

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2017 CHRT 30

Date: October 3, 2017

File No.: T2139/1316

Between:

Sandra Temple

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Horizon International Distributors

Respondent

Decision

Member: Gabriel Gaudreault

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I. Background

[1] On February 4, 2015, the Canadian Human Rights Commission (the “Commission”) received a complaint from Sandra Temple (the “Complainant”) against Horizon International Distributors (the “Company”, the “Respondent” or “Horizon”) alleging that she was discriminated against on the basis of her sex and her disability. Relying on these two grounds, she alleges that she suffered adverse differential treatment in the course of employment and that the Company refused to continue to employ her, contrary to section 7 of the *Canadian Human Rights Act* (the “CHRA” or the “Act”).

[2] On February 26, 2016, the Commission referred the complaint to the Canadian Human Rights Tribunal (the “Tribunal”) to institute an inquiry under section 44(3)(a) of the *CHRA*.

[3] On December 22, 2016, the Vice-Chairperson of the Tribunal, Susheel Gupta, ruled on a motion regarding the location of the hearing. It was decided that the hearing would take place in two different places, namely, Calgary (from May 23 to 25, 2017), for the witnesses called by the Complainant, and Winnipeg (from June 6 to 9, 2017) for the witnesses called by the Respondent. The Complainant was present during the first three days of the hearing in Calgary and accompanied by her son, Jonathan Temple. Also present were counsel for the Respondent, Terra Welsh, and a representative of the Company, Luc Dubé. Two other Company representatives, Gilbert Dubé and his spouse, participated in the hearing via videoconference from Winnipeg. During the subsequent four days of hearings in Winnipeg, all the Respondent representatives attended, assisted by their counsel. Ms. Temple participated in the hearing via videoconference, from Calgary, again accompanied by her son.

[4] Considering the constant use of videoconferencing during this seven-day hearing, including for some of the testimony, the Tribunal was very proactive in guiding the parties throughout the hearing, specifically in managing documents and testimony. The Tribunal also ensured that the parties were able to follow and understand the hearing even if they were not physically present. The Tribunal asked the parties, repeatedly, to inform it of any

technological difficulties. The parties did not hesitate to do so when there were any, and measures were taken to rectify the situation.

[5] In Calgary, Ms. Temple testified first. She then called three witnesses: Paul Murray, a truck driver and friend; Yves Carriere, a Company truck driver and former colleague; and Jonathan Temple, her son. In Winnipeg, the Respondent called six witnesses: Gilbert Dubé, President of the Company; Luc Dubé, General Manager of the Company; Sheldon Savage, Equipment Manager; Terry Matthews and Verne Wyatt, dispatchers; and David Yach, a former truck driver for the Company.

[6] Having heard the various testimonies, and apart from some exceptions that I will deal with later in this decision, I find nothing to suggest that the witnesses were not forthright or credible in their testimony. Moreover, the Tribunal recognizes Ms. Temple's perseverance and her respect for the quasi-judicial process. The Tribunal also recognizes Ms. Welsh's great work. The parties worked well together and a sense of collegiality pervaded the hearing.

[7] Having said that, I must render a decision that is based on the evidence before me. For the following reasons, I find that Ms. Temple's complaint is not substantiated. Ms. Temple has not met the burden of establishing a *prima facie* case of discrimination or, more specifically, that the characteristics protected by the *CHRA* were a factor in the adverse impact.

II. Relevant provisions of the Act

[8] The following provisions from the *Act* are relevant in this case: 2 and 3(1), 7(a) and (b), 15(1)(a), 15(2), 53(1), 53(2), 53(3) and 53(4).

[9] These provisions provide as follows:

2 The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being

hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

7 It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

15 (1) It is not a discriminatory practice if

(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;

...

15 (2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a *bona fide* occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a *bona fide* justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

53 (1) At the conclusion of an inquiry, the member or panel conducting the inquiry shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.

53(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged

in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

(a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including

(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or

(ii) making an application for approval and implementing a plan under section 17;

(b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;

(c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;

(d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and

(e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.

53 (3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

53 (4) Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

III. Factual context

[10] For the sake of brevity and a clear understanding of the case, the Tribunal will summarize the general aspects of the case on the basis of the documents submitted by the parties and the various testimonies given at the hearing. The Tribunal deems it necessary to establish these facts in order to capture the essence of the case and the trucking industry.

A. Horizon International Distributors and the trucking sector

[11] Horizon is a Manitoban trucking company that was founded in 1988 by Gilbert Dubé and whose headquarters are located in Winnipeg, Manitoba. The Company's activities stretch across all of Canada and focus specifically on the transportation of perishable and refrigerated foods. At the time of the hearing, the Company's operations were administered by just over ten employees. The Company has a fleet of about 32 trucks and a warehouse in the Montréal area (Quebec). Horizon employs two types of truck operators to deliver its freight: (1) truck operators who drive the trucks that belong to the Company and who are employees ("operator-employees"); and (2) truck operators who own their own heavy goods vehicle and who are employed on a contractual basis ("owner-operators"). Importantly, on the date of the complaint, Ms. Temple was the only female owner-operator at Horizon.

[12] Owner-operators are paid for their mileage: the more kilometres they drive, the more they are paid. In addition, they earn a fixed minimum amount for each delivery they make. The trucks owned by the Company are managed and maintained by the Company, while owner-operators are responsible for their own heavy goods vehicles and related expenses. Horizon is the type of trucking company that does not provide a specific schedule for collecting freight. It also does not guarantee particular areas or routes to truck operators. However, truck drivers indicate their availability and preferred areas or routes to the Company, which dispatches deliveries to the operators available. Horizon attempts to accommodate truckers according to their preferences where possible. It should be noted

that the truck operators' loads do not necessarily all go to the same client. Operators' trailers may therefore contain several loads that have to be delivered to different clients.

[13] Horizon allows owner-operators to have their expenses, including repairs, gas, insurance and permits, billed to its account. Sometimes, it also advances money to owner-operators in the middle of the month to help them pay for their everyday expenses. Finally, the Company issues a statement at the end of the month listing the earnings and expenses of owner-operators. Their earnings can be summarized in the following manner: the amount allocated for their mileage and their deliveries, less gas, advances, repairs and maintenance, insurance, permits and other expenses.

[14] Without going into every detail of how the Company operates, when goods have to be delivered to a client, a dispatcher organizes the logistics of the delivery. Without limiting his or her tasks, we understand that the dispatcher assigns loads to truck operators, organizes delivery times with clients, works closely with truck operators, anticipates alternatives in the event of a problem and contacts clients, among other things. The dispatcher is the link between the Company, clients and truck operators. At Horizon, dispatchers divide duties across two sections: Eastern and Western Canada. Each section has a dispatcher.

[15] Truck operators have to deliver the goods as planned. They must obviously follow delivery schedules. Some clients are less flexible about delivery times, and sometimes deliveries have to be changed or rescheduled. This is not rare. Truck operators also have to respect strict transportation regulations and are subject to particular requirements when it comes to their working hours. Once again, without going into every detail of the regulations on heavy goods transportation, the Tribunal notes that truck operators have to work one of two cycles: a 7-day cycle or a 14-day cycle. For each cycle, specific restrictions apply. For example, during the 7-day cycle, a truck operator may not drive more than 70 hours. After the 70-hour period, a 36-hour break is mandatory. The Tribunal also understands that, over a 24-hour period, truck operators may not drive more than 13 hours a day. They are entitled to a two-hour break and an hour long maintenance break, especially to inspect the truck and refuel but not to drive. Lastly, they have to rest for eight consecutive hours. The Tribunal understands that truck operators may switch

from one cycle to another while, once again, respecting certain rules. The Tribunal certainly does not claim to reproduce all the regulatory requirements applying to heavy goods transportation.

