

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 8

Date: March 2, 2023

File No.: T2485/4220

Between:

Rae-Lynne Dicks

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

James Randall

Respondent

Decision

Member: Paul Singh

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I. RULING

[1] The Complainant Rae-Lynne Dicks alleges she was sexually harassed during her employment at a towing company (“Company”) by the Respondent, James Randall, contrary to s. 14 of the Canadian Human Rights Act RSC, 1985, c.H-6 (“CHRA”).

[2] For reasons that follow, I find that Ms. Dicks was sexually harassed by Mr. Randall contrary to the *CHRA* and order remedies.

II. MS. DICKS IS A CREDIBLE WITNESS

[3] I heard evidence from two witnesses during the course of the hearing: Ms. Dicks, and her treating psychologist, Dr. Jeff Morley.

[4] Ms. Dicks had previously named the Company as a respondent in her complaint, along with the respondent James Randall. In October 2020, Ms. Dicks settled her complaint with the Company and this hearing proceeded against Mr. Randall as the sole respondent.

[5] Neither the Canadian Human Rights Commission nor Mr. Randall attended or otherwise participated in the hearing despite being provided notice and opportunity to do so by the Tribunal.

[6] I can accept some, all, or none of a witness’ evidence depending, in part, on their credibility.

[7] In *Faryna v. Chorny* 1951 CanLII 252 (BCCA), the British Columbia Court of Appeal described the approach that should be taken to assess credibility:

...Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be in

harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...) Again a witness may testify to what he sincerely believes to be true, but he may honestly be mistaken. (pg. 356-357)

[8] On considering the factors set out in *Faryna*, I found Ms. Dicks to be a credible witness. Her evidence was reasonable, believable, and internally consistent. Further, it was not subject to challenge given Mr. Randall's failure to participate in the hearing, and there was nothing in the evidentiary record that contradicted her narrative.

[9] As a result, I accepted Ms. Dicks' evidence in its entirety, and it is to this evidence that I now turn.

III. MS. DICKS' EVIDENCE

[10] Ms. Dicks is a 55-year-old woman who, prior to working for the Company in Surrey, British Columbia, was a 911 operator and dispatcher. She was diagnosed with chronic post-traumatic stress disorder ("PTSD") as a result of her years of 911 service and is prone to anxiety and depression as a result.

[11] Ms. Dicks worked at the Company, which provided towing services, for about three months from October 20, 2017 to January 15, 2018. She was a billing clerk and Mr. Randall was a senior dispatcher to whom Ms. Dicks reported when he was on duty.

[12] Ms. Dicks regularly worked with Mr. Randall while at the Company. Mr. Randall would routinely state to her that, given his seniority in the Company, he had the General Manager's confidence and support and could do whatever he wished and not get fired. Ms. Dicks says these statements made her feel uncomfortable and concerned about her job stability.

[13] On the evening of November 26, 2017, Ms. Dicks began a 12-hour shift with Mr. Randall. They were working alone, except for when tow-truck drivers would come into the office to drop off paperwork.

[14] During that shift, Mr. Randall stood at the front counter, blocked Ms. Dicks' access to the vehicle records book, and waited for her to move closer to him to make entries in the book. He was humming and making dancing movements.

[15] Ms. Dicks asked Mr. Randall to move to allow her access to the books. At that point, Mr. Randall prevented her access and attempted to do a "hip-bump" dance with her. Ms. Dicks attempted to physically avoid contact with Mr. Randall to make him stop dancing and asked him to move again.

[16] Mr. Randall eventually moved and said something to the effect of, "hey, I really need to go get stupidly drunk, want to go do that with me after work at my place". Ms. Dicks responded that she didn't drink and avoided making eye contact and continued to enter information into the books. Mr. Randall responded by saying something to the effect of, "that's OK, you can hang out and look after me while I get drunk. I am a fun drunk".

