

**Date:** 20230420

**File:** 568-33-45521 and 45522  
**XR:** 566-33-45381 and 45383

**Citation:** 2023 FPSLREB 42

*Federal Public Sector  
Labour Relations and  
Employment Board Act and  
Federal Public Sector Labour  
Relations Act*



Before a panel of the  
Federal Public Sector  
Labour Relations and  
Employment Board

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BETWEEN

**JENNIFER SQUIRES**

Applicant

and

**PARKS CANADA AGENCY**

Respondent

Indexed as

*Squires v. Parks Canada Agency*

In the matter of an application for an extension of time referred to in paragraph 61(b) of the *Federal Public Sector Labour Relations Regulations*

**Before:** Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Applicant:** Wael Afifi, Public Service Alliance of Canada

**For the Respondent:** Elizabeth De Guerre, Parks Canada Agency

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Decided on the basis of written submissions,  
filed August 18 and 29 and September 16 and 27, 2022.

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**REASONS FOR DECISION**

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**I. Application before the Board**

[1] Jennifer Squires (“the applicant”) is a senior financial services advisor (FI-03) with the Parks Canada Agency (“the respondent”). She is part of a bargaining unit represented by the Public Service Alliance of Canada (“the bargaining agent”).

[2] On July 29, 2022, the applicant referred a grievance to adjudication with the Federal Public Sector Labour Relations and Employment Board (“the Board”). It was referred under both ss. 209(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), so that two files were created. The applicant alleged a breach of article 15 of the relevant collective agreement, which addresses discipline (Board file no. 566-33-45381), and discipline that gave rise to a termination, suspension, demotion, or financial penalty (Board file no. 566-33-45383).

[3] The grievance relates to the respondent’s denial of the applicant’s accommodation request in relation to the *Policy on COVID-19 Vaccination for the Parks Canada Agency* (“the Policy”) and its decision to place her on leave without pay.

[4] On August 18, 2022, the respondent acknowledged the referral to adjudication and raised two preliminary objections that the Board is without jurisdiction to hear them. It submits first that the grievance was not presented in compliance with the timelines prescribed in the collective agreement (between the respondent and the bargaining agent; “the collective agreement”). Second, it submits that placing the applicant on unpaid leave was administrative, not disciplinary.

[5] On August 29, 2022, the applicant responded to the preliminary objections. She argues that the Board does have jurisdiction to hear the grievance. She argues first that she did not file it earlier because she followed a process set out by the respondent. In the alternative, she asks for relief against the expiration of the time limits.

[6] On September 7, 2022, the Board invited the parties to make additional written submissions with respect to the timeliness issue. They both took advantage of the opportunity.

[7] This decision deals only with the applications for an extension of time. Pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C.

2013, c. 40, s. 365), the Board may decide any matter before it without holding an oral hearing.

## II. Background

[8] On November 8, 2021, the respondent adopted the *Policy*. It mirrored the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* that applied to employees of the core public administration and required that Parks Canada Agency employees be fully vaccinated against COVID-19 unless they were accommodated based on a certified medical contraindication, religion, or another prohibited ground as defined under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

[9] Absent an accommodation, section 7 of the *Policy* provided as follows that employees who were unwilling to be vaccinated or to disclose their vaccination status would be placed on administrative leave without pay:

### *Consequences of Non-Compliance*

***For employees unwilling to be fully vaccinated or to disclose their vaccination status by the attestation deadline of November 29, 2021, or prior to their seasonal recall date for seasonal employees, Parks Canada will implement the following measures:***

...

***7.1.3 On December 15, 2021, or upon return on strength for seasonal employees, place employees on administrative Leave without Pay advising them not to report to work, or to stop working remotely, and taking the required administrative action to put them on Leave without Pay....***

...

[Emphasis added]

[10] On January 28, 2022, the applicant submitted a request for accommodation on religious grounds.

[11] On February 23, 2022, the respondent advised the applicant that her accommodation request was denied as it did not meet the requirements outlined in the *Policy*. The respondent went on to advise her of her options, as follows:

...

*As per the Policy, you have until March 9, 2022 to attest to your vaccination status against COVID-19 **and** receive your COVID-19*

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*vaccine at the earliest opportunity. Should you fail to attest to your status, or attest that you remain unvaccinated within that timeline, you will be subject to the administrative measures as outlined in the Policy.*

...

[Emphasis added]

[12] The respondent also invited the applicant to raise any questions, and it reminded her as follows of her rights under the collective agreement should she disagree with the decision:

...

