

*Case Name:*

**Nasee v. God's Lake First Nation**

**IN THE MATTER OF a Complaint of Alleged Unjust  
Dismissal - Adjudication under Division XIV - Part III  
of the Canada Labour Code**

**Between**

**Smitty Robert Nasee, employee, and  
God's Lake First Nation, employer**

**Human Resources Development Canada File No. YM2707-5339**

[2002] C.L.A.D. No. 128

Canada

Labour Arbitration

**B.P. Schwartz, Adjudicator**

Heard: Winnipeg, Manitoba, February 19, 2002 via  
telephone conference.

Decision: March 19, 2002.

(19 paras.)

**Appearances:**

Smitty Robert Nasee, for himself.

David Nassie, C.E.O., and Beverly Bee, Operators Manager, for the employer.

---

**AWARD**

**1** This is a complaint of unjust of dismissal by Mr. Smitty Nasee ("Mr. Nasee"). His employment was as a front-line Child and Family Services Worker.

**2** There was no disagreement that this was an important job that carried with it grave responsibilities. If a child in need of protection is not given adequate attention by agency workers, the consequences may be tragic.

**3** It is also job that can be emotionally taxing. At one point during his tenure there, Mr. Nasee spoke to his employers of how difficult it was to carry out this responsibility on a reserve where "everyone knows everyone else". Mr. Nasee's employers acknowledged the difficulty, but observed that it is inevitably part of the job.

**4** No one questioned that Mr. Nasee was a person who had the inherent ability to perform well at this very difficult job. I am not making any adverse finding in this ruling about Mr. Nasee's on-the-job performance except in one respect: the issue of his following proper procedures with respect to leaves.

**5** Mr. Nasee was dismissed for going absent from his job without taking the steps required by band policies for notice and approval of leaves.

**6** These band policies require that a person apply two weeks in advance of the leave. In the context of a child and family services agency, the consequences of failure to follow procedures can be catastrophic. A substitute worker may not be in place and a family situation requiring urgent attention in order to protect health, or even life, may not be properly addressed. A written statement of the policy on leaves is given to all agency employees.

**7** There was a prior history of Mr. Nasee's going absent without leave. The band followed a policy of progressive discipline and kept detailed records of various meetings and correspondence with Mr. Nasee, including those that involved reprimands or suspensions.

**8** Mr. Nasee was suspended for a week in October, 1999, for not informing his supervisor that he was going to be away from the community.

**9** On January 7, 2000, he was given a verbal reprimand with respect to another episode in which he was away from his duties without notice or permission. On May 4, 2000, another incident occurred in which Mr. Nasee was away for three days before he called in sick. He was spoken to by his supervisor.

**10** A month later, Mr. Nasee agreed to move to a less stressful position in the agency for a while. He worked at a desk job involving statistics. After a short time, however, he requested to return to the front line position. He was allowed to do so. His supervisors, however, met with him and emphasized that he must follow policies and procedures. They spoke of how agency officials are role models in the community.

**11** On November 3, 2000, Mr. Nasee was again absent from the community without having followed procedures.

**12** Mr. Nasee testified that he had gone out of town to take a course. He further testified that he had informed some fellow employees of the possibility of his doing so. Mr. Nasee did not recall being absent on some of the earlier occasions for which he was disciplined.

**13** The testimony of Beverly Bee, Operations Manager, however, was that he had not followed the officially prescribed step of notifying his supervisors two weeks in advance and obtaining permission. As a result, Mr. Nasee's absence came as a surprise to his supervisors.

**14** While Mr. Nasee's supervisor recommended a suspension of two weeks, the Chief in Council dismissed him. The collective view was that Mr. Nasee had been warned and disciplined in the past and had not mended his ways. The consequences of being absent without leave are serious, and

agency workers must set a positive example for the community as a whole in the responsibility and self-discipline they bring to the job.

**15** I have accepted the overall account of events provided by agency officials for the following reasons:

- The band witnesses supported their testimony by referring to precise written records;
- The band witnesses seemed careful to be precise in their testimony, and did not exaggerate any concerns they had about Mr. Nasee's performance history;
- The band witnesses testified credibly that they had attempted to be genuinely understanding of Mr. Nasee's personal and professional difficulties. These included the fact that Mr. Nasee's family had moved away from the reserve, leaving him isolated, and the fact that his job carries with it great responsibility and stress. The substance and tone of the testimony by band witnesses did not suggest that they had any personal hostility towards Mr. Nasee.

**16** Mr. Nasee was planning to resign from the agency in any event around the time of his dismissal. As noted, his family had moved away and he was all alone in the community. Understandably, however, he would have preferred the dignity of being permitted to leave voluntarily.

**17** Mr. Nasee did deserve a measure of sympathy and respect for the contribution he had made to the community. He had taken on a difficult task. It is one that benefits vulnerable individuals, including children. It is never an easy job in any context, and even harder in a small community like a reserve.

**18** I must conclude, however, that the band had valid grounds for terminating his employment. It had a firm policy about taking proper steps to arrange leaves. That firmness was based on profound concerns about health and safety. The agency informed all employees of this policy. When Mr. Nasee did not comply with the policy on several earlier occasions the employer did not immediately dismiss him, but instead took lesser disciplinary steps. The band throughout kept complete records of both the performance issues and disciplinary steps it took. As far as I can determine, the agency had a reasonable policy, properly informed employees of it and took the path of progressive discipline when Mr. Nasee did not comply on several initial occasions. I am unable to say that the agency was unjust in the final decision it took in this matter.

**19** Accordingly, the grievance is dismissed.

qp/d/qlklc