

How Arbitrators Decide Cases Standards And Tests

Standards

The arbitrator will consider certain contract language precise and explicit, even though the parties may disagree about its meaning.

Basic Principles of Contract Interpretation

- Where the contract language is specific, it will supersede more general clauses.
- Language that mentions one item group or class without mentioning other items, groups, or classes indicate that the others were deliberately excluded.
- The meaning of words or phrases is ascertained from the context in which they appear.
- Arbitrators will normally contend that all parts of the contract convey some meaning, otherwise the parties would not have included them in the agreement.
- Words and phrases will be defined according to their common meaning. Again, arbitrators will contend that a different usage of a commonly used word or phrase would be identified in the contract.

Standards That Extend Beyond the Contract

Parties will request that the arbitrators explore other contract interpretations depending on the circumstances. The arbitrator in these instances often uses the following standards.

- The arbitrator will look beyond the contract to determine the intent of the parties, when the contract alone is not a sufficient guide.
- The history of negotiations, as evidenced by minutes or records, may be a factor in the interpretation of the contract. The arbitrator also may use oral evidence if he or she is convinced of its accuracy.

- Settlement offers that occur during negotiations that lead to arbitration will not normally be considered in arbitration. It is widely recognized that in attempting a settlement, parties extend offers that might be less than what they consider to be their strict contractual rights. Additionally, citing such offers in an arbitration case discourages good faith negotiation and settlement in subsequent grievances.

Rules on Past Practice

What the parties do under a collective agreement might be even more important than what they say in the contract language. Consequently, arbitrators refer to general rules on past practice when the contract language is no longer helpful.

- Past practice considered if the contract language is unclear and ambiguous.
- The past practice must be mutual. Furthermore, it must be demonstrated that both parties have accepted the past practice. If there are no objections to a practice, it is often assumed that the practice is mutually accepted. However, sometimes the failure to object to a practice is a sign of ignorance of contractual rights and does not constitute mutual acceptance. The practice must be specifically acknowledged as a standard practice for it to be considered mutually acceptable. An arbitrator will sometimes look to the acceptance of practice in other agencies or departments of the same state, when practice in a particular agency or department does not provide a sufficient guide. General industry practice is rarely taken into account, since a practice in one state might be meaningless in another.

Special Considerations

- When two interpretations are possible — one making the agreement lawful and the other making it unlawful — the former is usually accepted on the assumption that the parties intended a valid contract.
- Arbitrators will generally strive to apply ambiguous language to reasonable and equitable interpretation.
- The arbitrator will generally choose the interpretation that will provide just and reasonable results.
- Arbitrators are reluctant to assess a penalty or forfeiture if another interpretation is reasonably possible. Nevertheless, many arbitrators are inclined to rule that some “remedy” (including back pay, and even interest)

is appropriate in certain kinds of cases. The question of remedies is a controversial one for arbitrators, unions and employers.

- Arbitrators are less likely to insist on strict contract interpretation when the negotiators are inexperienced. In these instances, past practices and rules may be used as a guide.
- Arbitrators will occasionally rule against the party responsible for the contract language when no other rule or standard applies. In these circumstances, it may be assumed that the drafting party intentionally wrote ambiguous language.

TESTS FOR JUST AND PROPER CAUSE IN EMPLOYEE DISCIPLINE

Adapted from Carol R. Daugherty, *Enterprise Wire Co.*, 46 LA 359 (1966)

“Just cause” is the standard commonly applied to grievances involving employee discipline. Yet, few union-management agreements contain a definition of just cause. Nevertheless, over the years, the opinions of arbitrators have established a generally accepted definition of just cause: a set of guidelines or criteria that is applied to the facts of any one case. These criteria for just cause are set forth below in the form of questions.

A “no” answer to one or more of the following questions normally signifies that just and proper cause does not exist. In other words, a “no” means that the employer’s disciplinary decisions contained one or more elements of arbitrary, capricious, unreasonable, and/or discriminatory action.

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