IN THE MATTER OF AN ADJUDICATION UNDER DIVISION XIV-

PART III OF THE CANADA LABOUR CODE

COMPLAINT OF UNJUST DISMISSAL

BETWEEN

Tla'amin Community Health Board Society

(the "Employer");

AND

Ms. Jeannie Bassett

(the "Complainant");

AWARD

ARBITRATOR:	RICHARD COLEMAN
FOR RESPONDENT (The "Band"):	JOHN W. GAILUS
FOR THE COMPLAINANT :	RICHARD B. JOHNSON
DATE OF AWARD:	MAY 9, 2012

This decision concerns a preliminary matter of jurisdiction related to a complaint of unjust dismissal filed by Ms. Jeannie Bassett, against the terminated of her employment on July 4, 2011. At the time of her discharge, Ms. Bassett was employed as the Finance Manager of the the Tla'amin Community Health Board Society (The Society), which has been delegated the task of administering certain health services and facilities to registered members of the Sliammon First Nations. (There is some question as to whether the First Nation or the Society is the employer but that issue need not be addressed here). Upon her termination the Complainant filed a wrongful dismissal complaint pursuant to sec. 240 of the *Canada Labour Code*. I was duly appointed by the Director General of the Federal Mediation and Conciliation Service.

The hearing proceeded by way of written submissions. Neither side objected to the essential facts relied on by the other.

The Respondent argues in this preliminary application that the Complainant's employment was properly under provincial rather than federal control, and therefore she is not covered by the Canada Labour Code, and has no access to sec. 240.

The essential facts relative to the jurisdictional issue are not controversial. The Society was created by the Sliammon First Nation and receives its mandate from that body, which also provides oversight. In 1995 the Society was incorporated under the British Columbia Society Act. The stated mandate at the time was articulated under three points in the Society's constitution:

- to improve and maintain the health status, lifestyle, and programs in communities of Sliammon First Nation;
- to improve and promote the "wellness" of the community in a wholistic (sic) manner; and
- to improve and maintain the existing standards of service delivery in an equitable manner for all Sliammon First Nations.

Those governing purposes were revised somewhat in 2003 and now read:

> The purposes of the Society are:
>
> a. to establish, administer and improve health services, public health services and facilities in respect of such services for which the Society is responsible to the registered members of the Sliammon First nation and to other persons, registered as members of a First Nations Band, ordinarily residing

on the Coast of British Columbia between and including Lund and Saltery Bay and on Texada and Savary Islands;

b. to improve and promote the wellness of the community in a wholistic (sic) manner which includes "Tla'Amin cultural, spiritual, healing and counselling practices to be blended with the techniques of modern medicine;

Activities are to be carried out on an "exclusively charitable basis". As per the 2003 governing purposes, the recipients are to be "registered members of the Sliammon First nation and...other persons, registered as members of a First Nations Band, ordinarily residing on the Coast of British Columbia between and including Lund and Saltery Bay and on Texada an Savary Islands"

The Society employs fifty individuals, and administers health services that include dental therapy, environmental health, chronic disease management, home and community care assistance, child care and family programs, addictions services and support workers, community health nursing, a medical health officer, and health promotion services that include nutrition and tobacco control strategies. Subsequent to the Complainant's dismissal, the B.C. Labour Relations Board certified the B.C.G.E.U. as bargaining agent for the Society's employees other than the Health Director, the Associate Health Director and the Manager of Child Development and Resource Centre. There is no evidence that the jurisdiction of the B.C. Labour Relations Board was an issue between the B.C.G.E.U. and the Society.

Health programs and services are provided according to terms set out in a Contribution Agreement between the Sliammon First Nation and Health Canada, pursuant to which the Sliammon First Nation "has agreed to provide health services and programs meeting certain standards and to provide reports to the federal government regarding how the funds have been expended" (*quoted from the Respondent's submission). Funding is also received from several B.C. provincial sources, including the Ministry of Child and Family Development and the Vancouver Coastal Health Authority, the provincial Aboriginal Training Employment Program, and the B.C. Child Initiative. But there is no evidence before me of any professional oversight or supervision by any provincial body; which is to say, for example, that the Ministry of Child and Family Development has not formally delegated its provincial responsibilities to the Society.