[16] Truck operators are also obliged to keep what is commonly known as a log book. This log book allows truck operators to maintain a record of their activities for each 24-hour period. The 24-hour period is divided into 15-minute intervals. Operators must keep a record of their movements and driving time, the length of their mealtimes and breaks and any time not working. When Ms. Temple worked for Horizon, her log book was kept by hand and not electronically.

B. Sandra Temple

[17] Sandra Temple has been a truck operator for about twenty years. She was living in the town of Salmon Arm, British Columbia, but now resides in the Calgary area, Alberta. Her son, Jonathan Temple, and her mother, whom she takes care of, also live in Calgary. Ms. Temple started working for the Company in winter 2011. She was replacing a sick driver, Peter Cox, and was driving his truck. What should have been a short-term replacement was extended until summer 2012. After this time, the Company and Ms. Temple reached an agreement for Ms. Temple to become an owner-operator for the Company. She therefore joined the team officially with her own truck in August 2012. Horizon terminated her employment contract on December 18, 2014. Ms. Temple preferred making deliveries in western Canada. She therefore made deliveries between Manitoba (point of departure and destination) and British Columbia.

C. The October 14, 2014 accident and subsequent events

[18] On October 14, 2014, another truck collided with Ms. Temple's truck while she was filling up in Kelowna, British Columbia. Ms. Temple injured her hand, more specifically, her thumb. However, there was no need to contact the first responders or the police, and the accident was caught by the gas stations' cameras. The truck and its trailer were

substantially damaged, but the load was not affected. Ms. Temple made her deliveries as planned.

[19] Without going into detail, and since the events will be explained later on, this type of incident involving a truck driver gives rise to two types of possible claims that can be made in parallel: (1) a claim to WorkSafeBC (“WCB”) for loss of wages; and (2) a claim to Manitoba Public Insurance (MPI) for damage to the vehicle. In Ms. Temple’s case, both claims were made because the truck was damaged and because she had to stop working for some time. The Tribunal understands that Ms. Temple’s claim to WBC was completed only in December 2014. This issue will be addressed later. As a result, Ms. Temple did not receive payments from WBC until March 2015, retroactive to the date of the accident and to when she stopped working. A claim to the MPI was also made, and the deductible was not reimbursed until July 2016.

[20] The Complainant did not work between October 14, 2014, the date of her accident, and early December 2014. The truck was damaged and had to be repaired. There were some communications between Ms. Temple and the Company regarding the MPI claim. In early December 2014, they started discussing her possible return to work. The truck was ready to go back on the road, and Ms. Temple, who was still in British Columbia, returned to Winnipeg to pick up her load. She made her deliveries as planned. Even though the Complainant had not worked for almost two months, Horizon found her some loads right before the holidays, a quiet period of the trucking year. Ms. Temple drove to British Columbia and had to be back in Winnipeg on Sunday, December 14, 2014. On the same day, she informed the Company that she had an appointment for a CT scan at Chilliwack Hospital, British Columbia, on December 18, 2014. On December 17, 2014, Horizon told the Complainant that she had a load to pick up in Richmond, British Columbia, on December 18, 2014. Ms. Temple reminded Horizon that she had a CT scan that day, between noon and 6 p.m., and that she also had to have her truck inspected because of a warning light indicating an engine problem. On December 18, 2014, Ms. Temple could not pick up the load as requested by the Respondent because she had to go to her hospital appointment and because there were more problems with her truck than she had thought: the truck could not go back on the road before being repaired. Horizon attempted to find

an alternative, but at that time of the year, finding a truck is difficult. The Company was unable to fulfill its commitment to its client. On the same day, Horizon terminated Ms. Temple's employment contract.

IV. Legal framework applicable to this case

[21] The purpose of the *Act* is set out in section 2 and allows everyone the opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by any discriminatory practices or prohibited grounds of discrimination under the *Act*.

[22] In human rights complaints, the Complainant has the burden of establishing a *prima facie* case of discrimination. As noted in *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), at paragraph 28, a *prima facie* case is “. . . one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer”.

[23] In the particular case of the Complainant, Ms. Temple has to establish, in accordance with section 7 of the *Act*,

- (1) That there were one or more prohibited grounds of discrimination under the *Act* (in this case, sex and disability);
- (2) That, in the course of employment, the respondent differentiated adversely in relation to her or refused to continue to employ her; and
- (3) That there was a connection between the prohibited grounds of discrimination and the adverse differential treatment in the course of employment or the refusal to continue to employ her.

[24] As was recently confirmed in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (“*Bombardier*”), a *prima facie* case must be established on a balance of

probabilities. Consequently, the Complainant has to establish, on a balance of probabilities, the three elements of a discriminatory practice. It is not necessary to establish that the prohibited ground is the sole cause of the discriminatory practice: the prohibited ground can be one of many factors (see *Bombardier, supra*, at paragraphs 44 to 52). Conversely, if the prohibited ground has not influenced the Respondent's conduct, the complaint must be dismissed

[25] Moreover, it is important to remember that discrimination is usually not direct, overt or intentional. As was held in *Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT) ("*Basi*"), direct evidence is not required and neither is it necessary to prove an intention to discriminate (see also *Bombardier, supra*, at paragraphs 40 and 41). The Tribunal therefore has to analyze the circumstances to determine whether the subtle scent of discrimination permeates the matter. In the case of circumstantial evidence, an inference of discrimination may be drawn where the evidence offered in support of the allegations renders such an inference more probable than the other possible inferences or hypotheses (see *Basi, supra*; see also *Chopra v. Canada (Department of National Health and Welfare)*, 2001 CanLII 8492 (CHRT)).

[26] If the Complainant meets her burden of proof, the Respondent has the burden of presenting its own evidence to refute the Complainant's allegations of discrimination. Where there is a *prima facie* case of discrimination, the Respondent may demonstrate that the alleged discrimination did not occur as alleged by the Complainant or that the conduct was not discriminatory within the meaning of the *Act* (see *Maillet v. Canada (Attorney General)*, 2005 CHRT 48, at paragraph 4). The Respondent may, moreover, establish a defence under the *Act*, specifically section 15 of the *Act*. Finally, the Complainant has the burden of establishing that the Respondent's explanations are pretextual and that the true motivation behind the Respondent's actions was in fact discriminatory (see, for example, *Basi, supra*, and *Israeli v. Canada (Canadian Human Rights Commission)*, 1983 CanLII 6 (CHRT)).

[27] In this matter, Horizon did not rely on the exceptions set out in section 15 of the *Act* to explain the alleged discriminatory practices. However, it did present its own evidence to refute the Complainant's allegations that discrimination took place. Having said that, and

since the Respondent did not rely on a defence available under the *Act*, the Tribunal will focus solely on the analysis of the testimonial and documentary evidence submitted by the parties to determine whether this is a *prima facie* case of discrimination.

V. Preliminary remarks

A. Witness David Yach

[28] The Tribunal is in an unusual position with regard to Mr. Yach's testimony. According to the Respondent, Mr. Yach was paid by Ms. Temple to make false statements to the Commission. Horizon therefore called Mr. Yach as a witness so that he could explain the situation to the Tribunal. Ms. Temple categorically denies these claims.

