

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20251126**

**Docket: A-316-24**

**Citation: 2025 FCA 209**

**CORAM: STRATAS J.A.  
RENNIE J.A.  
BIRINGER J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on November 26, 2025.

Judgment delivered from the Bench at Ottawa, Ontario, on November 26, 2025.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BIRINGER J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on November 26, 2025).**

**BIRINGER J.A.**

[1] The applicant seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board allowing the respondent's policy grievance: 2024 FPSLREB 129. The Board held that under the governing collective bargaining agreement, fishery officers are entitled to a \$10 allowance each time they transfer between a Zodiac boat and a fishing

vessel under inspection. The Board ordered retroactive payment of the allowance to individual fishery officers.

[2] The applicant does not dispute the Board's conclusion on the entitlement to a transfer at sea allowance. The sole issue raised by the applicant relates to the Board's authority to order individual retroactive compensation under paragraph 232(c) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the FPSLRA).

[3] Section 232 of the FPSLRA provides:

**Decision in respect of certain policy grievances**

**232** If a policy grievance relates to a matter that was or could have been the subject of an individual grievance or a group grievance, an adjudicator's or the Board's decision in respect of the policy grievance is limited to one or more of the following:

- (a) declaring the correct interpretation, application or administration of a collective agreement or an arbitral award;
- (b) declaring that the collective agreement or arbitral award has been contravened; and
- (c) requiring the employer or bargaining agent, as the case may be, to interpret, apply or administer the collective agreement or arbitral award in a specified manner.

**Portée de la décision sur certains griefs de principe**

**232** Dans sa décision sur un grief de principe qui porte sur une question qui a fait ou aurait pu faire l'objet d'un grief individuel ou d'un grief collectif, l'arbitre de grief ou la Commission ne peut prendre que les mesures suivantes :

- a) donner l'interprétation ou l'application exacte de la convention collective ou de la décision arbitrale;
- b) conclure qu'il a été contrevenu à la convention collective ou à la décision arbitrale;
- c) enjoindre à l'employeur ou à l'agent négociateur, selon le cas, d'interpréter ou d'appliquer la convention collective ou la décision arbitrale selon les modalités qu'il fixe.

[4] The applicant submits that section 232 limits the available remedies for a policy grievance to declaratory or prospective relief where the matter raised was, or could have been, the subject of an individual or group grievance. Since fishery officers had filed individual grievances, the applicant says that the Board's order for retroactive compensation was contrary to section 232.

[5] The Board, citing *Canada (Attorney General) v. Canadian Merchant Service Guild*, 2009 FC 344 [*Canadian Merchant Service Guild*], concluded that it had jurisdiction to order retroactive compensation.

[6] In *Canadian Merchant Service Guild*, the Federal Court (*per* Hughes J.) in *obiter* held that paragraph 232(c), which empowers the Board to require an employer or bargaining agent to "interpret, apply or administer" a collective agreement in "a specified manner", includes the ability to award retroactive compensation. The Federal Court observed that limiting the Board to awarding declaratory relief under paragraph 232(c) would be absurd as it would necessitate a subsequent individual or group grievance to obtain retroactive payments: *Canadian Merchant Service Guild* at paras. 19-23.

[7] The applicant submits that the Board erred by interpreting section 232 in a manner inconsistent with the provision's text, context and purpose, by inappropriately relying on *obiter* in *Canadian Merchant Service Guild* and by diverging from the Board's prior decisions. We disagree.

[8] The standard of review for the Board's decision is reasonableness: *Burns v. Unifor Local 2182*, 2025 FCA 39 at para. 3; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para. 85. A reasonable decision is one "based on an internally coherent and rational chain of analysis ... that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para. 85.

[9] Although the Board was not bound to follow the Federal Court's *obiter* in *Canadian Merchant Service Guild*, it was entitled to rely on it. The Supreme Court of Canada has explained that a range of weight can attach to *obiter* depending on the context in which it is written. "The weight decreases as one moves from the dispositive *ratio decidendi* to a wider circle of analysis which is obviously intended for guidance and which should be accepted as authoritative. Beyond that, there will be commentary, examples or exposition that are intended to be helpful and may be found to be persuasive, but are certainly not 'binding'": *R. v. Henry*, 2005 SCC 76 at para. 57; see also *Canada (Public Safety and Emergency Preparedness) v. Gaytan*, 2021 FCA 163 at paras. 59-60. The *obiter* analysis in *Canadian Merchant Service Guild* had persuasive value and it was open to the Board to adopt it.

[10] Contrary to the applicant's submission, the Board's conclusion was consistent with some of the Board's orders of retroactive relief in previous policy grievance cases: see e.g. *Union of Canadian Correctional Officers v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLREB 118 at para. 54; *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2016 PSLREB 77 [*PIPSC 2016*] at paras. 120-21; *Professional Institute of the Public Service of Canada v. Canada Revenue Agency*, 2015 PSLREB 65 at para. 78, *aff'd* 2016

FCA 104 (without comment on this point). Indeed, in *PIPSC 2016* at paras. 120-21, the Board explicitly adopted the reasoning of the Federal Court in *Canadian Merchant Service Guild*.

[11] While the Board's reasons on its power to award retroactive compensation are brief, when considered with the Federal Court's reasons on the interpretation of paragraph 232(c) in *Canadian Merchant Service Guild*, the Board's decision is transparent, intelligible and justified. There is no basis for this Court to intervene.

[12] If Parliament intended that paragraph 232(c) apply only prospectively, it can amend the provision.

[13] The application will be dismissed with costs.

"Monica Biringer"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-316-24

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. PUBLIC SERVICE  
ALLIANCE OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** NOVEMBER 26, 2025

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
RENNIE J.A.  
BIRINGER J.A.

**DELIVERED FROM THE BENCH BY:** BIRINGER J.A.

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