Additional non provincial funding is received from the First Nation Employment Society, the First Nations Health Council; plus proposal driven funding from Human Resources and Skills Development Canada.

The Complainant began working for the entity which eventually became the Society, in 1995 as the receptionist. She became the Society's Finance Manager in April of 2009.

The Respondent argues that however the law may have seemed or been understood, in the past, the Supreme Court of Canada's (SCC) decision in *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union* [2010] S.C.J. No. 45, has now firmly established the predominance and meaning of what has been termed the "functional test", whereby endeavors which are otherwise provincial and within provincial jurisdiction by virtue of their "nature, operations, and habitual activities", do not fall into the federal sphere simply because they are carried on by and for the benefit of First Nations individuals. Mr. Gailus points to *NIL/TU,O* and the subsequent application of the tests set out therein, in *U.N.A. v. Aakon-Kiyii (Peian/Pikkani) Health Services*, [2011] A.L.R.B.D. No. 26, *Oneida of the Thames Emergency Medical Services*, 2011 CIRB 564, and *Norway House Cree Nation* [2011] M.L.B.D. No. 26, as determinative that the provision of health services on native reserves are a provincial jurisdiction, and that employment matters related to the provision of those services are also of provincial jurisdiction and not federal.

I take the central piece of the Complainant's argument to be that the current case is distinguishable from *NILTU,O* on a number of points. Directly related to employment, *NIL/TU,O* they say, relates to labour relations and union certification rather than employment law, and the protections and remedies offered in provincial employment standards are less than those provided in the Canada *Code* or under labour law. In particular sec. 240 adjudication of discharge and the right to reinstatement are not replicated, nor have they any parallel. It is also argued that it is apparent from multiple references to *Canada Labour Code* provisions in the Society's policy manual, that the parties in the current matter always intended that the *Canada Labour Code* and its provisions applied to Society employees

With respect to the mandate of the Society itself, Mr. Johnson argues that the circumstances referenced in *NIL/TU,O* as critical facets of that fact pattern which brought the undertaking in question in that case--child welfare services--into the provincial sphere, have no parallel in the current matter. The logic, as I understand it, is that the Society in the instant case should be seen

as much more closely controlled and regulated by the Sliammon First Nation, as opposed to a provincial body or authority, and to the extent that the activities of the Society are in fact activities of the First Nation. Hence, the Society's employees should be treated as being involved in Indian business rather than the health business *per se* and thereby are no different from the administration of Band/First Nation business, which, they say, is work concerning "Indians, and Lands reserved for the Indians" and thereby under exclusive federal jurisdiction pursuant to s. 91(24) of the *Constitution Act, 1867*. It therefore meets the jurisdictional requirement in the *Canada Labour Code* by virtue of being "work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces".

II

Analysis and Decision

The Analytical Framework:

There is no question that the SCC in *NIL/TU,O* has established a template for addressing questions of federal/provincial jurisdiction over employment matters concerning First Nations. I think it is safe to say that with few exceptions, until *NIL/TU,O,* employment by a Band or for a First Nation, or on a reserve, was presumed by many if not most, to fall under federal jurisdiction and the *Canada Labour Code*. But that is no longer the case, if indeed it ever was. The majority in *NIL/TU,O* essentially reaffirmed and applied the principles and rules established three decades earlier in *Northern Telecom Ltd. v. Communications Workers of Canada*, [1980] 1 S.C.R. 115. At paras. 13 and 14 of NIL/TU,O:

> 13. The principles underpinning this Court's well-established approach to labour relations jurisdiction are set out by Dickson J., writing for a unanimous Court, in *Northern Telecom*. The case dealt with the jurisdiction of the labour relations of a subsidiary of a telecommunications company which was itself unquestionably a federal "work, undertaking or business" under s. 92(10)(a) of the *Constitution Act, 1867*. Adopting Beetz J.'s majority judgment in *Construction Montcalm*, Dickson J. described the relationship between the division of powers and labour relations as follows:
>
> (1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.
> (2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.
> (3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but

only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.