[29] I would like to start by noting that Mr. Yach's testimony raises many questions. Under oath, Mr. Yach admitted that he had lied and made false statements to the investigators of the Commission. When the Tribunal assessed his testimony, Mr. Yach succinctly answered general questions, even under examination-in-chief. However, when Ms. Welsh addressed the issue of the false statements, the witness quickly became hesitant in his replies and started stammering. Gilbert Dubé also testified that Mr. Yach had worked for the Company in the past. Mr. Yach had billed fancy accessories for his truck to the Company's account. The Tribunal understands that he had not been authorized to do this. Moreover, Mr. Yach's truck was in deficit. Horizon and Mr. Yach therefore reached an agreement: the Company was to recover the truck to cover its expenses. However, Mr. Yach removed the fancy accessories before returning the truck to the Company, contrary to the agreement. Horizon therefore terminated his employment contract, and they ended their relationship on bad terms.

[30] These events occurred several years ago. The Tribunal nonetheless questions Mr. Yach's credibility. Moreover, no evidence corroborating Mr. Yach's testimony was adduced at the hearing. It is Mr. Yach's word against that of Ms. Temple, who formally denies the allegations. I also find that, even though the Respondent is attempting to challenge Ms. Temple's credibility, Ms. Temple supported many elements of her testimony with documents, email exchanges and texted conversations. The Tribunal has no reason

to question Ms. Temple's credibility at this stage. I would also like to note that other than the question of credibility, Mr. Yach's testimony was neither useful nor necessary for making a decision.

[31] After considering these factors, the Tribunal therefore decided to disregard Mr. Yach's testimony.

B. Objection under advisement

[32] On the last day of the hearing, Ms. Temple asked for the Tribunal's permission to file a document from someone named Avi, who works at Rigmaster Truck & Trailer Repairs Inc. This document was not included in the documents sent to the Respondent or the Tribunal. According to Ms. Temple, it represents another example of her being forced to go on the road even though her truck was being repaired. She stated that the document should have been part of the documents she submitted to the Tribunal. Ms. Temple is not comfortable using technology, particularly, computers. She therefore needed support throughout the quasi-judicial process, including in the filing of her documentary evidence and the creation of binders. Also, the Complainant was not represented and did not benefit from the support of counsel.

[33] Ms. Welsh strongly objected to the filing of this document. First, she told the Tribunal that the procedure for filing documents as evidence was explained to the Complainant on several occasions. According to Ms. Welsh, the instructions were clear throughout the process. She added that the document had not been authenticated, and was undated and anonymous. Lastly, she submitted that the admission of such a document at this stage was very prejudicial to the Respondent and it would not be fair to admit its contents without the Respondent having an opportunity to make a full and complete defence.

[34] As Ms. Temple's request was made on the last day of the hearing, right before arguments, the evidence was closed and all witnesses had testified, I asked the parties whether they would agree to my reviewing the document before ruling on the objection.

The parties agreed to this request. The Tribunal noted the parties' submissions and reserved its decision.

[35] The rules and admissibility of evidence before the Tribunal are less formal than those before a court of law. The Tribunal may therefore receive and accept any information by any means that it sees fit under section 50(3)(c) of the *Act*. The procedure for filing documents with the Tribunal is set out in Rule 6 of the *Canadian Human Rights Tribunal Rules of Procedure* (the "Rules"). Under Rule 9, the Panel may, at the request of a party, allow the filing of certain documents that were not filed in accordance with the procedure set out in Rule 6. However, this leave must be given in respect of the purpose described in paragraph 1(1) of the Rules, more particularly the right to full and ample opportunity to be heard.

[36] Under section 50(3)(c) of the *CHRA*, the Tribunal has broad discretion in administering evidence. Hear-say can be admitted and documents do not necessarily have to be authenticated. However, the Tribunal is also guided by the principles of natural justice and fairness. I am mindful of the Complainant's arguments. However, I believe that admitting such a document would be highly prejudicial to the Respondent and given the very late filing, the Respondent was unable to take any means to mitigate this prejudice.

[37] Consequently, I reject the Complainant's request to file this document. Regardless of this decision, I would like to note that even if the document had been filed with the Tribunal, its contents would not have had a major impact on my decision.

VI. Analysis and positions of the parties

A. Prohibited grounds

[38] As mentioned previously, the prohibited grounds of discrimination relied upon by Ms. Temple are sex and disability. Neither ground was challenged by the parties.

[39] "Disability" is defined at section 25 of the *Act* as "any previous or existing mental or physical disability. . .". The Tribunal interpreted and expanded this definition in *Audet v. Canadian National Railway*, 2005 CHRT 25, at paragraph 39, which essentially reiterates

the interpretation of disability provided in *Desormeaux v. Corporation of the City of Ottawa*, 2005 FCA 311 (CanLII), at paragraph 15, which defines disability as “a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment”.

[40] It is clear to the Tribunal that Ms. Temple’s injury is consistent with this interpretation of disability.

B. Adverse differential treatment and refusal to continue to employ

[41] Ms. Temple described several events to the Tribunal that, in her eyes, are displays of discriminatory practices by the Respondent. In her statement of particulars, Ms. Temple had already attempted to be concise by putting these events into different categories. On behalf of the Respondent, Ms. Welsh did the same. I will therefore review the different categories and elements to determine whether this is a *prima facie* case of discrimination. Where appropriate, I will look at the connection between the prohibited ground and the adverse impact in the subsequent section.

(i) Tolls

[42] First, Ms. Temple alleges that she suffered adverse differentiation in regard to the toll charges on the Port Mann Bridge, British Columbia. She submits that the male truck operators are not charged toll fees, but that Horizon deducted these amounts from her earnings. She compared her case to that of two truck operators, Yves Carriere and Pat Nicholas. The Respondent submits that Mr. Carriere does not use this bridge and therefore does not incur these expenses and that Mr. Nicholas is an employee-operator of the Company and that his costs and expenses are therefore assumed by the Company. The Respondent further argues that the Complainant was reimbursed these amounts. Lastly, the Respondent argues that it made an administrative error in managing the toll charges, an error that was later corrected.

[43] The evidence reveals that the Port Mann Bridge, which is in the Vancouver area, British Columbia, has tolls. An electronic system called TReO records the details of

vehicles using the bridge and drivers then have to pay the toll charges. In Ms. Temple's case, the charges were billed to the Company. Between December 22, 2012, and October 9, 2013, the Complainant incurred \$523.90 in toll charges. The Company billed her for part of the sum, \$300.00, on October 31, 2013. It also billed her \$69.80 and \$36.30 for new toll charges on her statement dated November 30, 2013. She was billed a total of \$406.00 in charges.

[44] Ms. Temple talked to Mr. Carriere and Mr. Nicholas to find out whether they, too, were being debited their toll charges, to which they replied no. She therefore asked Luc Dubé to clarify why she was being billed these amounts. Luc Dubé had to discuss the matter with Horizon's president, Gilbert Dubé, who was out of the province at the time. A few weeks went by, and the Company finally reimbursed the Complainant \$406.00 on February 28, 2014. Luc Dubé told the Tribunal that British Columbia's TReO toll charges were a relatively new situation for Horizon. Gilbert Dubé had no recollection of receiving such invoices from the province previously. He also explained that the charges incurred by owner-operators, including tolls, are usually made at their own expense. The Tribunal notes that this is indeed what the employment contract indicates. Gilbert Dubé nonetheless decided to pay the charges and to assume them in the future. The evidence establishes that this was a business decision on the part of the Company.

[45] Furthermore, Mr. Carriere, who drives the same routes as the Complainant, between Manitoba and British Columbia, testified that he only rarely takes the Port Mann Bridge. Instead he uses a different route, without tolls or charges. As for Mr. Nicholas, it was established that he is an employee-operator for Horizon. He therefore does not incur such charges. Gilbert Dubé also informed the Tribunal that if one of his employee-operators incurred toll charges, the Company would pay for them as planned.

