

Canadian Human  
Rights Tribunal



Tribunal canadien  
des droits de la personne

**Between:**

**Leslie Hicks**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Human Resources and Skills Development Canada**

**Respondent**

**Ruling**

**File No.:** T1751/10611

**Member:** Réjean Bélanger

**Date:** August 22, 2014

**Citation:** 2014 CHRT 24

## Table of Contents

	<b>Page</b>
I. Introduction.....	1
II. Period of claim: 9 or 12 months?.....	2
III. The cost of the lease liability .....	3
IV. The cost of three trips .....	4
V. Interest.....	8
VI. Order .....	8

## **I. Introduction**

[1] The complaint filed by Leslie Hicks against Human Resources and Skills Development Canada was heard by the Tribunal and a decision rendered on September 18, 2013 (see *Hicks v. Human Resources and Skills Development Canada*, 2013 CHRT 20 [*Hicks*]).

[2] The decision of the Tribunal was favourable to the Complainant. In sum, the Tribunal found the Respondent's interpretation and application of its Relocation Directive to the denial of the Complainant's claim for Temporary Dual Residence Assistance ("TDRA") to be discriminatory on the basis of family status pursuant to section 7(b) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 [the *Act*]. The Tribunal granted various remedies to the Complainant, but deferred deciding the issue of the quantum of the claim for TDRA in the hope the parties could resolve the matter between themselves (see *Hicks* at paras. 89-91). The parties were unable to reach an agreement within the three (3) month delay fixed by the Tribunal.

[3] The parties have now asked the Tribunal to establish the quantum of the TDRA claim. The Complainant submitted his written position on November 22, 2013; the Respondent, its response on December 13, 2013; and, the Complainant his reply on December 20, 2013.

[4] Both parties recognized that the Relocation Directive applicable to the Complainant's claim is the "Relocation Directive Effective until March 31, 2003 (Archived)", which came into effect in March 1993. The Relocation Directive, including the TDRA, is deemed part of the collective agreement governing the Complainant's terms and conditions of employment.

[5] The Complainant seeks \$19,406.62 as compensation for his TDRA claim. This request for TDRA includes various expenses claimed for travel and housing, and the Complainant provided evidence in support of those claims. The Respondent only takes issue with two of the expenses claimed by the Complainant: the cost of the lease liability for the rental of a second home in his new place of duty in Ottawa; and, the cost of three trips.

## **II. Period of claim: 9 or 12 months?**

[6] Before getting into the issues above, I would like to clarify the period covered by the Complainant's claim for TDRA. The Complainant asks that his claim for TDRA cover a period of 12 months. It should be noted that the Complainant's period of maintaining dual residences lasted even longer than the 12 months he claims for.

[7] Section 2.18.2 of the Relocation Directive establishes that the duration of TDRA is typically for 9 months. However, an exception can be found in section 2.18.4, which specifies that in cases of exceptional circumstances, the 9 month period can be extended to 12 months:

2.18.4 In exceptional circumstances, if, as a result of factors outside the employee's control, the two residences must be maintained beyond the nine months, the deputy head or a senior delegated officer may approve a further maximum period of three months of assistance.

[8] The Respondent, at paragraph 5 of its submissions on the present issue, says the Complainant had neither requested, nor did the Respondent agree to, an extension of the period of assistance from 9 to 12 months. However, later in its submissions at paragraph 17, the Respondent calculates the Complainant's entitlement to TDRA based on the assumption that it would have extended the TDRA period from 9 to 12 months; an assumption the Respondent describes as "...based on a retrospective and hypothetical assessment of whether HRSDC would have extended the assistance period if requested by the Complainant".

[9] Despite these statements, the Respondent does not argue that the Complainant was ineligible for an extension under section 2.18.4 or that it would have refused such an extension. In fact, as mentioned above, the Respondent calculates the Complainant's entitlement to TDRA based on the assumption that it would have extended the TDRA period from 9 to 12 months. Furthermore, the Respondent states at paragraph 12 of its submissions that it only "...takes issue with two expenses claimed by the Complainant in respect of his travel and housing entitlements". The period of the claim is not one of the issues the Respondent says it takes issue with.

[10] Therefore, I am satisfied that the period of the Complainant's TDRA claim should be calculated over 12 months, pursuant to section 2.18.4 of the Relocation Directive.

### **III. The cost of the lease liability**

[11] At the hearing, photocopies of the face of 13 cheques were filed by the Complainant as evidence of the payment of his rent for maintaining a second home in his new place of duty in Ottawa. The back of the cheques was not submitted. The first cheque, dated September 22, 2002, was for \$900.00 with the memo "Oct. rent & last month". The twelve other cheques, dated the first of each month from November 1, 2002 to September 1, 2003, are for \$450.00. The Respondent did not attack the probative value of said cheques.