*If you have any questions related to this letter, or the Policy, you are invited to raise them with me....*

*If you disagree with this decision, you are invited to discuss your concerns with me. **You may also wish to file a grievance or contact your Bargaining Agent representative to discuss any recourse measures available to you.***

...

[Emphasis added]

[13] On February 24, the applicant did seek further clarification. She asked the respondent about the specific requirements in the *Policy* and how she had not met them. She also asked about the criteria that were used to assess the duty to accommodate.

[14] On February 25, the respondent explained that her request did not meet the requirements for a religious exemption. It again advised her that if she had any further questions or if she disagreed with the decision that she could "... perhaps reach out to the bargaining agent or [she could] also, if [she wished], file a grievance." The respondent's representative also advised the applicant that she would be out of the office starting later that day, and she provided the applicant with the name and email address of an alternate contact.

[15] On March 9, 2022, the applicant emailed the alternate contact, providing her with an "updated" version of the applicant's COVID-19 "Vaccination Attestation Form". As it indicated that the applicant remained unvaccinated, the respondent's representative reached out to the Human Resources branch to confirm the timing and the "next steps".

[16] On March 10, the respondent's representative contacted the applicant to advise her that she would be placed on leave without pay starting two weeks from the date of the letter denying her accommodation request, i.e., on that day. As the workday was already underway, she advised the applicant that the leave would start on the following day, March 11, 2022. She invited the applicant to contact her if she had any further questions about the process.

[17] On April 12, 2022, the applicant, with the assistance of her bargaining agent, filed a grievance respecting the denial of her accommodation request and being placed on leave without pay. Given the nature of the grievance, it proceeded directly to the final level of the grievance procedure, where it was presented on April 20, 2022.

[18] On May 30, 2022, the applicant attended a grievance consultation with the respondent.

[19] On June 24, 2022, the respondent provided the applicant with the final-level response to her grievance, denying it on the grounds that it was untimely and on the merits. With respect to timeliness, it stated, "You were provided the accommodation response letter on 23 February 2022. In reviewing article 16.06 of the collective agreement, your grievance is determined to be untimely."

[20] As noted earlier, the applicant referred the matter to adjudication on July 29, 2022.

### **III. Summary of the arguments**

#### **A. For the applicant**

[21] The applicant submits that she did not file a grievance when the accommodation request was denied because she was following a process prescribed by the respondent.

[22] The applicant further submits that the respondent was well aware that she did not agree with the denial of the accommodation request. She further states that this disapproval was evident in her decision to follow the process set out by the respondent by providing supplemental information to it, so that her initial accommodation request could be re-examined.

[23] The applicant states that she provided this additional information to the respondent on March 9 and 10, 2022, with a clear reconsideration request.

[24] In the alternative, if the Board finds that the timeline was not respected, the applicant submits that she should be granted an extension of time. She relies on the criteria in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, arguing that any “... real or perceived delay was mainly due to compelling and cogent reasons ...”.

[25] The *Schenkman* criteria are not a fixed mathematical formula, and the overriding goal is to determine what is fair based on the facts of the case. In *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2013 PSLRB 144 at para. 62 (“*IBEW*”), the Board held that the factors that steer the inquiry are fact driven and based on the underlying principle of what is fair in the circumstances.

[26] In *Prior v. Canada Revenue Agency*, 2014 PSLRB 96, the Board held that “fairness” is the primary and most important consideration when an adjudicator examines requests for relief against the expiration of time limits.

[27] In *Trenholm v. Staff of the Non-Public Funds, Canadian Forces*, 2005 PSLRB 65, the Board held that relief may be granted from mandatory timelines in a case in which a grievor has been diligent in enforcing their rights, injustice to the grievor from denying an extension outweighs the prejudice to the employer from granting one, and the grievance has merit.

### **1. Clear, cogent, and compelling reasons for the delay**

[28] The applicant submits that there is a clear, cogent, and compelling reason for the delay, namely, she honestly believed that there was a simple misunderstanding related to her accommodation request.

[29] The emails between the applicant and the respondent illustrate her sincere belief that there was a simple misunderstanding or perhaps a mistake that she thought would certainly be rectified once she sent her “updated” COVID-19 Vaccine Attestation Form.

[30] The applicant did not realize that she had to file a grievance until she became aware that her updated attestation had not settled the “misunderstanding”, she was suddenly on the verge of losing her pay, and the matter was more serious than she had originally thought.