[46] Ms. Temple stated that Horizon was set on no other truck operator taking the Port Mann Bridge and incurring this type of charge. She referred to the Company's history of TReO charges, which clearly shows that one other driver took the bridge between January and March 2013. This was during the same period she accumulated \$523.90 in toll charges. It was demonstrated that an administrative error was made in managing the toll charges. Gilbert Dubé admitted that he had taken it for granted that the toll charges had all

been incurred by the Complainant and had not really looked at the licence plate numbers associated with the charges. Ms. Temple was therefore debited \$69.80 even though it had not been incurred by her. This sum plus the other amounts debited were reimbursed, and she was not subsequently charged for tolls. The fact that the \$406.00 reimbursement was made four months later and that the other operator was not billed these charges, as a result of an error, is not adverse differential treatment in itself.

[47] Regarding the British Columbia toll charges, I therefore find that, on a balance of probabilities, the evidence does not show that the Company differentiated adversely in relation to the Complainant.

(ii) Working harder than male operators

[48] Ms. Temple alleges that she had to work harder than her male colleagues to earn the same income. Horizon respectfully submitted to the Tribunal that no evidence was submitted for this. After reviewing the evidence, I must indeed find that the Complainant has not met her burden. In the factual background, I explained how the earnings of owner-operators are calculated. A number of factors affect this calculation, including the number of pick-ups and deliveries made, mileage, maintenance and repair costs, gas, insurance and permits. I also note that the Company cannot guarantee routes or pick-ups and deliveries. Other aspects must also be taken into consideration, including efficiency and even business opportunities. Without overwhelming evidence clearly showing that it is more probable than not that Ms. Temple had to work harder to earn the same income as the male operators, I cannot draw this conclusion.

[49] I therefore do not believe that, in the course of employment, the Company differentiated adversely in relation to the Complainant as far as this aspect is concerned.

(iii) Forced to deliver and drive

[50] Ms. Temple alleges that, in contrast to the male truck operators, the Company forced her to deliver goods when she was unavailable to do so. Once again, the Respondent attempted to refute these allegations. Some witnesses explained the

expression “forced to deliver” to the Tribunal in their own words. Generally speaking, they all agreed that “forced to deliver” the goods referred to the Company forcing a truck operator to go on the road when he or she was unable to go on the road or when the Company put the operator in a position where the operator felt that he or she had no other choice but to go on the road. Being unable to drive can mean a number of things, for example when an operator is on a mandatory break or leave, or when he or she is too tired to drive. Ms. Temple attempted to establish several situations to the Tribunal where she had been forced to deliver goods by Horizon. For the sake of brevity, I will not review all of these situations. She explained, moreover, that she had been afraid of losing her job if she refused to go on the road even when she was unable to do so.

[51] It is clear to me that the Complainant generally agreed to drive when the Company asked her to do so, even when she was unable to do so. Ms. Temple made several statements about this subject and often repeated the same expression, saying that she had not wanted to “rock the boat” and drove when she was asked to do so. Luc Dubé confirmed this in his testimony, describing the Complainant as being compliant. The Complainant’s colleague, Mr. Carriere, whose testimony is absolutely credible, also explained to the Tribunal that he had trouble understanding why she agreed to every load Horizon gave to her. He explained that he had refused loads from the Company and that the president, Gilbert Dubé, had also contacted him because he had refused a load. When he was asked whether Horizon had ever threatened him with dismissal when he refused a load or refused to drive, Mr. Carriere clearly replied no. Lastly, Mr. Carriere testified that he had refused several loads that Ms. Temple had accepted.

[52] Having said that, two situations involving the Complainant feeling forced to make a delivery or to go on the road attracted the Tribunal’s attention. The first occurred on July 21 and 22, 2014. Ms. Temple, who was in British Columbia, informed her supervisor, Luc Dubé, on Sunday, July 21, 2014, that her truck had a mechanical problem. She told him in advance that she would take her 36 hours of mandatory leave on Tuesday, July 23, 2014, and would reset her working hours. On Monday, July 22, 2014, Luc Dubé informed her that she had to go on the road and pick up three loads, including some scheduled for July 24, 2014. The Complainant told Luc Dubé that this would not allow her to do her 36-

hour reset. She accepted the load anyway, but it forced her to switch from the 70-hour cycle to the 120-hour one. Counsel for the Respondent alleges that Ms. Temple's hours were complying with statutory requirements and that she could switch cycles. I do not find the evidence to be as clear as Ms. Welsh sees it. It is apparent that the Complainant informed her supervisor by text message that her hours were violating statutory requirements and that she could attempt to organize herself so as to be able to pick up the load as requested. Nothing in the evidence allows me to question what the Complainant has said about the situation. Having said that, the load was maintained, by both Ms. Temple and the Company.

[53] The Respondent noted several times that the duty to comply with the law with regard to driving hours was the responsibility of the truck operators. The Tribunal understands the idea that an operator should not go on the road if it is unlawful to do so within the operator's hours of work. However, the Tribunal has trouble understanding how the Company could dispatch a load when the operator tells it that he or she has to rest or take a break and indicates numerous times that it would be unlawful to drive. The Company was already aware on the day before that Ms. Temple had to reset her cycle. I would add that Ms. Temple took the time to explain to her supervisor, Luc Dubé, that she had the feeling that the Company was questioning her work and her efficiency. Should she have said no to the load? Probably. Was she under the impression that she had no other choice but to take the load? For a number of reasons, this is very possible. When the Complainant explained to the Tribunal that she had felt pressured to drive, in the circumstances, her statement does not seem unreasonable.

[54] Another similar incident took place a few weeks later, on September 26, 2014. Ms. Temple had to pick up a load in Winnipeg, and the president of the Company, Gilbert Dubé, had to load the truck. A new delivery had to be made in Alberta, by Ms. Temple, on her way west. The evidence reveals that the Complainant was threatened with dismissal by Gilbert Dubé via text message if she did not take the load as requested. The Tribunal can understand that, for a number of reasons, Gilbert Dubé was irritated by the situation, in part, because of the existing tension between them. What is clear is that Ms. Temple took the load under threat of dismissal if she decided otherwise. When looking

at the situation from a broader perspective, this incident was a continuation of the events of July 21 and 22, 2014. Ms. Temple felt under pressure and that she had to take the loads or risk consequences.

[55] The Tribunal understands that Horizon is a small family company and that its directors want to provide their clients with excellent service. This cannot, however, justify such treatment. The Respondent mentioned that Ms. Temple never refused a load. Indeed, she repeated a few times that she wanted to make money and that she did not want to refuse the loads offered by the Company. These arguments do not supersede the fact that she had been threatened by the Respondent if she did not go on the road. Even though there are several reasons why she accepted most of the offered loads, the pressure remains one of the many factors to consider.

[56] Horizon also mentioned that Ms. Temple never made a written complaint about the matter. This argument has no basis as nothing in the evidence suggests that there was an obligation to make a written complaint to the employer. I would also add that it is clear that on July 22, 2014, Ms. Temple described to her supervisor, Luc Dubé, that she felt pressured to accept loads and that the Company was questioning her work and her efficiency. The Company was therefore well aware of the Complainant's feelings.

[57] Even though Gilbert Dubé testified that he monitored all his operators in the same manner, supervised them when necessary and sometimes used profanity with his employees, nothing in the evidence suggests that he threatened other drivers with dismissal if they did not take loads. On the contrary, the evidence reveals that Mr. Carrière refused loads and was not threatened with dismissal. Ms. Temple feared dismissal. This was adverse differential treatment.

