE
- 1958

BASIC PRINCIPLES OF RAILROAD ARBITRATION FROM AWARD 8431

- “A CARRIER HAS THE RIGHT TO DISCIPLINE AN EMPLOYEE FOR JUST CAUSE, INCLUDING MAINLY VIOLATION OF CARRIER RULES”
- “THE BOARD WILL NOT PRESUME TO SUBSTITUTE ITS JUDGMENT FOR THAT OF A CARRIER AND AND REVERSE OR MODIFY CARRIER’S DISCIPLINARY DECISION UNLESS THE CARRIER IS SHOWN TO HAVE ACTED IN AN UNREASONABLE, ARBITRARY, CAPRICIOUS OR DISCRIMINATORY MANNER, AMOUNTING TO ABUSE OF DISCRETION”

ELEMENTS OF JUST CAUSE AND DUE PROCESS IN AWARD 8431 - 1

NO. 1 - REASONABLE RULE - CARRIER'S RULE MUST BE
"REASONABLY RELATED TO THE ORDERLY AND EFFICIENT
OPERATION OF CARRIER'S BUSINESS"

NO. 2 - NOTICE -- EMPLOYEE MUST BE PROVIDED REASONABLE
NOTICE OF THE RULE

NO. 3 - NOTICE OF THE CONSEQUENCES – EMPLOYEE
MUST BE AWARE OF THE CONSEQUENCES OF DISREGARDING
RULE

- **IS THIS A DISMISSABLE OFFENSE?**

ELEMENTS OF JUST CAUSE AND DUE PROCESS IN AWARD 8431 -- 2

NO. 4 – NO DISPARATE TREATMENT – CARRIER ENFORCES RULES
THE SAME (REASONABLY) FOR ALL EMPLOYEES

--SAME INCIDENT, DIFFERENT DISCIPLINE

NO. 5 – SUBSTANTIAL EVIDENCE OF RULE VIOLATION

NO. 6 – TIMELY HEARING – HELD IN ACCORDANCE WITH THE
PARTIES' CONTRACT

**NO. 7 – HEARING OFFICER MAY NOT ACT AS CHIEF
WITNESS, INTERROGATOR AND JUDGE**

-- MAY ACT AS INTERROGATOR AND JUDGE

ELEMENTS OF JUST CAUSE AND DUE PROCESS IN AWARD 8431 - 3

**NO. 8 – CLAIMANT MUST BE ALLOWED TO HAVE
REPRESENTATION, TO TESTIFY, AND TO CALL
WITNESSES**

**NO. 9 – CARRIER MAY NOT DISPLAY MANIFEST BIAS AT
THE HEARING**

NO. 10 – DEGREE OF DISCIPLINE EXCESSIVE

**-- NOT REASONABLY RELATED TO THE SERIOUSNESS OF
THE OFFENSE**

ELEMENTS OF JUST CAUSE AND DUE PROCESS IN AWARD 8431 - 4

NO. 11 – DISPARATE TREATMENT

- OTHER EMPLOYEES CHARGED WITH SIMILAR OFFENSES HAVE BEEN TREATED MORE FAVORABLY
- APPLIES BOTH TO THE FINDING OF GUILT
- AND THE DEGREE OF DISCIPLINE IMPOSED

OTHER PRINCIPLES FROM AWARD 8431

- THE BOARD WILL NOT GENERALLY GO BEYOND THE RECORD DEVELOPED AT THE CARRIER'S INVESTIGATION
- THE CARRIER HAS THE BURDEN OF PROVING ITS CHARGE AND THAT ITS CONDUCT AND DECISION WERE NOT UNREASONABLE
- THE ORGANIZATION MUST SHOW THAT THE CARRIER FAILED TO SUSTAIN ITS BURDEN
- IN JUDGING WHETHER THE CARRIER SUSTAINED ITS BURDEN THE BOARD WON'T TRY TO JUDGE CONFLICTING TESTIMONY IF THE CARRIER'S DECISION WAS BASED ON SUBSTANTIAL EVIDENCE OF RECORD
- IF CARRIER'S DISCIPLINE IS "NOT SUPPORTABLE" BUT THE EE HIMSELF "WAS NOT FREE OF IMPROPER BEHAVIOR" LESSER DISCIPLINE MAY BE IMPOSED