

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2020 CHRT 22

Date: July 29, 2020

File No.: T1853/8312

Between:

Dmitri Izrailov

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Greyhound Canada Transportation Corp.

Respondent

Ruling

Member: Olga Luftig

Table of Contents

I.	Background.....	1
	A. The Disputed Documents	2
	B. The applicable law	3
	C. The Hours of Service Audits	5
	D. Documents admitted on the consent of the parties.....	5
II.	Disputed Documents which were ruled on at the hearing.....	5
	A. Disputed Documents HR1-36, HR1-39, HR1-41, HR1-42, HR1-44, HR1-45 and HR1-46 – Hours of Service Audits	6
	(i) Analysis: Disputed Documents HR1-36, HR1-39, HR1-41, HR1-42, HR1-44, HR1-45 and HR1-46	15
	B. The Hours of Service Audits	15
	C. The Driver Audit Spreadsheet.....	16
	D. Disputed Documents R2-57, R2-58, R2-59, R2-60, R2-61, R2-63, R2-64; R2-65; R2-68, R2-69, R2-70, R2-71, R2-72; and R2-74, R2- 75, R2-76, R2-77	20
	(ii) Analysis.....	23
	E. Other Disputed Documents.....	25
	(iii) Analysis.....	26
	F. Other Disputed Documents: C1-9.....	27
	(iv) Analysis.....	28
	G. Other Disputed Documents: R4-135, R4-169, and R4-176.....	30
	H. Other Disputed Documents: HR1-52	33
	I. The December 2, 2016 Tribunal letter to the parties and post-Ruling submissions	34
III.	Ruling.....	34

I. Background

[1] When the orders at the end of this Ruling were rendered, the hearing for the Complaint had taken place from February 9 to February 27, 2015 and November 16 to 18, 2015. The next hearing dates were scheduled for December 14, 2016 to December 16, 2016, for the parties to present their final arguments and submissions.

[2] The usual procedure once parties have closed the calling of evidence portion of their cases, but before they submit their final arguments and submissions, is for the parties and the Tribunal, including the Tribunal's Registry Officer present at the hearing, to verbally go through each of the parties' Books of Documents (also called Exhibit Books) and any loose documents, and refer to each document one by one and state whether the document was admitted during the hearing or not. During the hearing, the Tribunal Registry Officer in attendance is meant to keep track of documents which are admitted into evidence as the hearing unfolds. The parties are also expected to keep track of the documents admitted into evidence, since they rely not only on testimony but also on the documents to establish their case.

[3] Once agreement is reached on which documents were admitted, the parties and the Tribunal remove from the Books of Documents all those documents which were not admitted. This is done so that the parties do not rely in their final arguments on documents which were not admitted and so that the hearing Chair does not refer to or take unadmitted documents into account in the final Decision.

[4] If there is a dispute about whether a document was admitted into evidence, the Tribunal Registry Officer will also look at his record to see what it shows, and after hearing the parties' submissions, the Tribunal chair will issue a ruling to settle the dispute.

[5] In the hearing of this inquiry, this procedure was not precisely followed because what had originally been scheduled as the last hearing dates in November 2015 were adjourned before their scheduled end in order to deal with an evidentiary issue which arose during the cross-examination of the Complainant's last scheduled witness. The issue of which

documents had been admitted into evidence was addressed after the resolution of the evidentiary issue and before the parties made their final arguments and submissions.

[6] Therefore, in order to deal with the process of whether documents were admitted during the hearing, the Tribunal proceeded via e-mails to and from the parties and a Case Management Conference Call (CMCC). On November 3, 2016, the Registry Officer sent to the parties the Tribunal's lists (Tribunal's Initial Exhibits Lists) of documents in the parties' Exhibit Books which she had recorded as entered and admitted into evidence (entered), the dates of such admission, and which documents had not been entered or referred to during the hearing. The Tribunal requested that the parties advise the Tribunal if they thought there were any errors in the Tribunal's Initial Exhibit Lists.

[7] The Complainant's response was that certain documents which the Tribunal's Initial Exhibit Lists recorded as not entered were or should have been entered.

[8] The Respondent's position was that a) the Tribunal had in fact entered a few of the documents shown as not entered and b) it objected to the admission of the other documents which the Complainant wished to have entered.

[9] In this context, the Tribunal convened a CMCC on November 18, 2016 (November 18 CMCC) for the parties to make oral submissions on the admissibility of the documents in issue.

The Disputed Documents

[10] In this Ruling, the documents on which there was no agreement between the Complainant and the Respondent as to whether the Tribunal had admitted them during the evidentiary portion of the hearing are called the "Disputed Documents", including three documents the Complainant added at the November 18 CMCC.

[11] During the November 18, 2016 CMCC, the Registry Officer who had also been at the hearing, assisted the parties and the Tribunal by stating what her records indicated as to which Disputed Documents had been admitted by the Tribunal during the hearing. The CMCC proceeded in accordance with the Tribunal's November 3, 2016 letter to the parties,

and each document listed was discussed. Furthermore, it is worth noting that the Commission did not participate in the November 18 CMCC.