(4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one. [p.132]

14. He then set out a "functional test" for determining whether an entity is "federal" for purposes of triggering federal labour relations jurisdiction. Significantly, the "core" of the telecommunications head of power was not used to determine, as part of the functional analysis, the nature of the subsidiary's operations:

(5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.

(6) In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity. [Emphasis added; p. 132.]

NIL/TU,O goes on to establish that only if the functional test is "inconclusive", is it necessary to proceed to a second step articulated by Beetz J. in *Four B Manufacturing Ltd. v. United Garment Workers of America,* [1980] 1 S.C.R. 103, as an examination of "whether the labour relations in issue forms an integral part of primary federal jurisdiction over Indians and Lands reserved for the Indians." (NIL/TU,O para. 17). The majority in *NIL/TU,O* interpreted the second inquiry as "whether provincial regulation of the entity's labour relations would *impair the core of the federal head of power at issue*" (emphasis added). At para. 18:

18 In other words, in determining whether an entity's labour relations will be federally regulated, thereby displacing the operative presumption of provincial jurisdiction, *Four B* requires that a court first apply the functional test, that is, examine the nature, operations and habitual activities of the entity to see if it is a federal undertaking. If so, its labour relations will be federally regulated. Only if this inquiry is inconclusive should a court proceed to an examination of whether provincial regulation of the entity's labour relations would impair the core of the federal head of power at issue.

I read the references to "labour relations" *Four B, Northern Telecom, and NIL/TU,O* as reflecting the facts of those cases rather than a limiting of the logic to labour relations as opposed to employment in general. I reject the Complainant's contention, at least as it concerns the

functional test, that there is a manifest difference between labour law where union representation is involved, and employment law where the employee is on their own subject to employment standards regulation and common law. The judgement in *Northern Telecom* sweeps it all into the same package with the sentence "the terms of a contract of employment". I also reject the Complainant's arguments that the incorporation of sections of the *Canada Labour Code* into the Society's employment policies has any bearing on the question of constitutional jurisdiction. Those terms may be relevant in determining employment obligations in a contractual sense, but not in determining jurisdiction

In the result, I take it to be settled that, (1) exclusive provincial competence over labour relations is the rule; (2) the same applies to employment law; (3) a service designed for, and delivered to, First Nations people does not automatically fall into the class of subject "Indians and Lands reserved for Indians" and thereby does not automatically fall under federal jurisdiction. Where employment is concerned, there is a rebuttable presumption to the contrary, through a two step test: the functional test followed, if necessary, by what I will call for convenience, the "impairment" test, given the use of the term "impair" in NIL/TU,O para. 18.

Application of the analytical framework:

What then is required of the "normal or habitual activities" of a the health related services entity to enable a conclusive decision that it falls into federal or provincial jurisdiction? *NIL/TU,O* has two parts: the one summarized above establishes a legal framework and sets the order and nature of the inquiry. The second part applies those rules to the facts of that case, and is instructive as to what kind of connection is sufficient.

The *NIL/TU,O* majority analysis and discussion of the evidence begins at para. 23 and goes on for 22 paragraphs to record and consider in some detail, the various connections between the NIL/TU.O operation and the provincial and federal governments respectively. They note that "the federal government's role in the arrangement is limited to financing NIL/TU,O's provision of certain services to certain children". But otherwise, the NIL/TU,O Child and Family Services Society operates almost entirely under a provincial statute, the C*hild, Family and Community Service Act*, in accordance with the requirements of that statue and under the oversight of provincial authorities. Its employees are likewise provincially accountable.

The majority's findings are summarized in para 45:

> 45 The essential nature of NIL/TU,O's operation is to provide child and family services, a matter within the provincial sphere. Neither the presence of federal funding, nor the fact that NIL/TU,O's services are provided in a culturally sensitive manner, in my respectful view, displaces the overridingly provincial nature of this entity. The community for whom NIL/TU,O operates as a child welfare agency does not change *what* it does, namely, deliver child welfare services. The designated beneficiaries may and undoubtedly should affect how those services are delivered, but they do not change the fact that the delivery of child welfare services, a provincial undertaking, is what it essentially does.