[17] Ms. Dicks says it was clear to her that Mr. Randall wanted "drunk sex" with her because of the "suggestive grin" on his face and because of his hip gyrations which were sexual in nature. Ms. Dicks responded, "I don't look after drunks" and then ignored Mr. Randall. Ms. Dicks says she wanted to flee but couldn't move. She was scared about what he would do because they were alone.

[18] Two times shortly after this incident, Mr. Randall made similar statements to Ms. Dicks without warning and in what Ms. Dicks described as a "suggestive voice". Specifically, Mr. Randall stated "you know what I want" with a physical gyration as he walked past Ms. Dicks. Ms. Dicks says these incidents caused her to be fearful, insecure, and to feel like a "target".

[19] On about two dozen other instances, Mr. Randall would make a point of touching Ms. Dicks' shoulder, neck, or the top of her chest without her consent and on pretexts including removing a stray hair. He would often laugh as Ms. Dicks recoiled or lurched away from the touch.

[20] Ms. Dicks says that these repeated actions suggested to her that Mr. Randall had no respect for her personal space and could touch her whenever he wanted without her consent

and despite her actively resisting the touch. Ms. Dicks says she felt “small, insignificant, and helpless”.

[21] Between about mid-November to mid-December 2017, when Ms. Dicks would ask Mr. Randall a question about billing or the computer system, Mr. Randall would lean on her shoulder with his chest and place his hand on top of her hand to move the mouse. Ms. Dicks estimated that this occurred about a dozen times and made her feel very uncomfortable.

[22] The first time it happened, Mr. Randall stated, “this could be cozy”. Each time, Mr. Randall would tell Ms. Dicks to “relax”, that he wasn’t attacking her, or that they were “all adults”, and they should be able to “talk about sex and our ex”.

[23] Ms. Dicks estimates that about six times between October and December 2017, tow-truck drivers would ask Ms. Dicks if she was “looking for a good man”. Ms. Dicks says that she believed Mr. Randall asked the drivers to make these inquiries because they only occurred when she was alone on shift with Mr. Randall and Mr. Randall was nearby and could hear the conversation. In response to the last inquiry in late December, Ms. Dicks stated loudly so that Mr. Randall could hear that she did not date coworkers and was “not looking for a man, so stop asking me”.

[24] Ms. Dicks says that after this incident in late December, Mr. Randall’s “tactics changed” and that when she would have subsequent conversations with a driver of a personal nature in the presence of Mr. Randall, he would interject and say things like “Rae-Lynne doesn’t date her co-workers you know”. From that point onwards, Mr. Randall stopped providing positive feedback on Ms. Dicks’ work.

[25] Ms. Dicks testified that “this made me feel very defensive, as if I had no value as a work partner because I refused to date [Mr. Randall] or have sex with him after work. My skills at work were no longer of value. I wasn’t a team player... solely because I refused to date him”.

[26] In mid-January 2018, Ms. Dicks was speaking with a driver who, along with 2 other drivers, had offered to assist her with moving furniture because she was moving from her

apartment at the end of the month. Mr. Randall heard this conversation and interjected to invite himself. Mr. Randall said something to the effect of, “hey that sounds like fun. I would like to help. I live just three blocks away and can wander over with my six pack of beer. I mean I can’t actually help lift or carry anything, but I can be the entertainment”.

[27] Ms. Dicks firmly declined the invitation, but says Mr. Randall continued to demand an invitation. Ms. Dicks says she was fearful after this interaction because Mr. Randall stated he lived three blocks away from her apartment which meant he knew where she lived. Ms. Dicks stated she did not know how Mr. Randall knew where she lived and she did not want him to show up unannounced to her apartment on the day of the move or otherwise.

[28] From about January 2 to 14, 2018, once Ms. Dicks rebuffed Mr. Randall’s advances on a regular basis in front of others, Ms. Dicks says Mr. Randall advised the Company manager that she was not able to competently perform her duties, despite Ms. Dicks receiving positive work evaluations prior to then. As a result, Mr. Randall was given an extra-hour each shift to double-check Ms. Dicks’ work and would harass and interrupt her, making it difficult for her to complete her work.

