

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**GOVERNMENT OF THE NORTHWEST TERRITORIES**  
as represented by the Minister responsible  
for the *Public Service Act*

Employer

- and -

**THE UNION OF NORTHERN WORKERS**

Union

**Grievance re: CSSWIII Rejection on Probation**

**AWARD**

BEFORE:	Thomas Jolliffe, Q.C.
FOR THE EMPLOYER:	Brad Patzer
FOR THE UNION:	Chantal Homier-Nehme
HEARING LOCATION:	Yellowknife, Northwest Territories
HEARING DATES:	April 15, 16, 17 and 18, 2008 June 10, 2008

**Date Award Issued:**  
**February 12, 2009**

Our File: 52,054 TJ

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This matter concerns the grieved rejection on probation of a registered social worker from her Community Social Service Worker III (CSSW III) position with the Yellowknife Health and Social Services Authority (YHSSA), positioned as she was approximately 150 air kilometres distant in an “outlying community”, which for purposes of this award will receive no other identification, and coming within the Authority’s administrative structure and authority. Due to the sensitive and confidential nature of information presented throughout this award, including evidence about certain child clients, the rejected probationary employee will be referred to as “the grievor”. This award will refer to her immediate office co-workers positioned by YHSSA in the outlying communities with whom interpersonal conflicts developed only by the jobs they performed, not by name, which is to say references will be made repeatedly to the “other community social worker”, the “community co-ordinator”, and the “administrative assistant”. It will refer to managers and executives positioned in Yellowknife by name. Outside adult witnesses are referred to by one initial, and child clients as such.

The written notification sent to the grievor by Gregory Cummings, the Chief Executive Officer (CEO) at YHSSA rejecting her while on probation, dated February 22, 2005, includes the following reasons:

**After reviewing your submission and the circumstances surrounding your work performance problems, I have decided to accept the recommendation to reject you on probation. Over the past ten months you have been disciplined for negligence and insubordinate behaviour. The latest incident occurred when you yet again placed a youth in our care at risk by not taking appropriate steps to address the situation. Thus you are being rejected on probation for negligence, incompetence, and overall unsuitability for the position.**

The grievance was filed during the next week, with the Union claiming that the dismissal

was not justified under Section 21 of the *Public Service Act*. It reads as follows:

**21.(1) At any time during the probationary period of an employee, the Minister, on the recommendation of the deputy head, may reject the employee but any such rejection must be made in good faith.**

**(2) An employee who has been rejected under subsection (1) ceases to be an employee.**

The Union further stated its position in the grievance to be:

**“... that the dismissal was not in good faith and the Employer deliberately “set up” (the grievor) for failure, and did not even attempt to follow appropriate steps in regards to alerting and guidance as outlined in the FMBS Human Resources Manual. (Section 1601).**

**Furthermore it is the Union’s opinion that the letter written by Les Harrison, Director Social Programs is borderline malicious, slanderous, and a defamation of (the grievor)’s character and work ethics.**

**To the best of our knowledge, (the grievor) at no time received any corrective action or direction by the Employer which could have led to improvement in her performance, and carry out her job duties as described in her Job Description.**

The above reference to the Human Resource Manual issued by the Financial Management Board Secretariat, Section 1601, reads as follows:

- 1. The purpose of a probationary period is to provide the employing department with a reasonable period of time in which to ascertain whether an employee is suitable and competent in the duties of the position assigned. It also provides an employee with the opportunity to adapt to the work environment.**
- 2. Where a probationary employee fails to maintain the required standard of conduct and corrective action has not resulted in acceptable improvement in performance, rejection on probation may be considered. Rejection on probation may also be considered if during the probationary period it is determined that the employee is not suitable for the position or does not have the competency to perform the duties of the position at an acceptable level. ...**

In its filed grievance document, by way of remedy, the Union has sought the full range of compensation possibilities speaking to the grievor being made whole, in addition to claiming punitive damages for undue hardship, stress and public humiliation, and reinstatement.