[58] I would like to add that it is clear to me that the relationship between the Complainant and the Respondent deteriorated considerably over time. The Tribunal understands that frustrations built up on both sides. In addition, the evidence reveals that Ms. Temple required more supervision than certain other operators. However, I reiterate that this in itself does not justify Horizon threatening her with dismissal if she did not take loads given that it did not threaten the other truck operators. It is not sufficient for the

Respondent to explain to the Tribunal that the Complainant could have simply said “no” and refused the loads.

[59] Based on a balance of probabilities, I find that the Company treated the Complainant adversely in the course of employment. I will deal with the question of the connection between the prohibited ground and the adverse differential treatment later.

(iv) Less time allocated

[60] Ms. Temple alleged that Horizon assigned her less time for her trips than her male truck operator colleagues. The Respondent contradicts these allegations and submits that the Complainant did not prove her allegations on a balance of probabilities. The only evidence is the short testimony by Jonathan Temple, who stated that, in her last months of work, his mother had less time to stop in Calgary. This factor alone does not allow her to meet the burden of a balance of probabilities. Therefore there is insufficient evidence that, in the course of employment, the Company differentiated adversely in relation to Ms. Temple in this regard.

(v) Additional loads

[61] The Complainant alleged that she suffered adverse differential treatment because the Company assigned her new loads and deliveries while she was already driving a planned route. The Respondent confirms that Horizon follows this type of practice to make trips effective. It noted that it could not wait for an operator to return to Winnipeg to give the operator new loads: the goal was profitability. Ms. Temple was not specific about which situations she is criticizing Horizon for. She addressed this subject in general terms in her testimony. I understand that the trucking industry is constantly moving, that loads and deliveries can change or be added quickly. The fact that loads and charges are added to planned loads and deliveries is not in itself a discriminatory practice.

[62] What the Tribunal must look at, rather, is the impact of such additions on the Complainant and if this resulted in adverse differential treatment in the course of employment. Unfortunately, Ms. Temple was unable to establish that the addition of loads

during trips resulted in adverse differential treatment for her. On a balance of probabilities, there is no evidence for this.

(vi) Difference in privileges (debts and truck lease)

[63] The Complainant also described as adverse differential treatment the fact that she did not enjoy the same privileges as the male truck operators. More specifically, she referred to the management of her financial debt to the Company, the renting of a replacement truck and the financing of a personal loan. I will discuss these three privileges separately.

[64] First, the Company accepts owner-operators charging certain expenses to its account. The Company then deducts these amounts from the owner-operators' earnings at the end of the month. The evidence shows that, in late September 2014, the Complainant owed Horizon \$78.16 and that, in late October, she owed zero. Ms. Temple's accident occurred on October 14, 2014, and she stopped working until early December 2014. Consequently, the sums she incurred to repair the truck started accumulating in the Company's account. At the end of November 2014, the Complainant owed \$5,835.91. She started working again in mid-December 2014 and made a few deliveries. However, on December 17, 2014, the Complainant brought her truck to the garage for new repairs. There were more repairs than expected, and new expenses were incurred. The Company terminated her contract on December 18, 2014. On December 31, 2014, Ms. Temple owed \$10,264.40.

[65] Ms. Temple explained to the Tribunal that the Company dismissed her and in the course of employment, differentiated adversely in relation to her on the pretext that she owed them a great deal of money and that she was unable to reimburse it. She submits, however, that the male owner-operators, including Mr. Carriere, also had debts to the Company, but that they were not dismissed or made to suffer adverse differential treatment. First, I note that Mr. Carriere is in the same situation as the Complainant: he is an owner-operator and charges expenses to the Company's account. Some of his equipment statements were adduced before the Tribunal, specifically those of October,

November and December 2014. Like Ms. Temple, Mr. Carriere also had an accident in mid-October 2014, and he stopped working until November 22, 2014. In October 2014, he owed Horizon \$7,381.48. In November, he owed \$24,653.26. However, Mr. Carriere started working again in late November. In December 2014, he succeeded in reducing his debt to \$15,917.55 and did not take the advance during this month.

[66] Gilbert Dubé testified on this subject at the hearing. He explained that when Mr. Carriere incurred the charge of over \$12,000.00 in November 2014, he was unaware that the charge would be so high. He explained that the Company did not assume these repair costs. Gilbert Dubé allegedly asked Mr. Carriere to take out a personal loan to pay for these expenses and referred him to an acquaintance working for a financial institution. The testimonies are contradictory. Mr. Carriere testified that when he has major repair work done to his truck, he asks for the Company's permission before incurring such expenses. He then confirmed that the Company did pay for this repair of almost \$13,000.00. That is indeed what appears from his equipment statement dated November 30, 2014. As mentioned previously, on this date, he owed \$24,653.26. When cross-examined, Gilbert Dubé changed his mind and confirmed that the Company did seem, in fact, to have paid for these repairs, and eventually attempted to explain the situation. He added that Mr. Carriere had the capacity to reimburse the Company and that he owned a house and his truck. Yet Mr. Carriere confirmed to the Tribunal that his truck was financed through a financial institution. Moreover, when the Tribunal consulted Mr. Carriere's equipment statement from December 2014, nothing suggested that he reimbursed the Company a large part of his debt, through a personal loan he might have taken out, for example, as requested by Gilbert Dubé. In the circumstances, I find Mr. Carriere's testimony to be more coherent in light of the evidence before me at the hearing.

[67] Once again, the Tribunal is mindful of the fact that Horizon is a small family company. As mentioned by Gilbert Dubé and corroborated by Luc Dubé, the Company assumes many expenses of owner-operators and is not reimbursed these sums before the end of every month, if the owner-operators have sufficient earnings. Otherwise, it assumes the balance of the debt until it has been reimbursed in full. However, I wonder how the

Respondent can say that the Complainant was unable to reimburse her debt even though she had been working for Horizon for over two years and the evidence clearly reveals that she had always reimbursed what she owed the Company. Moreover, on October 31, 2014, she did not owe the Company anything.

[68] Because of the accident and the repairs to her truck, it is clear that charges would be made to the Company's account. When Gilbert Dubé contacted the garage on December 17, 2014, to find out what could be done to repair the truck as quickly as possible, he learned that there would be additional expenses in the amount of \$5,000 to \$10,000. It is clear that Gilbert Dubé made a business decision to prevent the situation from worsening. However, the Company accepted the risk with Mr. Carriere, but not with Ms. Temple. The Respondent adds that Mr. Carriere refused advances from Company funds in December 2014 and that he generated excellent earnings in the same month in order to reimburse his debt as quickly as possible. The evidence does indeed reveal that Mr. Carriere reimbursed almost \$9,000 of his debt in December 2014. Having said that, Horizon did not give the Complainant the same opportunity to reimburse her debt because it terminated her employment contract.

[69] Consequently, I find, on a balance of probabilities, that the Complainant suffered adverse differential treatment by the Respondent in the management of her debt.

[70] The Complainant states that the Company helped and supported Mr. Carriere in applying for personal financing to reimburse his debt and that she had not been entitled to this type of privilege. The Respondent refutes these allegations. There seems to be some confusion here. It is not clear whether Ms. Temple is criticizing the fact that Horizon referred Mr. Carriere to one of its contacts in a financial institution or that Horizon guaranteed his application for financing. The evidence reveals that the Respondent did not guarantee his application: Gilbert Dubé suggested to Mr. Carriere that he meet with an agent he knew in a financial institution. Moreover, the Tribunal cannot find that between October 2014 and December 18, 2014, based on Mr. Carriere's equipment statements, a financing application allowed Mr. Carriere to reimburse his debt to the Company.

[71] This issue has not been established on a balance of probabilities, and I find that there was no adverse differential treatment by the Company.