[29] On January 14, 2018 (Ms. Dicks’ second to last day with the Company), Mr. Randall approached Ms. Dicks and talked about his relationships with women. He then asked Ms. Dicks if she ever had a “one-night stand”. Ms. Dicks says she wanted to end the conversation and responded along the lines of, “I am a grown woman and I don’t kiss and tell” to which Mr. Randall responded with something to the effect of, “that means that you have... tell me about it... where did you find him...was he good in bed”.

[30] Ms. Dicks says she felt uncomfortable with this interaction and was relieved when a driver arrived at the office and she could avoid any further discussion with Mr. Randall.

[31] On January 15, 2018, Ms. Dicks says she was fired from the Company. She testified that she could not divulge the circumstances surrounding the termination given the confidentiality provisions of her settlement agreement with the Company.

[32] Regarding the impact of Mr. Randall’s harassment, Ms. Dicks says that, given her role as a former 911 operator and dispatcher living with chronic PTSD from her years of

service, she was in a particularly vulnerable position and Mr. Randall's conduct had a significant impact on her.

[33] Ms. Dicks says working with Mr. Randall:

made me nervous, increased my anxiety and made me doubt my professional abilities. It knocked my confidence out from under me and affected my ability to sleep and ability to perform at work to the best of my abilities. I felt that because I am a single woman that I was fair game and if I did not cooperate then I would suffer the consequences. Over the course of my employment my ability to cope, sleep, perform self-care, and maintain a professional equilibrium while at work were all negatively affected. I began having to make frequent appointments with my doctor, began having to use sleep medication on a nightly basis.

[34] After leaving the Company, Ms. Dick says:

I fell apart and suffered from a major depressive episode like I haven't experience in many years. Depression, anxiety, anger, shame, guilt, and serious lack of self-esteem caused me to be incapable of even basic self-care. Despite knowing that this was not my fault I reverted to punishing myself via lack of self-care. I had done this for many years and I hated myself for it. For the rest of January, and all of February to March, I was non-functional. Not eating properly, not sleeping without medication and suffering from insomnia. It got bad enough to even concern my doctor who then convinced me to begin taking anti-depressants again.

[35] Ms. Dicks says she relocated to Grand Forks, British Columbia in April 2019 to be closer to family, in part because of her negative experience with Mr. Randall.

[36] Ms. Dicks called her treating psychologist Dr. Jeff Morley to testify as an expert witness. Dr. Morley testified that he completed a Ph.D in counselling psychology from the University of British Columbia and had been a registered psychologist with the College of Psychologists of British Columbia since 2004. He testified that he is a board-certified expert in traumatic stress with the American Academy of Experts in Traumatic Stress. Given his qualifications, I accepted Dr. Morley as an expert witness in the field of psychology.

[37] Dr. Morley testified very briefly that he conducted a psychological assessment of Ms. Dicks in February 2013 and diagnosed her with Chronic PTSD and a Major Depressive Disorder. He stated that Ms. Dicks has "checked in with me periodically throughout the

years” and the symptoms of her disorders, including anxiety and depression, have remained to the present day. Other than confirming his 2013 diagnosis and stating that the symptoms have remained, Dr. Morley did not provide any other material evidence.

IV. SEXUAL HARASSMENT – LEGAL TEST

[38] It is a discriminatory practice to harass someone on a prohibited ground of discrimination in the course of their employment, and sexual harassment is deemed to be harassment on a prohibited ground: *CHRA* s. 14.

[39] The Supreme Court of Canada, in *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252 at 1284, described sexual harassment as follows:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. [...] Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[40] The Federal Court expanded on the reasoning in *Janzen in Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1999] 3 FC 653. The Court held that, for a sexual harassment allegation to be substantiated, the following must be established:

- (1) The acts that form the basis of the complaint must be unwelcome, or ought to have been known by a reasonable person to be unwelcome;
- (2) The conduct must be sexual in nature; and
- (3) Ordinarily, sexual harassment requires a degree of persistence or repetition, but in certain circumstances even a single incident may be severe enough to be detrimental to the work environment.