The same detailed and evidence-based approach is reflected in all of the post *NIL/TU,O* cases cited to me. All accept, as they must, the legal analytical framework, and then go on to measure the nature, operations and habitual activities in question according to their particular circumstances including what ties each operation to a provincial or federal power.

In *Oneida of the Thames Emergency Medical Services* [2011] CCRI 564, the Canadian Industrial Relations Board applied the functional test to a land based ambulance service operated by the Oneida First Nation. The issue was whether the Canada Board had jurisdiction to award a federal bargaining certification to the C.A.W. The CIRB found that Oneida EMS was "a distinct operation, reporting to the Oneida Nation", that it "was established...pursuant to an agreement between the Oneida Nation and the Ontario government", that "its operations are regulated by the *Ontario Ambulance Act*, R.S.O. 1990, c. A.19 and the Regulations thereunder", and that it was "entirely funded by the Ontario Ministry of Health and its hours of operation are set by the Ministry of Health." On those facts, they concluded that the nature, operations and habitual activities fell under provincial jurisdiction. As with *NILT/U,O,* the conclusion that the functional test produced a "conclusive" result favouring provincial jurisdiction, centered on a finding of direct and significant provincial regulatory involvement.

Norway House Cree Nation [2011] M.L.B.D. No. 26, is a decision of the Manitoba Labour Relations Board concerning certification applications by the Manitoba Nurses Union for "all nurses employed by Norway House Cree Nation in 'Home and Community Care, and Public Health'", and "all nurses employed by the Pinaow Wachi Personal Care Home". The community care operation is administered directly by the Norway House Cree Nation; the Pinaow Wachi Personal Care Home is a provincially incorporated non profit seniors' care home. The normal and habitual activities of both entities were health related and delivered by provincially regulated nurses.

The determinative findings of the MLRB are found a para. 27, which reads in part:

27.

...

b) The Respondent, Norway House Cree Nation, operates a community health clinic which provides community health services, addiction services, public health initiatives and home care utilizing nurses, *who are the employees in the applied for bargaining unit, who are regulated and licensed pursuant to provincial legislation*. The nature of the operation is a health care service...

c) The Respondent, Pinaow Wachi Inc., is a provincially incorporated non-profit corporation licensed and regulated by provincial legislation which provides residential personal care for elderly persons utilizing nurses, who are the employees in the applied for bargaining unit, *who are themselves regulated and licensed pursuant to provincial legislation*. The nature of the operation is a health care service...

d) Health is not a head of power under section 91 of the *Constitution Act, 1867*. It is not a matter under the exclusive power of Parliament. Rather it has a double aspect. Pursuant to sections 92(7) and 92(13) of the *Constitution Act, 1867*, Provincial Legislatures have extensive jurisdiction over health.

e) Applying the functional test to the Respondents' operations, the Board is satisfied that the nature, operations and habitual activities of the Respondents do not constitute federal undertakings. Rather, they are provincial undertakings and the presumption in favour of provincial jurisdiction over the labour relations in question remains operative.

f) ...For the reasons set out above, the Board has determined that the functional test is conclusive. The essential nature of both the Respondents' operations is health care services, which is not a federal undertaking.

(emphasis added)

Again, the conclusive result favouring provincial jurisdiction is centered on evidence of a direct and significant provincial regulatory involvement. In both bargaining units the employees are regulated and licensed pursuant to provincial legislation

The last case, chronologically, is *UNA v. Aakom-Kiyee Health Services* [2011] ALRBD No. 26, a decision from the Alberta Labour Relations Board which addresses the question of jurisdiction to certify the United Nurses of Alberta for what are described as “two separate independently structured health departments”. The employees concerned are described as "all employees employed in direct nursing care or nursing instruction". Both operations are federally registered corporations. The Blood Tribe Department of Health Inc. ("BTDH") provides “a continuum of

health care services including community health services", emergency medical services, home care, plus six health facilities located on reserve lands. The second entity and proposed bargaining unit, is described as a "Health Services Department...staffed with nurses, visiting physicians, social workers, a home care program, community services, public health, and children's services." General facts are summarized in the following two paragraphs:

> [37] In this case we are satisfied the Respondents are providing health services that the federal government primarily funds. The Respondents both entered into agreements with the federal government surrounding the provision of these services and the funding element contained within these agreements. These agreements require regular reports and financial oversight by the federal government. Both entities are expected and required to act within both federal and provincial laws (see exhibit 1 - tabs 5, 6, and 7; exhibit 3 - tab 7, section 13 [specifically clause 13.5.1], and exhibit Page 16 3, tab 11). The federal government, however, plays no operational role or other oversight role although, in the case of AAKOM-KIYII Health Services, the Health Director for the Respondent has ongoing dialogue with federal agencies. We heard no evidence, however, that any of this discussion relates to how medical and health services are actually administered.
>
> [42] With health not assigned exclusively to one level of government, we must examine closely the nature, operations and habitual activities of the entity. The Respondents both provide health care delivery through the professional services of accredited nurses. As provided by section 92(13) of the Constitution Act, 1867 the province is empowered to regulate the health care profession and, indeed, the accreditation, licensing and regulation of registered nurses employed throughout Alberta are all provincial in scope. This does not change depending on location...whether on or off an Indian Reservation. As confirmed by the evidence we heard, the nurses for both organizations must deliver care in accordance with provincial standards. The nurses seeking certification are required to be licensed by the provincial College and Association of Registered Nurses of Alberta and follow the regulatory requirements governing the practice of nurses within the province. They must follow the codes of practice established by the provincial College.

Between these two paragraphs, this case provides a useful discussion and summary of constitutional jurisdiction over health care in Canada, citing (at para. 40) the SCC decision in *Schneider v. British Columbia,* [1982] S.C.J. No. 64:

> This view that the general jurisdiction over health matters is provincial (allowing for a limited federal jurisdiction either ancillary to the express heads of power in

> s. 91 or the emergency power under peace, order and good government) has prevailed and is now not seriously questioned (see *Rinfret v. Pope* (1886), 12 Q.L.R. 303 (Que. C.A.), Re *Bowack, supra, Labatt Breweries of Canada Ltd. v. Attorney General of Canada*, [1980] 1 S.C.R. 914, per Estey J.).

But noting in a summary sense, at para. 38,

> Health is not a single matter assigned exclusively to one level of government by the *Constitution Act, 1867*. Like inflation and environment, it is an amorphous topic, which in its entirety encompasses matters within federal as well as provincial jurisdiction. A law dealing with some aspect of health will come within federal or provincial jurisdiction depending upon the purpose and effect of the law.

The Alberta Labour Relations Board ultimately decided that, on the facts before it, jurisdiction was provincial, specifically basing its conclusion on the following findings:

* The operations entail the provision of nursing services, which is a provincial matter;
* The accreditation, licensing and regulation of the nurses is provincial;
* The nurses must perform their duties in a manner that complies with provincial nursing standards or risk discipline by a provincial regulatory body;
* Discipline by their provincial regulatory body could lead to the inability to be employed as a nurse anywhere in the province, including on the Reserve;
* The nurses are not in the employ of Health Canada nor are they members of the Public Service of Canada;
* The nurses are not employed pursuant to delegated authority under a federal statute or regulations;
* The fact many of the nurses are aboriginal persons is not relevant for our consideration;
* The reality of the service being delivered on Reserve in a culturally sensitive manner to mainly aboriginal clientele is again not relevant to our determination although it is clearly a desirable component for effectively delivering the service;
* Similarly, the source of the funding for the majority of the health services is not determinative.

The fact patterns in these cases were clearer and more determinative of the issue of which level of government has jurisdiction over the "normal and habitual activities" being considered, than what is before me. In all four cases there was evidence of a direct and conclusive connection between the entity and some provincial based authority. The evidence I have in that regard is that funding is received from a variety of federal and provincial sources. There is no evidence of

government oversight other than the Contribution Agreement with the federal government, which is described as an agreement "to provide health services and programs meeting certain standards and to provide reports to the federal government regarding how the funds have been expended". There is no indication as to what "certain standards" includes, and only financial reporting is listed. This evidence is minimal, and is not particularly helpful in discerning who has formal oversight and regulation of the different activities.