[72] Lastly, Ms. Temple testified that the Company did not support her in renting a truck even though it supported Mr. Carriere. She is referring to a situation where Luc Dubé took steps to rent a truck for Mr. Carriere. The Company attempted to refute these allegations and stated that there had been no adverse differential treatment. The evidence reveals that on August 7, 2014, the Complainant's truck broke down, and she was therefore unable to pick up the planned loads. Gilbert Dubé succeeded in postponing the loading time so that the truck could be repaired. However, the garage could not do the work quickly because it did not have the part needed for the repair. Ms. Temple therefore proposed a solution, namely, renting a truck. With the rented truck, she would have been able to pick up the planned loads. However, there was a misunderstanding between her and Gilbert Dubé: while she believed that he was renting the truck, he had understood the opposite.

[73] Ms. Temple alleges that she suffered adverse differential treatment because Luc Dubé had previously rented a truck for Mr. Carriere, but Gilbert Dubé did not do the same for her. The evidence reveals that Luc Dubé was at the office when the situation with Mr. Carriere came about. It was therefore easy for him to take the necessary steps. It appears that, at the time of the August 7, 2014 incident, Luc Dubé was not in the office. In addition, Gilbert Dubé was not physically present at the office that day, and the dispatcher, Mr. Savage, was on vacation. The Respondent told the Tribunal that the Complainant had been in the best position to rent the truck. In the end, Ms. Temple did rent the truck herself and pay for the related expenses. Mr. Carriere also paid for his truck rental. Did this incident result in Ms. Temple being adversely differentiated against in the course of employment? The Tribunal believes that this situation was the result of a unique set of circumstances.

[74] I therefore find that this incident does not constitute adverse differential treatment of the Complainant by Horizon.

(vii) MPI claim

[75] Ms. Temple claims that the Company differentiated adversely in relation to her in how it managed her MPI and WorkSafeBC claims. She argues that the delays are the fault of the Company, which did not act quickly, and that she suffered the consequences. She cites as an example Mr. Carriere's claims, which, according to her, were managed swiftly by Horizon. The Respondent refutes these allegations.

[76] I will review the MPI claim first. As explained above, when a truck operator has an accident, MPI may cover some of the damage to the truck, trailer and load. The accident happened on October 14, 2014. The evidence reveals that the Complainant and the Respondent were in touch quickly to discuss the situation. Ms. Temple did not need an ambulance or the police. She felt able to complete her deliveries, which she did. On October 16, 2014, she and the Company discussed the estimated damage to the truck, among other things. At the same time, she told Luc Dubé that she would have to see a doctor about her thumb. Luc Dubé asked her to report to him when she had seen the doctor. On October 17, 2014, she informed Luc Dubé that the doctor had asked to go for an x-ray. Luc Dubé therefore confirmed to Ms. Temple that she would be off for the weekend. He also told her again that he needed an estimate for the damage to the truck. On Monday, October 20, 2014, Luc Dubé reiterated his request to the Complainant to provide him with the necessary information concerning the accident. Ms. Temple gave him some details and told him that she would send other information shortly. On October 22, 2014, Luc Dubé reminded the Complainant, once again, that he was still waiting for information from her. She replied that she had received the video of the accident and that she had given his email address to the garage assessing the damage. On October 23, 2014, Ms. Temple verified with Luc Dubé whether he had received the requested documents and information, which he confirmed. However, on November 3, 2014, the MPI claim had still not been completed. The evidence reveals that there had been communication errors between the various parties involved in the claim, including at MPI. On November 4, 2014, the claim was finally completed. Luc Dubé testified that he had acted as quickly as he could, as soon as he had received all the information needed to complete the claim. The Tribunal does not question Luc Dubé's credibility. A delay did

indeed occur in the processing of the Complainant's claim. However, this delay was partly due to the time needed to gather and send information and the communication problems between the various parties. The delay was not caused by the Respondent alone.

[77] Nothing in the evidence suggests that the Company differentiated adversely against Ms. Temple's claim. I therefore find that the Complainant did not meet her burden of proof regarding this issue.

[78] Ms. Temple claims that the Respondent should have asked MPI to reimburse certain other expenses in the claim, which it did not do. Horizon contradicts these allegations. The parties explained to the Tribunal that, when an employer completes a claim to MPI, there is a subrogation: MPI subrogates itself to the employer in the claim. The Respondent explained that it therefore no longer had the authority to claim a reimbursement of the additional expenses from MPI because MPI had subrogated its rights. The Tribunal listened to the parties give broad interpretations of the concept of subrogation. No MPI representative was called as a witness to explain the subtleties of this process. No acts, regulations, policies, procedures or other documents governing MPI and its processes were filed at the hearing. It is therefore difficult for the Tribunal to position itself on the concept of subrogation and on what the Company should or could have done, without any concrete evidence to this effect.

[79] I find that Ms. Temple has not established, on a balance of probabilities, that the Company differentiated adversely in relation to her in this regard.

(viii) WorkSafeBC claim

[80] The Complainant further claims that Horizon adversely differentiated in relation to her by not submitting the WorkSafeBC claim before December 2014. The Company defended itself, arguing that Ms. Temple did not inform it of the seriousness of her injury. The Company's representatives believed her injury to be minor and not requiring a claim. I note that the accident happened on October 14, 2014. The evidence reveals that the Company asked Ms. Temple whether emergency services had been required, which had not been the case. However, the Complainant did inform Luc Dubé on October 16, 2014,

that she actually had to see a doctor and do so quickly. Luc Dubé told her to inform him of any developments. On October 17, 2014, she told him that the doctor had asked her to go for x-rays. Luc Dubé replied that she was therefore definitely off for the weekend, which he had already anticipated. It was established that the WorkSafeBC claim was not made until December 18, 2014.

[81] Gilbert Dubé testified about the WorkSafeBC claim. He told the Tribunal that he did not know that Ms. Temple had injured herself during the October 14, 2014 accident and that he had not been sent an incident report for WorkSafeBC. Moreover, he had not realized that the injury was so serious that it required leave from work. He finally explained to the Tribunal that he had received a letter from WorkSafeBC in December 2014 asking him for an incident report. It was at that point that he contacted the Complainant for further information. In turn, Luc Dubé stated he took care of this type of claim for the Company. According to him, the injured employee has to initiate the claim by telling him (or Gilbert Dubé) that he or she is injured and intending to claim compensation. He then explained that he is not in the habit of asking his employees whether they will claim compensation for an accident. He justified this by stating that he did not wish to interfere in his employees' private lives and that if his employees did not want to disclose their injuries, he had no control over their affairs. The evidence also establishes that on December 4, 2014, Ms. Temple sent an email to Luc Dubé and asked him for her WorkSafeBC claim number. Luc Dubé testified that he was unaware at that date that Ms. Temple had initiated a claim. He had read the message quickly and taken for granted that she was asking for her MPI claim number.

[82] Having said that, and even if I accept the fact that the Company's president, Gilbert Dubé, was unaware that the Complainant had injured herself in the October 14, 2014 accident, it is clear to me that his son, Luc Dubé, Horizon's general manager, was aware of the injury. Ms. Temple had told him a few times that she had to see a doctor about her thumb, that she might have dislocated it and that she had to go for x-rays. The Tribunal can imagine that Ms. Temple did not specifically insist on the fact that the injury was a major one or that she wanted to make a WorkSafeBC claim, but I do not feel that Horizon was particularly proactive in managing this work-related injury. Luc Dubé testified that out

of respect for his employees' privacy, he does not question them about their injuries. I find this practice questionable. Ms. Temple filed a document from WorkSafeBC's website. It clearly mentions that when one of their employees injures themselves at work or becomes ill, employers are responsible for taking them somewhere where they will receive medical care. These costs are borne by the employer. In addition, employers have to report injuries within three days of the incident. The WorkSafeBC employer form for reporting a work-related injury also clearly notes at the beginning of the form that employers are required to report the incident even if they disagree with the claim. The form also states that by submitting the form promptly, employers will avoid penalties.

