Docket: 2017-3409(IT)I

BETWEEN:

JÉRÔME TALBOT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 1st, 2018, at Québec, Quebec.

Before: The Honourable Robert N. Fournier, Deputy Judge

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Julien Dubé-Senécal

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2015 taxation year is dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 11th day of May 2018.

"Robert N. Fournier"

Deputy Judge Fournier

Citation: 2018 TCC 94
Date: 20180511
Docket: 2017-3409(IT)I

BETWEEN:

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REASONS FOR JUDGMENT

Deputy Judge Fournier

[1] The Appellant, Jérôme Talbot, is appealing the initial notice of assessment issued on April 11, 2016, for the 2015 taxation year, denying him a Northern Residents Deduction. The Appellant argues that he resided in a prescribed zone for a period of at least six consecutive months, pursuant to section 110.7 of the *Income Tax Act* (the Act) and section 7303.1 of the *Income Tax Regulations*. Thus, on December 14, 2016, the Appellant served notice on the Minister of National Revenue (the Minister) of his objection to that assessment, which the Minister nevertheless confirmed on July 31, 2017.

[2] To establish and confirm his position, the Minister assumed that the Appellant's permanent residence was in the City of Québec and that, during the taxation year in question, he had worked 158 days for Canadian Royalties Inc. as a crusher operator in a northern zone. The Minister assumed that the Appellant spent the majority of the 207 days he did not work in Québec, outside the northern zone. Conversely, the Appellant has different data and presented a detailed table supporting his position.

[3] According to his testimony, although the Appellant was working in a northern zone, he would normally work for 22 consecutive days and then have 20 consecutive days off. It goes without saying that during the time off, he would leave the work site and return to his residence in the City of Québec, and live there

for the following 20 consecutive days. This occurred during the period from March 26, 2015, to December 17, 2015, which is clearly demonstrated in the table the Respondent filed as Exhibit I-1, tab 3. Thus, based on his calculations, this spanned a period of 275 days in total, during which he worked for 161 days in a northern zone, which was 58.5% of the period in question. It is on that basis that he then claimed credits, which the Minister denied.

[4] Therefore, the issue in dispute between the parties is to determine whether the Appellant resided in a prescribed zone for a period of at least six consecutive months during the period in question, from March 26, 2015, to December 17, 2015. First, the Appellant argues that his time away from the work site, when he returned to his residence in the City of Québec, should not be considered an interruption in the continuity of residence in the northern zone. However, he took the time to calculate the percentage of time he spent at work versus his time off, seemingly to establish that he did in fact work more than half the time! Is this some new way of calculating credits for those who work in northern zones? More on that later! Nevertheless, by his own admission, his primary residence was in the City of Québec.

[5] With regard to his work in a northern zone, for all practical purposes, the Appellant had a permanent position during which his employer provided accommodations and meals. By necessity, his activities were very limited, since his work site was in a very remote area. According to the Appellant, there is nothing to do except eat, sleep and work crazy hours. In short, he said, [TRANSLATION] “it’s like war.” It is easy to understand why such workers generally receive higher salaries than usual and even why the Act provides them with certain concessions.

[6] However, in this case, has the Appellant rebutted the presumption that the assessment was valid? Is he entitled to receive the Northern Residents Deduction?

[7] In this case, it is important to note that the Respondent does not dispute that the Appellant worked in a northern zone. However, the Respondent disputes that he lived or resided in a northern zone for a period of six consecutive months. Firstly, with regard to the prescribed period of “six months,” it is established that the Appellant left his work site from time to time and that these absences do not

necessarily disqualify him from claiming the credits as he attempted to do. In *Morecroft v. M.N.R.*[1], Justice Rip of the Tax Court of Canada wrote as follows:

> [TRANSLATION] . . . The fact that he left the northern zone two days in a row to purchase supplies and to visit his family in Nanaimo or to go to Nanaimo to attend family gatherings does not in my opinion constitute an interruption in his residence in the prescribed zone — no more than a Vancouver resident who has a cottage in Washington State ceases to be a resident of Canada when he spends two days in Washington to purchase supplies for his residence in Vancouver.
>
> The expression "consecutive" means continuously or without interruption. However, that expression applies to the six-month period during which a person resided in a prescribed zone. To reside anywhere, a person is not obligated to be in a particular region constantly and without interruption. A resident of a given region can leave it on several occasions, for varying periods of time, and remain a resident of that region. Consequently, for the purposes of section 110.7, a person may leave a prescribed zone where he or she resides to purchase supplies and visit family without it being considered an interruption in the continuity of residence in that region. The deduction provided for in section 110.7 is based on a specific reason, that is, the remoteness of the region where the taxpayer lives and works.

[8] There are also interesting discussions on this topic in the–decision *Éric Desrosiers v. ARQ*[2]. This is a decision of the Court of Quebec (Small Claims Division) made by the Honourable Hermina Popescu, J.C.Q. It is understood that the relevant provisions in that case, though similar, are not identical to those that apply in the federal jurisdiction. Moreover, the Court of Quebec had an Interpretation and administrative practice bulletin that we do not have in this case. Nevertheless, the following is an excerpt that, although moot, could be instructive, if not relevant.

> [TRANSLATION] Although the period of "not less than 6 consecutive months" is not further explained in the Act, the Respondent has an internal policy to exercise some flexibility in its interpretation of this condition to account for the reality of workers in northern zones. In this regard, the interpretation bulletin IMP.350.1-1 describes certain situations where the Respondent considers there to be no interruption in the period of six consecutive months. For example, a worker who lives and works in a northern zone for 35 days, then returns to his primary residence for 10 days, would not be considered to have interrupted the period of six months. The Respondent's tolerance threshold is established as being a cycle composed of at least 75% of days being in the northern zone.

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[1] 1991 CarswellNat 587, [1991] 2 C.T.C. 2265, 91 D.T.C. 937.

[2] 2015 QCCQ 14837.

[9] In the case at bar, did the Appellant take inspiration from these excerpts from *Desrosiers* when he made the effort to calculate that, of a total of 275 days, he worked 161 days, or 58.5% of the period in question? As previously stated, it was on this basis that he claimed the credits the Minister denied. So that is where we stand today.

[10] The Respondent does not dispute that the Appellant worked in a northern zone. Moreover, counsel for the Respondent is not necessarily opposed to a less strict interpretation of the specified period of six consecutive months or, as Rip J. describes it in *Morecroft*, [TRANSLATION] "not less than 6 consecutive months." Given the reality of workers in northern zones, if we accept that the Appellant was entitled to leave the prescribed zone from time to time, to procure something, or simply to take a mental health break, while visiting his family in Québec, the Court may conclude that these absences do not constitute an interruption in the continuity of his residence in that region. In my opinion, the Appellant's absences–do not influence the situation of his residence in a northern zone. Instead, the real issue in dispute between the parties is to determine whether the Appellant <u>resided</u> in a prescribed northern zone. Thus, "reside" is the key word!

[11] On this topic, we will return to *Morecroft*, supra, where Rip J. observed that the Respondent had denied the Appellant's claim because he regularly returned to his family's residence. Consequently, counsel for the Respondent argued that the Appellant did not reside in another place throughout the six-month period. According to the counsel, the purpose of section 110.7 of the Act was thus to provide tax relief to those who reside "permanently" in northern zones. On this point, Rip J. replied as follows:

> [TRANSLATION] The beginning of subsection 110.7(1) contains the verb "reside" with no other qualifier; there are no words such as "ordinarily" or "permanently" that in any way modify the usual meaning of the verb "reside," reside permanently or for an extended period, or have one's permanent or usual residence or live at or in a particular area.
>
> The Act establishes a period of not less than six consecutive months as the duration of residence that entitles a taxpayer to the deduction.

[12] Next, Rip J. elaborates on his definition of "residence" and concludes that a person may have more than one residence at a time:

> [TRANSLATION] The courts found that, for the purposes of the Act, a person could reside in more than one place simultaneously: *Thomson v. M.N.R.* Section 110.7

> does not obligate the taxpayer to reside in only one region. To be entitled to claim the deduction, the taxpayer must reside in a prescribed zone for six consecutive months; nothing in this provision precludes the taxpayer from residing simultaneously in a different region.