V. MR. RANDALL'S CONDUCT CONSTITUTES SEXUAL HARASSMENT

[41] I am satisfied that Ms. Dicks has proven, on a balance of probabilities, the essential elements of the test for sexual harassment set by the Federal Court.

[42] I find that Mr. Randall's conduct towards Ms. Dicks between October 2017 and January 2018, which included unwanted touching, suggestive remarks, physical gyrations, solicitation of sexual history, invitations to go on dates, invitations to get drunk together, and invitations to come to his residence constituted conduct that was clearly sexual in nature.

[43] I find that Mr. Randall's conduct was unwelcomed by Ms. Dicks or reasonably ought to have been known by Mr. Randall to be unwelcomed. Ms. Dicks clearly and repeatedly expressed her view to Mr. Randall that she was not interested in pursuing any conversation, physical interaction, or relationship with Mr. Randall that was sexual in nature.

[44] I also find that Mr. Randall persisted with inappropriate sexual conduct over the course of several months and this conduct detrimentally affected Ms. Dicks' workplace environment. Ms. Dicks has stated, and I accept, that Mr. Randall's conduct made her feel anxious and afraid and adversely impacted her confidence and ability to perform her job duties.

[45] Accordingly, based on Ms. Dicks' evidence which I have accepted in its entirety, and the legal test I must apply, I find that Mr. Randall's conduct constitutes sexual harassment contrary to s. 14 of the *CHRA*.

[46] Having found a breach of the *CHRA*, I turn next to the issue of remedies.

VI. REMEDY

Pain and suffering

[47] Ms. Dicks claims \$10,000 in damages against Mr. Randall for pain and suffering.

[48] The Tribunal may compensate someone for pain and suffering they experienced as a result of a discriminatory practice by an amount not exceeding \$20,000: *CHRA* s. 53(2)(e).

However, the Tribunal tends to reserve the maximum amount of \$20,000 for the most egregious of circumstances where the extent and duration of the circumstances warrant it: *Grant v. Manitoba Telecom Services Inc.*, 2012 CHRT 10 at para. 115; *Alizadeh-Ebadi v. Manitoba Telecom Services Inc.*, 2017 CHRT 36 at 213.

[49] In order to determine a reasonable amount for pain and suffering, the Tribunal must assess the consequences to the victim including, “emotional consequences, frustration, disappointment, loss of self-esteem and self-confidence, grief, emotional well-being, stress, anxiety and sometimes even depression, suicidal thoughts and other psychological symptoms resulting from the discriminatory practice”: *Youmbi Eken v. Netrium Networks Inc.*, 2019 CHRT 44 at para. 71.

[50] While medical evidence may be helpful in establishing these damages, it is not necessarily required: *McFee v. Canadian Pacific Railway Company*, 2019 CHRT 28 at para. 135.

[51] In this case, the duration of Mr. Randall’s harassment of Ms. Dicks was short and spanned less than three months. However, the impact on Ms. Dicks was significant, particularly given her vulnerability associated with pre-existing chronic PTSD. As noted earlier, Ms. Dicks says, and I accept, that Mr. Randall’s conduct made her feel anxious and afraid at work which impacted her confidence and ability to perform her job duties. After she left the Company, she says, and I accept, that she continued to suffer psychological harm, including a major depressive episode, which lasted several months as a result of Mr. Randall’s conduct.

[52] Upon considering the duration and impact of the harassment and the range of damages for pain and suffering awarded by the Tribunal in other relevant cases of sexual harassment including *NA v. 1416992 Ontario Ltd.* 2018 CHRT 33 (\$10,000 against the individual respondent), *Opheim v. Gagan Gill and Gillco. Inc.* 2016 CHRT 12 (\$7,500), *Green v. Thomas* 2016 CHRT 13 (\$5,000), and *Cassidy v. Canada Post Corporation and Raj Thambirajah* 2012 CHRT 29 (\$5,000 against the individual respondent), I award \$9,000 to Ms. Dicks as damages for pain and suffering.