[12] According to the Respondent, the Complainant's housing entitlement includes, among other things, rent for a furnished bachelor apartment within the medium cost range in the new place of duty (section 2.12.5(a) of the Relocation Directive). Therefore, the Respondent says the Complainant is entitled to be reimbursed his rental expenses at a rate of \$450 per month for twelve months.

[13] However, the Complainant claims an additional \$450 as the cost of his lease liability. He argues that his first cheque, in the amount of \$900, included \$450 to cover the rent for the first month (Oct. 2002) and \$450 to cover for the rent of the last month, as mentioned at the bottom of the cheque. If for some reason, the Complainant needed to end his lease earlier than the term he had agreed to, the \$450 deposit for last month's rent would have been kept by his landlord. The Complainant relies on section 2.12.5(d) of the Relocation Directive as authority for his entitlement to be reimbursed for this amount:

(d) the costs of subletting or lease liability, when the employee was obliged to sign a lease for temporary accommodation. (These costs should be approved by management prior to the employee's signing the lease)

[14] The Respondent objects to the reimbursement of this amount of \$450 because it would be redundant (paragraph 17 of its response) since this amount would simply have been applied to cover the rent for the final month of the Complainant's tenancy.

[15] It should be noted that the lease was not filed as evidence. During the hearing, it was not indicated if the lease was oral or written. The Respondent did not raise any objection regarding this matter. The Complainant speaks in the hypothetical at paragraph 11 of his reply submissions:

Pursuant to his lease agreement, if for some reason Mr. Hicks needed to end his lease earlier than the term that he had agreed to, he would have to pay \$450 by way of forfeiture of his last month's rent deposit.

But during the hearing, the Complainant testified that the \$450 deposited as a lease liability had been cashed, because the lease had been terminated earlier than agreed upon.

[16] The Complainant also argues that the Respondent failed to provide guidance and assistance regarding the Relocation Directive and, therefore, the Tribunal should find the Complainant's interpretation of the Relocation Directive to be reasonable.

[17] I therefore grant the Complainant's claim of \$450 for the cost of the lease liability.

#### **IV. The cost of three trips**

[18] In total, the Complainant claims the cost of six trips: his initial move from home to Ottawa; two trips by his wife to come visit him; two trips to visit home; and, one final trip home to finalize his move. The cost of three of those trips is in dispute between the parties: the two trips by the Complainant's wife to visit him on November 7 to 10, 2002 (\$717.85) and February 7 to 10, 2003 (\$931.75); and, the Complainant's second trip home on April 17 to 21, 2003 (\$939.70).

The Complainant cites section 2.13.2(c), (d) and (e) of the Relocation Directive as authority for his travel entitlements:

2.13.2 Employees who are separated from dependants, and who are maintaining two households, shall be entitled to:

[...]

(c) when the period of occupancy of the temporary second residence is longer than one month, for transportation expenses, including ground transportation, for one return trip to the former place of duty, to visit dependants living in the principal residence, on a weekend of the employee's choice during this interim period, work schedules permitting;

(d) another trip may be authorized at the termination of this period, on an as-needed basis, to finalize selling or moving arrangements. In this latter case, the employee shall be required to use leave provisions for this travel when it cannot be arranged to correspond with days of rest;

(e) a return trip to the former place of duty, in the event of emergency situations at home (e.g. illness) when, in the opinion of the employer or the attending physician, the employee should return home.

[19] According to the Respondent, these provisions cover neither dependants' travel expenses nor claimants' travel expenses for more than one trip to visit dependants, subject to the exception in section 2.13.2(e). Therefore, the two trips taken by the Complainant's wife and the Complainant's second trip home are not covered by the TDRA.

[20] The TDRA, specifically section 2.13.2, has no provision for the reimbursement of travel expenses incurred by the Complainant's wife. However, the Complainant points to the 2002 National Joint Council Travel Directive, which provisions address situations where an employee is on travel status. The Travel Directive outlines alternatives for claiming travel expenses, including travel by employees' dependants. According to the Complainant, this demonstrates that the claims for his wife could be permissible. He adds, the claim reflects a reasonable view of the expenses he was entitled to in the absence of guidance and information from the employer.

[21] Again, the aim in making an order under subsection 53(2) of the *Act* is not to punish the person found to have engaged in the discriminatory practice, but to eliminate - as much as possible - the discriminatory effects of the practice (see *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84 at para. 13). There is no ambiguity in section 2.13.2 of the Relocation Directive regarding travel by dependants requiring interpretation through other policies. Travel by the Complainant's spouse was not an expense that he was entitled to claim. To award the Complainant compensation for these expenses would result in the Complainant being put in a better position than he would have been in had the discrimination not occurred. Therefore, his claim for the two trips by his wife to visit him on November 7 to 10, 2002 (\$717.85) and February 7 to 10, 2003 (\$931.75) are rejected.

[22] As for the Complainant's second trip home, at paragraph 14 of his reply, the Complainant indicated he considered section 2.13.2(c) allowed him to travel home once a month to be with his family. For its part, the Respondent says the section is limited to a total of one trip for the entire TDRA period, subject to sections 2.13.2(d) and (e).