There was no issue raised speaking to the arbitrator's jurisdiction to hear and determine this matter on the merits, inasmuch as the collective agreement, unlike some others, does not preclude the Union from grieving the dismissal of a probationary indeterminate employee, and having the matter heard on its merits at arbitration by reference to the *Public Service Act* and applicable case law providing some interpretive guidance.

The voluminous evidence and argument in this matter was heard over five days in Yellowknife, as recorded in 364 pages of the arbitrator's foolscap notes and some 60 exhibited documentary materials addressing many aspects of the grievor's employment tenure lasting from her acceptance of the appointment offer into a full-time indeterminate position, effective April 20, 2004, carrying a one-year probationary period, until she was rejected on probation some 10 months later. Overall, it can be said to have centered on whether the Employer fulfilled its obligation to act in good faith by providing the grievor with a workplace environment in which a new employee could realistically succeed over the course of her probationary period, including her having reasonable assessment and guidance along the way, or were there a variety of ongoing circumstances within the workplace taking the situation sufficiently outside the grievor's control such that she was realistically bound not to succeed despite her best and competent efforts. At the same time the Employer acknowledges its obligation to provide a safe and healthy work environment, for any employee. A consideration of the grievor's efforts at succeeding included one having to review

certain documented incidents and occurrences prior to her release which generated discipline and which were seen by her superiors, certainly, to reflect adversely on her suitability, and her commitment to succeed at the job. In this respect, much of the evidence presented at hearing can be said to be contentious, realistically raising issues speaking to motive, and credibility, and the overall attitude or actions of co-workers, and reactions by superiors.

The job description under which the grievor was hired sets out at some length her expected responsibilities in providing support services within the community in order to identify needs involving both crisis intervention and ongoing child or parent-child relations' management and find appropriate solutions within the community. As pointed out during the course of the hearing, the job description document applicable to the grievor, in addition to suitable education and experience required:

**The incumbent must have the ability to work independently with a minimum of supervision. Skills in managing a varied caseload are required. The nature of the caseload requires a high level of skill in problem solving techniques and the ability to reach sound decisions in highly stressful situations.**

**Exceptional skills in communication and interviewing techniques are required in both written and verbal form; effective listening skills are essential to fulfill the demands of the position.**

**The incumbent must have the ability to work effectively in a cross-cultural setting, have direct counselling experience, and have an understanding of human behaviour and development as well as a family dynamics.**

The grievor's credentials and professional background leading to her accepting the job offer cannot be considered in dispute. Between 1993 and 1999 she held positions in Peace River and Edson, in the province of Alberta, as a child welfare worker, employment counsellor, support services worker, income support worker, and supervisor, working for the Department of Family and

Social Services, running the gamut of usual programme delivery. Her experience included working within the team concept in organizing, liaising, and providing action plans for assigned clientele in a variety of circumstances giving rise to Provincial support or intervention. Between 1999 and 2003 the grievor worked as a regional manager for Native Counselling Services of Alberta, positioned in Edmonton with duties which included co-ordinating and organizing the work of staff under her supervision to ensure effective programme delivery in order to meet the varied needs of the assigned clientele within her region. It included creating and overseeing the delivery of programming and resources at the regional level, relative to eight separate offices, budgeting and monitoring of financial expenditures. She also participated in hiring, and doing performance evaluations of programme staff, and ensuring as the regional manager that they received ongoing training support and development, working in the areas of family support, child welfare issues, employment counselling, and court worker assignments within aboriginal communities. The grievor testified that her past total disciplinary record while working in Alberta amounted to a one-day suspension for having taken part in an illegal strike action. She said that during all those years she never received a below standard work performance rating in any of her formalized annual work appraisals.