[13] Ultimately, in *Morecroft*, Rip J. notes that the Appellant had acquired a self-contained domestic establishment in a prescribed zone and had resided and worked in that zone for seven and a half months. He concludes as follows:

> [TRANSLATION] . . . As I previously stated, occasional visits to family should not influence — and do not influence, in my opinion — a taxpayer's residence situation for the purposes of section 110.7. It is clear that the Appellant had ties in Nanaimo and that this city could have been considered his ordinary residence. However, in 1988, he resided in a prescribed zone for a period of more than six consecutive months.

[14] I note that in *Morecroft*, the Court allowed the appeal with costs, having found that the taxpayer had established a "residence" in a prescribed northern zone. What is different in the Appellant's case is that, in my view, he has not demonstrated that he had "resided" in a prescribed zone for a period of at least six consecutive months. Even if we apply a generous interpretation of section 110.7 of the Act, while supporting the approach Rip J. recommends in *Morecroft*, the fact remains that the Appellant has not successfully established that he had a "residence" other than a temporary one at the work site during the 2015 taxation year. On this topic, I reference the comments of Justice Linden in *Dixon v. Canada*[3], where he references *Thomson v M.N.R.*[4], as follows:

> A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally or customarily lives. One "sojourns" at a place where he usually, casually, or intermittently visits or stays. In the first case, the element of permanence prevails; in the latter, that of the temporary prevails. The difference cannot be stated in precise and definite terms, but each case must be determined after all of the relevant factors are taken into consideration, but the foregoing indicates in a general way the essential difference. It is not the length of the visit or stay that determines the question.

> While this statement may well be an *obiter dictum*, this definition of sojourn has withstood the test of time.

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3 [2001] FCA 216.

4 [1946] 2 DTC 812.

[15] In this case, unlike the taxpayer in *Morecroft*, the Appellant’s employer provided him with meals and a room, which he had to vacate for his replacement when he left the work site during his time off. That was when he would return to his ordinary residence in the City of Québec. Every time he left the work site, he had to bring his personal belongings with him, because he no longer had a place to store them. At no time did he have a self-contained domestic establishment in a prescribed zone. Furthermore, the Appellant has tried to demonstrate that he is entitled to the deduction claimed on his tax return based on a percentage calculation. Recall that, according to the Appellant, the 161 days he worked out of 275 days constituted 58.5% of the period that he spent at the work site during the 2015 taxation year. I note that, pursuant to section 110.7, the Act seems to require a period of residence of not less than six consecutive months, which translates to more than 50% of a year. Nevertheless, in my view, this means of establishing entitlement to benefits provided in section 110.7 based on “percentage” does not exist.

[16] In my opinion, given all the circumstances of the Appellant’s personal situation, he “sojourned” in the northern zone in question. The most that can be said is that he intermittently stayed at the work site and did not even have the means of establishing a “residence” within the meaning of section 110.7 of the Act, even though that was his intention. The most he could expect was that his employer would provide him with a room during those work days. When he was off, he had no choice but to give his room to a colleague and go to his residence in Québec. While the advantages and benefits an employee receives as part of his or her employment are generally taxable, the Appellant could potentially obtain relief by asking that such benefits be excluded from his income, if that is not already the case.

[17] However, for the reasons I have just provided in this case, I am obligated to dismiss this appeal, without costs.

Signed at Ottawa, Canada, this 11th day of May 2018.

“Robert N. Fournier”

Deputy Judge Fournier

CITATION:	2018 TCC 94
COURT FILE NO.:	2017-3409(IT)I
STYLE OF CAUSE:	JÉRÔME TALBOT v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	May 1, 2018
REASONS FOR JUDGMENT BY:	The Honourable Robert N. Fournier, Deputy Judge
DATE OF JUDGMENT:	May 11, 2018

APPEARANCES:

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COUNSEL OF RECORD:

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Name:

Firm:

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