[83] Employers therefore have every interest to report an employee injury as quickly as possible, however serious the injury and regardless of whether they agree with the claim. I would add that the incident report employers have to submit is very short. Most of the questions are multiple choices and can be answered with a check mark. The other questions concern basic personal information. The section for describing the incident and injury in question is short compared with the rest of the form. Consequently, only a brief description can be provided. In reviewing the form completed by Horizon on December 18, 2014, I note that the description of the incident is no more than four lines and a few words long. Horizon may well request written injury reports from its employees, but I do not believe that this is required to initiate a claim. Nothing in the evidence allows me to draw such a conclusion. Furthermore, the description of the injury given by Horizon to WorkSafeBC does not contain any more information than the information available to Luc Dubé in October 2014. It is hard for the Tribunal to understand how the Company can say that it did not have enough information on the accident and that it needed a written report when it essentially knew what happened.

[84] The evidence reveals that Mr. Carriere's claim was completed quickly and smoothly. Horizon stated that Mr. Carriere had quickly given it a written injury report, which is why the claim was completed immediately. The evidence does not reveal whether Mr. Carriere clearly told the Company that he intended to claim compensation for his injuries. Having said that, the fact is that, like Ms. Temple, he had an accident around the same time, he was injured, the truck had to be repaired and he was unable to work. In all

of these aspects, his situation was identical to that of the Complainant. But the manner in which his claim was processed is disproportionate.

[85] For these reasons in particular, I find that Ms. Temple suffered adverse differential treatment by the Company in the management of her WorkSafeBC claim.

(ix) Time to make repairs denied

[86] The Complainant claimed that she suffered adverse differential treatment because Horizon did not give her the necessary time for carrying out repairs on her truck. According to her, the male truck operators do not have this kind of problem. Horizon attempted to refute these allegations. According to Horizon, it is the owner-operators' responsibility to ensure that repairs on trucks are properly carried out and not the Company's. It therefore submits that the Complainant should have refused loads in order to have her equipment properly repaired. Ms. Temple referred to a situation where her truck caught fire due to oil deficiency. Repairs were necessary. According to Ms. Temple, the Respondent planned a load even though the problem on the truck had not yet been identified. She stated that she had not wanted to "rock the boat" and accepted the load despite the repairs on her truck not having been completed. This incident occurred in February or March 2014. I do not find the evidence here to be exhaustive and it is difficult to conclude that the Company differentiated adversely in relation to Ms. Temple. I reiterate that the Complainant has the burden of establishing her case on a balance of probabilities.

[87] I attempted to identify other incidents of this kind in the evidence. Another incident occurred on December 17, 2014, when Ms. Temple announced to Luc Dubé that she was taking her truck to the garage to have the engine warning light inspected. On the following day, December 18, 2014, Ms. Temple's contract was terminated. It is therefore impossible for the Tribunal to conclude that the Company did not give her the necessary time to have her truck repaired. Moreover, there is nothing in the evidence to suggest that, between the October 14, 2014 accident and mid-December 2014, the Complainant did not have the time she needed for her repairs.

[88] On these occasions, I do not believe that the Respondent differentiated adversely in relation to Ms. Temple.

[89] The last incident is that of July 21 and 22, 2014, when Ms. Temple told Luc Dubé that she was taking her 36-hour break and having her truck repaired. I already dealt with this event in the previous section. I already determined that Ms. Temple felt pressured to take the load and that she was therefore treated adversely by the Company. The incident is the same but has to be examined from a different angle, that of the repairs. The Company did not directly deny the Complainant the right to carry out repairs on her truck. However, the indirect result was that Ms. Temple was unable to carry out the repairs. She therefore suffered adverse differential treatment.

[90] On this occasion, I find that in the course of employment, the Respondent differentiated adversely in relation to the Complainant.

(x) Adverse differential treatment and mistreatment by dispatchers

[91] The Complainant also argued that some of the Company's employees differentiated adversely in relation to her or treated her improperly. She is referring to the Company's two dispatchers, Mr. Wyatt and Mr. Boulanger. According to Ms. Temple, the dispatchers only sent partial information to the president of the Company. The Respondent refutes these allegations. It is undeniable that there were communication problems between Horizon, Ms. Temple and the employees. The evidence also reveals that they relied greatly on text messaging as a communication tool, which does not seem to have simplified exchanges, on the contrary. On many occasions, a simple phone call could have clarified any ambiguities. Ms. Temple also stated that the dispatchers mistreated her. Mr. Boulanger was not called as a witness. Ms. Temple's testimony alone did not satisfy the Tribunal on this subject. As for Mr. Wyatt, the only evidence on file in this regard is a text message exchange dated October 3, 2014, between him and Ms. Temple. He sent her information for a new load and asked her whether she could take it or not. Ms. Temple took over an hour to confirm whether she would take it, and Mr. Wyatt seemed to lose patience. He told her that he thought that she would once again mess up the plans. He

added that it was no longer worth assigning her loads as the Company looked like an idiot in front of its clients by not fulfilling its obligations.

[92] Mr. Wyatt and another dispatcher, Mr. Matthews, testified at the hearing. They told the Tribunal that they both decided to stop acting as dispatcher for Ms. Temple because she required too much supervision and because her truck was often broken. They added that it was not the first time they refused to work with truck operators for the same reasons. This is why Luc Dubé and particularly Gilbert Dubé were involved in supervising Ms. Temple and her trips. It is the Tribunal's understanding that Ms. Temple was happy no longer dealing with the dispatchers. Inversely, she also alleged that she was being micro-managed by Gilbert Dubé. The Tribunal realizes that no situation is perfect. However, this is the solution that was implemented by the Company to resolve the matter.

[93] Once again, it is undisputable that the members of Horizon, including the dispatchers, were frustrated, and that this frustration seemed to be firmly entrenched in October 2014. Certain exchanges were less cordial than others. Does this in itself constitute adverse differential treatment? I cannot draw such a conclusion. The evidence does not establish, on a balance of probabilities, that information was transmitted only partially. For these reasons, I find that there was no adverse differential treatment by the Company.

(xi) Time for medical appointments denied

[94] Finally, the last allegation of discrimination raised by Ms. Temple involves the Company not allowing her the necessary time for her medical appointments. Horizon refutes her allegations. In assessing the evidence, the Tribunal identified two specific events related to her medical appointments.

[95] The first event occurred on August 26 and 27, 2014. The Complainant was in Langley, British Columbia. Luc Dubé told her that he would contact her on the morning of August 27, 2014, to inform her whether there would be a new load for her or not. She agreed and told him that she would stay in Langley. She also asked him to let her know as early as possible because she would take the day off otherwise. Luc Dubé replied in the

affirmative. On the morning of August 27, 2014, the Complainant asked Luc Dubé whether he had a delivery for her. He replied not for the time being. Later, Luc Dubé contacted her because there was finally a load. He then provided her with the information for the load. Ms. Temple replied that she was at the doctor's, on the waiting list. She told the Tribunal that the Company had not given her time for her medical appointment. Ms. Temple and Luc Dubé both testified on this subject. The Complainant stated that, for her, it was clear that they had agreed that she would take the day off if no load had been scheduled by early the next morning. Luc Dubé told the Tribunal that when Ms. Temple wrote to him on August 27, 2014 to verify whether there was a load for her, this meant that she wanted and was asking for a load. He therefore assigned her a load once confirmed by the client. Once again, the Complainant and the Respondent had trouble communicating and understanding one another. The Tribunal also wonders why Ms. Temple did not tell M. Dubé that she was going to the doctor's when she decided to go there. Would it not have been easier to clarify the situation? Once again, text messaging and communication problems lead to a misunderstanding. This in itself is not adverse differential treatment.