## **2. Length of the delay**

[31] There is no magic threshold at which one can say that anything transmitted before that time is reasonable but after that time is not (see *Rinke v. Canadian Food Inspection Agency*, 2005 PSSRB 23 at para. 16).

[32] The applicant submits that the delay in this case was fairly short and that the respondent did not suffer any prejudice.

## **3. Due diligence of the applicant**

[33] The applicant was diligent throughout the process. She continued to communicate with the respondent’s representatives, to seek clarification. Her email correspondence with the respondent serves as proof that she tried to correct the misunderstanding. As soon as she realized that the matter was not simply about “updating” the Vaccination Attestation Form, she acted promptly and filed her grievance.

## **4. Balancing the injustice to the applicant against the prejudice to the respondent**

[34] The injustice to the applicant, should her grievances not be heard, is significant. The remedies she seeks relate to a grave injustice against her.

[35] The respondent will suffer only relatively minor prejudice should the extension of time be granted. If the grievance is heard and allowed, the resulting cost to the respondent would be insignificant.

## **5. Chances of success**

[36] At this preliminary stage, this factor should be of little weight as the grievance is neither trivial nor vexatious (see *D’Alessandro v. Treasury Board (Department of Justice)*, 2019 FPSLRB 79; *IBEW*; *Thompson v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 59; and *Trenholm*).

**B. For the respondent**

[37] The respondent submits that the grievance was untimely and that an extension of time is unjustified given the circumstances of this case as there is no clear, cogent, and compelling reason for the delay.

[38] There are good labour relations reasons for imposing time limits. First, the grievance and adjudication processes are intended to provide a final and binding method of resolving disputes that arise during the course of a collective agreement's term. Second, time limits contribute to labour relations stability by providing closure on the employer's business decisions with the consequence of avoiding constant or long-term exposure to workplace incidents (see *Mark v. Canadian Food Inspection Agency*, 2007 PSLRB 34 at para. 24).

[39] Time limits in collective agreements are meant to be respected by the parties and should be extended only in exceptional circumstances, which will always depend on the facts of the case. The grievance system is designed to be an effective and efficient way of dealing with workplace disputes, and timelines should be extended only when there are compelling reasons (see *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93 at para. 77)

[40] If the prescribed grievance time limits have not been met, and the employer has met the requirements under s. 95 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), it is well established that the Board is without jurisdiction, pursuant to s. 225 of the *Act* (see *Szmidt v. Treasury Board (Correctional Service of Canada)*, 2010 PSLRB 114; and *Payne v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 33).

[41] In the present case, clause 16.06 of the collective agreement sets out the following time limit for filing a grievance:

**16.06 Time limits****16.06 Délais**



*a) An employee may present a grievance at the first step not later than the twenty-fifth (25th) day after the date on which he or she first becomes aware of the action or circumstances giving rise to the grievance.*

*a) Au premier palier de la procédure, l'employé-e peut présenter un grief au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il ou elle prend connaissance pour la première fois de l'action ou des circonstances donnant lieu au grief.*

...

[...]

[42] Clause 16.01 of the collective agreement provides that the time limits stipulated in the grievance procedure may be extended by mutual agreement between the respondent and the employee and, where appropriate, the bargaining agent. However, in the present case, there was no such agreement.

[43] Absent such an agreement, the applicant could not unilaterally extend the time limit in which to file a grievance by attempting to convince the respondent to reverse or modify its decision (see *Mark*, at para. 22; and *Williams v. Treasury Board (Correctional Service of Canada)*, 2008 PSLRB 28).

[44] The applicant was informed of the respondent's decision to deny her accommodation request on February 23, 2022. It did not receive the grievance until April 12, 2022. As such, the grievance was not filed in compliance with the timelines prescribed in clause 16.06 and therefore was denied due to untimeliness, on June 24, 2022.

[45] As for the *Schenkman* criteria, many adjudicators have reinforced the requirement for a clear, cogent, and compelling reason for a delay filing a grievance to justify granting an extension of time to file it (see *Schenkman*; *Cloutier v. Treasury Board (Department of Citizenship and Immigration)*, 2008 PSLRB 31; *Demers v. Treasury Board (Department of Public Works and Government Services)*, 2007 PSLRB 118; and *Salain v. Canada Revenue Agency*, 2010 PSLRB 117).

[46] While the *Schenkman* criteria are not of equal weight and importance, the first criteria cannot be ignored completely. There must be a clear, cogent, and compelling reason for the delay filing a grievance (see *Bowden*, at para. 77).

