

# An Act

## **LEGISLATIVE ACT 17-05**

### **AN ACT RELATING TO EMPLOYEES OF THE CHEROKEE NATION OR ITS WHOLLY OWNED CORPORATIONS; TERMINATION APPEALS PROCEDURES AND EMPLOYEE BACK PAY ACT OF 2005; PROVIDING FOR SEVERABILITY AND DECLARING AN EMERGENCY**

**BE IT ENACTED BY THE CHEROKEE NATION:**

#### **SECTION 1. TITLE AND CODIFICATION**

This Act shall be titled as “the Employees of the Cherokee Nation or its Wholly Owned Corporations; Termination Appeals Procedures and Employee Back Pay Act of 2005 ” and codified as Title 51, Section 1001 ET. Seq., of the Cherokee Code Annotated.

#### **SECTION 2. PURPOSE**

The purpose of this Act is to provide legislative authority for the award of back pay to employees who are reinstated to their positions after administrative and/or judicial procedures are followed.

#### **SECTION 3. LEGISLATIVE HISTORY**

Title 51 of the Cherokee Nation Code Annotated, Article V, Section 7 of the Cherokee, Legislative Act 12-96, 20-96

#### **SECTION 4. DEFINITIONS**

For the purposes of this Title:

- A. “Employee” shall mean a person who has been directly employed by the Cherokee Nation or its wholly owned corporations on a regular full-time basis for at least one continuous year immediately prior to termination of employment, but shall not include employees who have limited term contracts, employment agreements, or are considered independent contractors. For purposes of employee termination appeals under this Act this term shall not include employees of specialized authorities and entities created by the legislature, such as, but not limited to, the Arkansas Riverbed Trust Authority.
- B. The “Nation” means the Cherokee Nation.
- C. “Back pay,” means the amount of wages denied an employee from the time of discharge until reinstatement in accordance with administrative and/or judicial procedures available to employees under Cherokee Nation laws and Constitution.

#### **SECTION 5. SUBSTANTIVE PROVISIONS**

Amend Title 51 § 1029 of the Cherokee Nation Code Annotated:

Remedies for Termination without Cause:

If the termination is overturned based on a finding that the termination was without cause by unappealed decision of the Cherokee Nation Employee Appeals Review Board or by a final decision of the Judicial Appeals Tribunal, the Former Employee shall be immediately restored to employment in the same or similar job position, with pay no less than the pay received at the time of termination,

and with benefits and back pay retroactive to the date of the termination; and the employee's personnel records adjusted as may be consistent with the action of the Cherokee Nation Employee Appeals Board or Judicial Appeals Tribunal. The remedies provided herein shall be exclusive, and the Cherokee Nation expressly declines to waive sovereign immunity as to suit for the recovery of any form of damages or other type or relief other than the relief set forth herein. All remedies listed herein shall be available to employees of corporations wholly owned by the Cherokee Nation, if said employee is successful in overturning a termination as provided through the applicable termination appeals process for that corporation.

**SECTION 6. PROVISIONS AS CUMULATIVE**

The provisions of this act shall be cumulative to existing law.

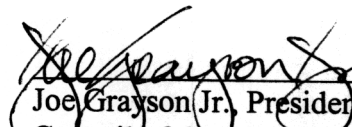
**SECTION 7. SEVERABILITY**

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

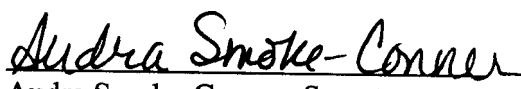
**SECTION 8. EMERGENCY DECLARED**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force upon its approval and signatures.


Enacted by the Council of Cherokee Nation on the 11<sup>th</sup> day of April, 2005.

  
Joe Grayson Jr., President  
Council of the Cherokee Nation

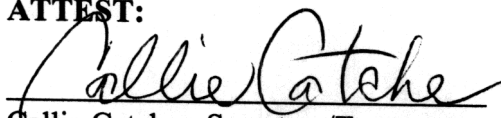
**ATTEST:**

  
Audra Smoke-Conner, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 20<sup>th</sup> day of APRIL, 2005

  
Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

  
Callie Catcher, Secretary/Treasurer  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Bill John Baker	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Audra Smoke-Connor	<u>Yea</u>	Meredith Frailey	<u>Yea</u>
S. Joe Crittenden	<u>Yea</u>	John F. Keener	<u>Yea</u>
Jackie Bob Martin	<u>Yea</u>	Cara Cowan	<u>Yea</u>
Phyllis Yargee	<u>Yea</u>	Buel Anglen	<u>Yea</u>
David W. Thornton, Sr.	<u>Absent</u>	William G. Johnson	<u>Yea</u>
Charles "Chuck" Hoskin	<u>Yea</u>	Don Garvin	<u>Yea</u>
Linda Hughes-O'Leary	<u>Yea</u>		