By the grievor's description, she left her position in Alberta in 2003 after having decided to relocate to the outlying community where some members of her immediate family had lived for many years, including parents and sisters, and where she considered she had numerous ties and a commitment to the community. Her family was of aboriginal descent, being members of the Metis nation. As a single parent, she made the decision to live in the community and place her son in school there in September 2003. At the time of applying for the available permanent position with

YHSSA in April 2004, she had been working as a community social worker on a casual employment basis for Health and Social Services in that community since the previous November. She said that her on-site training for her period of casual employment was a matter of starting work and being shown the files on which she would be working. By her recollection, she spent about three hours with the other community social worker reviewing a manual with her, and talked to the office supervisor, Robert Hopkins who was positioned in Yellowknife, from time to time. She simply went about her business handling the assigned full caseload. She said that she never met Mr. Hopkins "face-to-face" until the spring of 2004. She also recalled that from time to time she also received advice from another supervisor positioned in Yellowknife, Margo Kennedy.

The grievor testified that she applied for a permanent position as a community social worker in April 2004 at the suggestion of the community co-ordinator, but that immediately upon commencing her duties in the permanent position she was told by the other social worker in the same office that she was disappointed with the choice. She had wanted one of her friends to get the job, who had been out of the Northwest Territories during the time of the interviews. To put it bluntly, serious difficulties in their working relationship, and with other co-workers, by the grievor's observation, surfaced almost immediately on her accepting the position although not with respect to the case load on which she worked. The grievor started seeing various persistent issues developing which she felt plainly impacted the supposed professionalism of the office. This included co-workers showing up late, and upon arrival not starting to immediately deal with client matters, also their "gossiping" in front of clients and talking about other persons' files with co-workers within hearing distance of clients. She saw there to be emotional discord openly displayed

at work, even some suspected ongoing illicit drug use by one co-worker, the administrative assistant. The evidence in many respects centered on the unhappy and deteriorated relationship amongst co-workers, with certain matters and occurrences being recorded on the grievor's file as time passed, including a successful allegation of harassment made by the grievor against the community coordinator, as investigated. The grievor encountered some disciplinary responses with respect to her own actions, and eventually experienced the immediate contentious circumstances leading to the release decision being taken by her superiors.

The first Employer called witness, Margo Kennedy, became an acting supervisor for YHSSA in June 2004, with duties primarily focussing on intake and investigation matters, before accepting the position on a permanent basis in February 2005. To that point she had been an investigator and case manager at the YHSSA for some six years, having previously worked in Alberta doing child protection work in Slave Lake and also in a regional position with Child and Family Services. By Ms. Kennedy's description, from August 2004 onward she was supervising four staff workers in Yellowknife, before taking on the supervisory duties from mid-December onwards, both administrative and clinical, over the two community social workers positioned in the outlying communities, including the grievor who had started working in her indeterminate position eight months earlier, with a one-year probationary period to apply. She described her main responsibilities in her supervisory role as being available to staff on a consultative basis, providing guidance and clinical direction if need be on difficult files as matters developed, and assisting them in team building efforts as might be necessary. She also expected she would play a role in the performance review process, including meeting with individuals and setting objectives within an

office under her supervision including the one in the outlying community. She saw her clinical supervisory role as involving discussions with the social workers respecting their caseloads, reviewing their reports and their dealings with any clients including both the children and the adult services' files within the community. Her administrative supervisory duties included reviewing and approving time sheets, hours and scheduling, and time off requests. She recollected that the previous supervisor in the outlying community, Robert Hopkins, who had only provided clinical supervision from his office in Yellowknife, had mentioned that there had been "difficulties" in that office for several months involving both community social workers and the community co-ordinator. Generally her involvement would be in discussions held by telephone as well as reviewing the written case scenarios and reports submitted to her Yellowknife office. She acknowledged that on moving into the supervisory duties over the outlying community caseworkers, she was not yet familiar with the community workers or any perceived interpersonal difficulties having arisen amongst them. She also acknowledged never having been a part of setting out any specific objectives or expectations with respect to the grievor's work as a social worker, having only come into a direct supervisory role over the outlying community office in mid-December 2004. By Ms. Kennedy's recollection, her first conversation with the grievor had been over the phone in August 2004, about two months after she had taken on acting supervisory duties in Yellowknife, but while Mr. Hopkins was still doing the formal clinical supervision of the caseworkers positioned in the outlying community.

Ms. Kennedy testified that prior to becoming a supervisor she had worked in the Yellowknife office for the previous two years, and had herself received at least one performance evaluation, by