[47] Where there is no clear, compelling, or cogent reason for the delay in filing a grievance, there is no need for the Board to proceed to the balancing of the prejudice to the employer against the injustice to the grievor (see *Schenkman*, at para. 80).

[48] In the present case, neither the applicant nor her bargaining agent have, at any time during the grievance procedure or in the response to the respondent's objection, raised a compelling or significant rationale to explain the untimeliness of her grievance.

[49] The applicant received a clear decision from the respondent on February 23, 2022, which included a reminder of her grievance rights under the collective agreement, and it encouraged her to seek the guidance of her bargaining agent representative should she disagree. As such, the applicant was well aware of her grievance rights.

[50] The mere fact that the applicant provided additional information to the respondent and sought to have it revisit its decision does not compel extending the time limit prescribed in the collective agreement for filing a grievance.

[51] Based on these facts, there is no clear, cogent, and compelling reason that the applicant was unable to file her grievance within the prescribed time limit. Consequently, an extension of time is not justified.

#### **IV. Analysis**

[52] On February 23, 2022, the applicant was advised that her accommodation request had been denied. At that time, she was also clearly advised that if, by March 9, 2022, she failed to attest to her vaccine status or she attested that she remained unvaccinated, she would be subject to administrative measures as outlined in the *Policy*. On March 11, 2022, she was placed on leave without pay.

[53] The applicant filed her grievance on April 12, 2022. The substance of her grievance is twofold: she grieves being denied accommodation, and she grieves the resulting leave without pay imposed upon her.

[54] If one considers being placed on leave without pay as the action or circumstances giving rise to the grievance, then the grievance **was** filed within the 25 working days provided by the collective agreement. If the initial refusal is the starting

point, then I need to consider whether it is in the interest of fairness to grant the extension of time.

[55] Section 61 of the *Regulations* provides that the Board may grant an extension of time to present a grievance at any level of the grievance procedure, in the interest of fairness:

*61 Despite anything in this Part, the time prescribed by this Part or provided for in a grievance procedure contained in a collective agreement for the doing of any act, the presentation of a grievance at any level of the grievance process, the referral of a grievance to adjudication or the providing or filing of any notice, reply or document may be extended, either before or after the expiry of that time,*

*(a) by agreement between the parties; or a) soit par une entente entre les parties;*

*(b) in the interest of fairness, on the application of a party, by the Board or an adjudicator, as the case may be.*

*61 Malgré les autres dispositions de la présente partie, tout délai, prévu par celle-ci ou par une procédure de grief énoncée dans une convention collective, pour l'accomplissement d'un acte, la présentation d'un grief à un palier de la procédure applicable aux griefs, le renvoi d'un grief à l'arbitrage ou la remise ou le dépôt d'un avis, d'une réponse ou d'un document peut être prorogé avant ou après son expiration :*

*a) soit par une entente entre les parties*

*b) soit par la Commission ou l'arbitre de grief, selon le cas, à la demande d'une partie, par souci d'équité.*

[56] As the parties have pointed out, when determining whether such an extension should be granted, the Board will consider the criteria in *Schenkman*.

[57] On the facts of this case, I find that there was a clear, cogent, and compelling reason for the delay. I accept that the applicant thought that the respondent would change its mind if it understood her religious exemption request. Having the refusal confirmed by the fact that she was placed on leave without pay led to her grievance, with the support of her bargaining agent.

[58] As to the remaining criteria, the length of delay, if there was one, was short. The applicant also exercised diligence, communicating with the respondent and acting promptly once the gravity of the situation became clear to her. The impact on the

applicant is significant in comparison to the impact on the respondent, which did not suggest it would suffer any prejudice if the extension were granted. Finally, it is too early to say this grievance has no chance of success.

[59] Because the reality of the refusal did not sink in until the applicant was advised of her loss of salary, I would deem the grievance timely. If I am mistaken, then I would exercise my discretion under s. 61(b) of the *Regulations* to grant an extension. I find that it is unfair to deprive the applicant of her recourse to grieve her placement on leave without pay.

[60] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[61] The respondent's objections as to timeliness are denied.

[62] The applicant's application for an extension of time to file her grievance that was referred to the Board as Board files nos. 566-33-45381 and 566-33-45383 is granted.

[63] The two files will be placed on the Board's hearing schedule in due course.

April 20, 2023.

**Marie-Claire Perrault,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**