Nonetheless, the applications and consideration of the underlying principles set by the SCC are instructive. The main principle is a strong presumption in favour of provincial jurisdiction over labour relations. I have already addressed the question of whether the same applies to employment law. From *Construction Montcalm*: "Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule". A second principle concerns the general presumption about health care. It may be, that "health is not a single matter assigned exclusively to one level of government by the *Constitution Act, 1867"*. But, "the general jurisdiction over health matters is provincial (allowing for a limited federal jurisdiction either ancillary to the express heads of power in s. 91 or the emergency power under peace, order and good government)" from *Schneider v. British Columbia, supra*.

It is worthwhile to repeat the list of activities in which the Society is involved: health services that include dental therapy, environmental health, chronic disease management, home and community care assistance, child care and family programs, addictions services and support workers, community health nursing, a medical health officer, and health promotion services that include nutrition and tobacco control strategies. Despite the minimal information put before me about oversight and regulation of those activities, I cannot ignore the content and length of the list of what are on their face the Society's normal and habitual activities--the "what" it does--all of which are generally and essentially about health care services and health promotion which are in turn, close in subject matter to what are normally provincial activities.

I would have preferred to base a decision on a more detailed knowledge about each of the areas listed, the professional status of those doing the work (as per the registered nurses in the labour board cases), and the precise involvement of provincial or federal authority (as per *NIL/TU.O* and *Oneida*). But given the list of the Society's activities and the governing principles, I think that there is sufficient information to find that the functional test is conclusive, and that the normal

and habitual activities are within the provincial jurisdiction. Looked at in reverse, the evidence is not “inconclusive”.

I have considered whether the ultimate decision regarding jurisdiction would be any different if I had concluded that the evidence was insufficient to make a “conclusive” finding on the functional test, making it necessary to move ahead to the “impairment” test. I think not. In the circumstances the “impairment” question would be whether the core of the federal head of power--”Indians and Indian Lands”--would be impaired by provincial regulation of employment with the Society *vis a vis* employment law. The main potential issue in that respect is available remedies. Mr. Johnson for the Complainant has accurately pointed out that remedies under the *Canada Labour Code* are quite different and broader than anything in the provincial sphere, and in particular, allow reinstatement as well as “any other like thing that it is equitable...to remedy or counteract any consequence of the dismissal”.

I agree that the removal of a right to reinstatement does touch on issues of “Indians and Indian Lands” because of the potential that a dismissed Native person may have to move away from their Native community to find reemployment, a kind of economic banishment. In that regard, the list of “matters that may go to the status and rights of Indians” provided at para. 71 of NIL/TU,O includes:

> "relationships within Indian families and reserve communities": *Canadian Western Bank*, at para. 61; * "[R]ights so closely connected with Indian status that they should be regarded as necessary incidents of status such for instance as registrability, membership in a band, the right to participate in the election of Chiefs and Band Councils, reserve privileges, etc.": *Four B*, at p. 1048;

Attachment to, and involvement in, the Community is clearly an important part of what the Court has in the past termed "Indianness" (see NIL/TU,O, para. 55, reference to *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 181: “That core has been described as matters touching on "Indianness"..or the "core of Indianness" (*Dick*, *supra*, at pp. 326 and 315; also see *Four B*, *supra*, at p. 1047 and *Francis*, *supra*, at pp. 1028-29).

The difficulty with this argument is that even under the *Canada Labour Code*, Division XIV Wrongful Dismissal, including sec. 240 and its attendant rights, does not apply to managers (see *Canada Labour Code*, sec. 167(3). Hence a manager dismissed without cause could face moving away by the rules in either jurisdiction. If such a circumstance would not go to the status and

rights of a Native person because they have been employed as a manager, it is difficult to reconcile a conclusion that it would do so for a non-manager.

In the result, I find that the Society falls under provincial jurisdiction with respect to the employment and the discharge of the Complainant, and thus, sec. 240 of the Canada Labour Code does not apply and I have no jurisdiction.

It is so awarded.

Dated in Vancouver, B.C., this 9th. day of May, 2012.

Richard Coleman, Arbitrator