[23] To clarify this situation, I find it useful to read sections 2.13.2(c) and (d) together.

[24] Section 2.13.2(c) mentions: "When the period of occupancy of the temporary second residence is longer than one month...for one return trip". Section 2.13.2(d) mentions: "another trip may be authorized at the termination of this period".

[25] The reading of these two sections together illustrates that only one return trip is covered for the whole period of time when the employee has to maintain two households. The "one month" reference only establishes the eligibility criteria for being able to claim that one return trip. The reference to "another trip" in section 2.13.2(d) means that there cannot be more than one previous trip. Consequently, I do not interpret section 2.13.2(c) of the Relocation Directive as authorizing monthly trips home for the Complainant.



[26] The Complainant says this interpretation is unreasonably narrow and unfair to employees who have been relocated, and is inconsistent with the letter and spirit of this provision, as demonstrated not only in the Relocation Directive but in other similar policies. For example, section 5.11.2(c) of the Relocation Directive provides for a return trip home every third weekend for employees on short-term relocations. The 2002 National Joint Council Travel Directive authorizes a trip every third weekend for employees on travel status for periods longer than one month. Also, according to the Complainant, the current Relocation Directive would authorize these trips.

[27] Again, there is no ambiguity in section 2.13.2(c) of the Relocation Directive regarding the Complainant's entitlement to claim expenses for travel home. Pursuant to section 2.13.2(c) of the Relocation Directive, the Complainant was not entitled to claim the expense of more than one return trip home, unless the exceptions in sections 2.13.2(c) and (d) were applicable. The Relocation Directive makes a distinction between the entitlements of employees on TDRA and those on short-term relocations. The 2002 National Joint Council Travel Directive also provides for different entitlements for employees on travel status. However, in determining the quantum of the Complainant's TDRA, it is not for the Tribunal to question these differences in entitlements. Furthermore, while the current Relocation Directive may provide for different entitlements than its previous version, it is not the policy that was applicable to the Complainant in the circumstances of this case. Therefore, in my view, to award the Complainant compensation for his second trip home on April 17 to 21, 2003 would result in the Complainant being put in a better position than he would have been in had the discrimination not occurred.

[28] As a result, the Complainant's claim for the two trips by his wife to visit him on November 7 to 10, 2002 (\$717.85) and February 7 to 10, 2003 (\$931.75); and, the Complainant's second trip home on April 17 to 21, 2003 (\$939.70), are denied.

**V. Interest**

[29] At paragraph 112 of *Hicks*, the Tribunal awarded interest on the Complainant's TDRA claim:

In working out the details of the quantum of the Complainant's TDRA claim as directed above, the parties should also factor in an award of interest pursuant to the instructions in paragraph 111 above.

[30] Paragraph 111 of *Hicks* provides:

As a result, I award interest on the compensation granted under paragraph 53(2)(e) and subsection 53(3) above. The interest shall be simple interest calculated on a yearly basis at the Bank of Canada Rate (monthly series) established by the Bank of Canada; and, shall accrue from November 23, 2004, the date the Complainant's application for TDRA was denied, until the date of payment of the award of compensation.

[31] Therefore, the Tribunal's order with regard to the Complainant's TDRA claim shall include an award of interest from November 23, 2004 until the date the award is paid.

**VI. Order**

[32] As the Tribunal has denied the Complainant's claim for the cost three trips (\$2,589.30), those amounts shall be deducted from the \$19,406.62 the Complainant seeks as compensation for his TDRA claim. Therefore, the Tribunal calculates the Complainant's TDRA claim to be \$16,817.32.

[33] As a result, the Tribunal orders as follows:

- (1) Pursuant to the reasons above, the Tribunal's decision in *Hicks*, and section 53(2)(c) of the *Act*, the Tribunal orders the Respondent to pay \$16,817.32 to the Complainant as compensation for the TDRA expenses he incurred as a result of the discriminatory practice.

- (2) Pursuant to the reasons above, the Tribunal's decision in *Hicks*, and section 53(3) of the *Act*, order (1) above shall include an award of interest. The interest shall be simple interest calculated on a yearly basis at the Bank of Canada Rate (monthly series) established by the Bank of Canada; and, shall accrue from November 23, 2004, the date the Complainant's application for TDRA was denied, until the date of payment of the award of compensation.

*Signed by*

Réjean Bélanger  
Tribunal Member

Ottawa, Ontario  
August 22, 2014

**Canadian Human Rights Tribunal**

**Parties of Record**

**Tribunal File:** T1751/10611

**Style of Cause:** Leslie Hicks v. Human Resources and Skills Development Canada

**Decision of the Tribunal Dated:** August 22, 2014

Last submissions received from the parties on  
December 20, 2013

**Appearances:**

Linelle S. Mogado and Steven Welchner, for the Complainant

No one appearing, for the Canadian Human Rights Commission

Patrick Bendin, for the Respondent

Reference: 2013 CHRT 20