

**Date:** 20251103

**File:** 569-02-52406

**Citation:** 2025 FPSLREB 147

*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

**PUBLIC SERVICE ALLIANCE OF CANADA**

Bargaining Agent

and

**TREASURY BOARD**

**(Department of Employment and Social Development)**

Employer

Indexed as

*Public Service Alliance of Canada v. Treasury Board (Department of Employment and Social Development)*

In the matter of a policy grievance referred to adjudication

**Before:** Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

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

**For the Employer:** Erin Saso, Treasury Board of Canada Secretariat

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Decided on the basis of written submissions,  
filed June 24, July 9, and October 3, 2025.

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## REASONS FOR DECISION

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### I. Overview

[1] This is a policy grievance about a shift schedule. The employer objects to the grievance on the basis that it is untimely because the shift schedule was implemented in 2017 and the Public Service Alliance of Canada (PSAC) did not file this policy grievance until February 3, 2023.

[2] I have dismissed the employer's objection. This case is a textbook example of a continuing grievance, meaning that PSAC could have filed the policy grievance at any time without the grievance being untimely. My reasons follow.

### II. Nature of the grievance

[3] This policy grievance is about a shift schedule at Employment and Social Development Canada's (ESDC) File Management Centre in Edmonton, Alberta. In the fall of 2017, ESDC implemented a shift that runs from 3 p.m. to 11 p.m. from Monday to Friday. It calls this the "Nighthawk" shift. So far, ESDC has not said whether it is named after the bird nighthawk or the 1981 movie *Nighthawks* starring Sylvester Stallone and Billy Dee Williams. PSAC alleges that ESDC violated the collective agreement by creating the Nighthawk shift. It also argues that employees working this shift are in fact "day worker[s]" and not "shift workers", meaning that they are entitled to premium pay of \$7.00 per hour after 6 p.m. The employer says that they are shift workers and entitled to the shift premium of \$2.25 per hour after 4 p.m. instead. As far as I can determine, PSAC has no objection to the name Nighthawk.

### III. This is a continuing grievance and, therefore, timely

[4] On October 12, 2022, some officials from PSAC visited the Edmonton File Management Centre. PSAC says that this was the first time that it learned about the Nighthawk schedule. The employer says PSAC knew or ought to have known about the Nighthawk schedule in 2017. PSAC filed this policy grievance on February 3, 2023.

[5] The deadline to file a policy grievance in the relevant collective agreement is 25 working days. The employer says that the grievance was filed late — very late, if the deadline runs from 2017, but still late if it runs from October 12, 2022.

[6] I disagree. Instead, I agree with PSAC that this is a continuing grievance.

[7] A continuing grievance "... is one in which the event being grieved is being performed successively, or the violation of the collective agreement is recurring or repetitive. Each time the violation occurs, the limitation period begins to run again" (from *Federal Government Dockyard Trades and Labour Council (Esquimalt, B.C.) v. Treasury Board of Canada*, 2025 FPSLREB 67 at para. 17).

[8] I said in the overview that this case is a textbook example of a continuing grievance. I meant that literally. In Palmer and Snyder, *Collective Agreement Arbitration in Canada*, 7th ed. at chapter 3.03(1)(b), paragraph 3.44, the authors wrote, "Where a claim has been made that an employer has improperly scheduled hours of work, it has been held that this is a continuing grievance."

[9] The employer argues that this is a case about the recurrence of damage, which is different from a continuing grievance. I disagree that this case is about recurring consequences of an earlier action. This grievance is a classic continuing grievance. The alleged violation recurs every day that an employee works on the Nighthawk shift, and the alleged violation also recurs every day that the employer does not pay a \$7.00 per hour shift premium to employees on the Nighthawk shift. This means that the policy grievance was timely when it was filed.

[10] This does not mean that the delay filing the grievance has no consequences. The employer may argue that PSAC is estopped from grieving a schedule that had been in place for over 5 years before it filed this grievance. The employer has already argued that any remedy is limited as a result of the delay or, at most, should be capped at the 25-day period that preceded the policy grievance, in accordance with *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL). I am not prepared to rule on that issue now, but the employer is free to make that argument when the Federal Public Sector Labour Relations and Employment Board ("the Board") hears the grievance on its merits.

[11] In short, the grievance is timely. Any other consequences of this delay must be addressed later. My conclusion also means that I do not need to address PSAC's application for an extension of time to file this grievance, which it made in the alternative.

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

*(The Order appears on the next page)*

**IV. Order**

[13] The employer's preliminary objection is dismissed. This grievance will be scheduled for a hearing in due course.

November 3, 2025.

**Christopher Rootham,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**