[96] I therefore find that the Company did not differentiate adversely in relation to Ms. Temple on this occasion.

[97] The other situation occurred on December 18, 2014, when Ms. Temple went to Chilliwack Hospital for her CT scan. The Tribunal has already reviewed the facts in a previous section and there is no need to repeat them at this stage. However, I have already found that the Company differentiated adversely in relation to Ms. Temple on this occasion.

C. Connection between the ground and the adverse differential treatment

[98] I will review the adverse differential treatment suffered by the Complainant to determine whether sex and disability were one of the many factors of the impugned actions and their adverse impacts. There is no need for a "causal connection": the connection between the prohibited ground of discrimination and the impugned action does not have to be an exclusive one (see *Bombardier, supra*, at paragraphs 44 to 52). The

demonstration, on a balance of probabilities, of a simple “connection” or “factor” suffices. For the sake of brevity and to avoid redundancy, the Tribunal will not reiterate all the facts set out in the previous section and will limit itself to determining whether the Complainant has made a connection between the ground and the adverse differential treatment.

[99] First, I determined that the Complainant suffered adverse differential treatment in the course of employment by the Company when she was forced to make deliveries or to go on the road. I also found that she felt pressured to take loads to avoid dismissal. Did the Complainant establish, on a balance of probabilities, that this adverse differential treatment was connected either to her sex or her disability? I cannot conclude that Ms. Temple established this connection between either of the grounds and the impugned actions. The evidence reveals that the Company had many reasons to act as it did, including built-up frustration, low revenues and unreliability, and performance and communication issues, to name but a few. I would add, however, that some of these reasons are questionable and do not justify the threats of dismissal. However, was the fact that Ms. Temple is a woman or disabled a factor in how she was treated? The evidence does not allow me to answer this in the affirmative.

[100] I also determined that Ms. Temple was treated adversely in how her debt to the Company was managed. Once again, I must determine whether this treatment is connected to the prohibited grounds of discrimination. The Complainant did not establish, on a balance of probabilities, that her sex or her disability was a factor in the impugned action of the Company. It is clear for the Tribunal that in October 2014, the relationship between the Complainant and the Respondent deteriorated considerably. This relationship ended on December 18, 2014, because of several factors. Some of these factors were listed above. Sex and disability were not part of the factors of how her debt was managed.

[101] I now have to determine whether there is a connection between Ms. Temple’s sex and disability and the manner in which her WorkSafeBC claim was processed. I have already mentioned that, in my opinion, Horizon had enough information to initiate a claim and that I have trouble understanding why this was not done swiftly. However, this is not a determining factor in a case of discrimination. At issue is whether sex and disability were a factor in the Company’s processing of her WorkSafeBC claim. The evidence does not

suggest that these factors played a role in how the claim was processed. The processing delay was caused by a variety of factors, including the fact that the Company wanted to respect its employees' privacy, the requirement to file a written report and the perception of the seriousness of the injury. Whether these explanations are justified is not at issue. It is clear for the Tribunal that Ms. Temple's sex and disability were not factors in the impugned act, and I therefore find that there is no connection between them.

[102] Regarding the incident of July 21 and 22, 2014, and the fact that Ms. Temple was unable to have her truck repaired, I also have to determine whether she established that her sex or her disability were a factor in Luc Dubé's conduct. As for the issue of whether the Company forced the Complainant to take loads because she was a woman or disabled, here, too, I cannot find that there is a connection between the grounds and the impugned actions.

[103] I determined that the Company differentiated adversely in relation to Ms. Temple on December 18, 2014, when she had a medical appointment for a CT scan. Also, Ms. Temple stopped being employed by the Company on December 18, 2014. At issue is whether the refusal to continue to employ the Complainant and the adverse differential treatment are connected to her sex or her disability.

[104] In short, Ms. Temple was dismissed by Gilbert Dubé on December 18, 2014, while she was at her medical appointment. She had notified Luc Dubé of this appointment a few times several days in advance. The Tribunal also notes that Ms. Temple had to take her truck to the garage on the afternoon of December 17, 2014, to have an engine warning light checked. The evidence reveals that the problem was more serious than anticipated and that the truck could not go back on the road. Ms. Temple decided not to contact the Company on December 17 considering the time and the time difference. She informed the Company on the morning of December 18, 2014, that her truck was being repaired. The load could not be picked up, and Gilbert Dubé decided to terminate Ms. Temple's employment contract. I have to determine whether, on a balance of probabilities, Ms. Temple's sex or disability was one of the many factors in the adverse differential treatment. I cannot conclude that this was the case. The Complainant was unable to establish a connection between either of the grounds and the adverse differential

treatment. I do find that there was adverse differential treatment. The Company certainly put Ms. Temple in a very delicate spot. It consciously took the chance that the load might not be picked up. But did Horizon do this because the Complainant is a woman and had an injured thumb? Based on the evidence, such a conclusion cannot be drawn on a balance of probabilities.

[105] As for the dismissal, the Tribunal must once again ask itself whether the fact that Ms. Temple is a woman or injured her thumb was a factor in the refusal to continue to employ her. The time chosen by Gilbert Dubé to dismiss Ms. Temple was not ideal as she had to go to her medical appointment. Having said that, the Tribunal has to analyze the evidence before it to determine whether the subtle scent of discrimination permeates the dismissal. I would like to note that Ms. Temple's truck had to be repaired on December 17, 2014. On December 18, 2014, the truck could therefore not go on the road and the load could not be picked up by the truck. Did Gilbert Dubé dismiss Ms. Temple because she was at the hospital or because she had an injured thumb? Did Gilbert Dubé dismiss her because she was a woman? The evidence does not allow me to answer in the affirmative. The fact that Ms. Temple was at the hospital did not affect the Company's decision to dismiss her. The Complainant could have been at a funeral, a family appointment or an activity with her son: the result would have been the same. December 18, 2014, was the breaking point and the point of no return in the professional relationship between the parties. The Company decided to end this relationship for many reasons, including performance, delays, a lack of communication and interpersonal problems. Sex and disability were not part of these factors.

VII. Complaint not substantiated

[106] The Tribunal understands that Ms. Temple could have felt under pressure from the Company and feared being dismissed, which resulted in stress and anxiety in her work on a day-to-day basis. The built-up frustrations, misunderstandings and communication problems merely aggravated the situation. These factors necessarily contributed to the Complainant's impression that the Company and its members differentiated adversely in relation to her. The Tribunal is also mindful of the fact that she was the only female truck

operator at Horizon at the time of the events. It is true that Ms. Temple is working in a traditionally male environment. Discrimination is rarely direct or intentional. The Tribunal therefore has to search for the subtle scent of discrimination and assess the circumstances surrounding the impugned actions. The Tribunal is also bound by the evidence on file, and the decision must be made on the basis of the balance of probabilities. I do not believe that Ms. Temple's sex or disability played a part in the acts Horizon is accused of.

VIII. Decision

[107] For these reasons, I find that Sandra Temple's complaint is not substantiated.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
October 3, 2017

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2139/1316

Style of Cause: Sandra Temple v. Horizon International Distributors

Decision of the Tribunal Dated: October 3, 2017

Date and Place of Hearing: May 23 to 25, 2017
June 6 to 9, 2017

Calgary, Alberta
Winnipeg, Manitoba

Appearances:

Sandra Temple, for herself

No one appearing, for the Canadian Human Rights Commission

Terra Welsh, for the Respondent