Willful and reckless conduct

[53] Ms. Dicks claims \$5,000 in damages from Mr. Randall for willful and reckless conduct.

[54] The Tribunal may award damages of up to \$20,000 if it finds that a person has engaged in a discriminatory practice wilfully or recklessly: *CHRA* s. 53(3).

[55] In determining the appropriate award under this section, the Tribunal must focus on the respondent's conduct, and not on the effect that the conduct has had on the complainant: *Beattie and Bangloy v. Indigenous and Northern Affairs Canada*, 2019 CHRT 45, aff'd 2021 FC 60 at para. 210.

[56] In *Canada (Attorney General) v. Johnstone*, 2013 FC 113 aff'd 2014 FCA 110, the Federal Court stated the following with regards to section 53(3):

This is a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate. [...] Recklessness usually denotes acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly (para. 155).

[57] If the Tribunal finds that the Respondent "acted in reckless disregard of the consequences of" its actions, it can award damages under this section: *Warman v. Winnicki*, 2006 CHRT 20 at para. 174. The more egregious the respondent's conduct is found to be, the higher the award should be and an award of \$20,000 should be restricted to the most egregious of cases: *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)* 2019 CHRT 39 at para. 230.

[58] In this case, I find that Mr. Randall acted in a willful and reckless manner towards Ms. Dicks. During their employment relationship, Mr. Randall was in a position of authority over Ms. Dicks as a senior dispatcher to whom Ms. Dicks reported when he was on duty. Mr. Randall leveraged that power imbalance and engaged in sexualized behaviour when he knew or reasonably ought to have known that the conduct was unwelcomed by Ms. Dicks.

When Ms. Dicks rebuffed Mr. Randall's advances, he retaliated by providing negative feedback on her work.

[59] In these circumstances, I find that Ms. Dicks is entitled to the full \$5,000 she seeks under s. 53(3) of the *CHRA*.

Wage loss

[60] The Tribunal may compensate someone for wages they were deprived of as a result of discrimination: *CHRA* s. 53(2)(c).

[61] In this case, Ms. Dicks testified that she reached a confidential settlement with the Company regarding her wage loss claim and was not seeking any such damages against Mr. Randall.

[62] In these circumstances, I make no award for wage loss.

Interest

[63] The Tribunal may award interest on an order to pay compensation: *CHRA*, s. 53(4).

[64] Any award of interest is simple interest calculated on a yearly basis, at a rate equivalent to the Bank of Canada rate (monthly series), set by the Bank of Canada. Interest would generally accrue from the date on which the discriminatory practice occurred until the date of payment of the compensation award: Rule 46, Tribunal *Rules of Procedure, 2021*, SOR/2021-137.

[65] In this case, Ms. Dicks is entitled to simple interest at the average annual bank rate established by the Bank of Canada. The interest shall run from November 26, 2017, which is the first date on which Ms. Dicks testified to being sexually harassed by Mr. Randall, until Mr. Randall pays the ordered compensation.

VII. ORDER

[66] I order Mr. Randall to compensate Ms. Dicks \$9,000 for pain and suffering and \$5,000 for willful and reckless conduct pursuant to ss. 53(2)(e) and 53(3) of the *CHRA*, respectively. Interest shall be payable on these amounts on the terms set out above.

Signed by

Paul Singh
Tribunal Member

Ottawa, Ontario
March 2, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2485/4220

Style of Cause: Rae-Lynne Dicks v. James Randall

Decision of the Tribunal Dated: March 2, 2023

Date and Place of Hearing: November 28, 2022

Appearances:

Rae-Lynne Dicks, the Complainant