[12] On December 2, 2016, the Tribunal wrote to the parties with its decision on the admission and non-admission of the Disputed Documents, without reasons (the December 2, 2016 Letter), and advised that because the hearing was scheduled to resume on December 14, 2016, the Tribunal would include the reasons for its rulings with the final Decision. These reasons are set out below.

[13] I find that for the purposes of this Ruling, the Disputed Documents can generally be classified into two groups.

[14] The first group of Disputed Documents are almost all Hours of Service Audits (also called Audits) done on individual Respondent drivers, and are specifically:

- a. Commission Documents HR1-20; HR1-23; HR1-36; HR1-39; HR1-41; HR1-42; HR1-44; HR1-45; HR1-46; and
- b. Respondent Documents R2-57; R2-58; R2-59; R2-60; R2-61; R2-63; R2-64; R2-65; R2-66; R2-67; R2-69; R2-71; R2-72; R2-74; R2-75; R2-76; R2-77 and R4-159.

[15] The second group of Disputed Documents are on various subjects. Specifically, these Disputed Documents are: Complainant's C1-6 and C1-9; Commission's HR1-52; and Respondent's R4-135, R4-169 and R4-176.

The applicable law

[16] Subsection 50(2) of the *Canadian Human Rights Act*, R.S.C. 1985, c.H-6 (the *Act*) authorizes the Tribunal to decide all questions of law or fact necessary to determine the matter.

[17] Subsection 50(3)(c) of the *Act* authorizes the Tribunal Member at a hearing to receive and accept any evidence and other information the Member sees fit, whether or not that evidence or information is or would be admissible in a court. The main limitation is that the Member may not admit or accept as evidence anything that a court would not admit because

of any privilege under evidence law. Further, a conciliator involved in settling a complaint could not be called as a witness at a hearing.

[18] Therefore, the Tribunal has a great deal of discretion in admitting evidence, so long as the Tribunal Member exercises that discretion in accordance with the requirements of natural justice (subsection 48.9(1) of the Act), which include the right of all parties to have a full and fair hearing, as codified in subsection 50(1) of the Act.

[19] The Canadian Human Rights Tribunal Rules of Procedure (Tribunal Rules) also have a bearing on the issue of admission of documents. Specifically, Tribunal Rule 9(4) states:

“Except with the consent of the parties, a document in a book of documents does not become evidence until it is introduced at the hearing and accepted by the Panel.”

It is pursuant to Tribunal Rule 9(4) that the Tribunal and the Parties conduct the procedure of removing from the parties’ books of documents those documents which have not been admitted into evidence.

[20] In deciding whether to admit a document into evidence, the main criteria is that the document must be relevant to the issues in the complaint (*First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada* (representing the Minister of Indian Affairs and Northern Development Canada), 2015 CHRT 1 (FNCFCSC v. Attorney General), at para. 25, referring to para. 67 in *FNCFCSC v. Attorney General*, 2014 CHRT 2 (FNCFCSC 2014)).

[21] Another factor the Tribunal must take into account in deciding if it admits a document is whether the probative value of the document outweighs the prejudice of admitting it at this stage of the proceedings. In order to answer this, the Tribunal also takes into account and weighs what reasonably needs to be done in order to alleviate or cure any such prejudice.

[22] Notwithstanding that I ruled on the admissibility of a number of the Disputed Documents at the hearing, in the interest of fairness, I again heard the parties’ submissions during the November 18 CMCC on such documents to permit them to raise any points they thought were material and may not have been raised at the hearing and to see if the parties had a different understanding or interpretation of any ruling I had made at the hearing.

Having said that, those submissions had to raise material points of natural justice, including procedural fairness, in order to change a ruling made at the hearing.

The Hours of Service Audits

[23] There was no dispute that the Hours of Service Audits at issue were done by the Respondent's Burlington Initial Response Centre (BIRC) on individual Respondent bus drivers. The Audits' purpose was to find if the drivers audited complied with the legislated Hours of Service laws and regulations. I will describe the layout and contents of the Hours of Service Audits later in this Ruling.

Documents admitted on the consent of the parties

[24] At the November 18 CMCC, the parties agreed that the following documents had been entered into evidence at the hearing: HR1-20, an Hours of Service Audit on one of the Settling complainants, and HR1-23, the Respondent's proposed termination letter for that Settling complainant. Therefore, I ruled them admitted as Exhibits HR1-20 and HR1-23.

[25] Document R4-159 is an Hours of Service Audit on the Complainant. The Respondent had not entered it at the hearing. The Complainant wished to have it entered. At the November 18 CMCC, Respondent counsel reviewed the document again and stated she did not object to having R4-159 entered. I therefore ruled at the November 18 CMCC that the document was admitted as Exhibit R4-159.

II. Disputed Documents which were ruled on at the hearing

[26] R2-66 is a Respondent Hours of Service Audit on one of its drivers who had been a Respondent's witness. At the hearing, on November 18, 2015, the Complainant sought to have it admitted into evidence through the Respondent's witness Mel Levandoski, Manager of Labour Relations during the relevant period. The Respondent objected on the ground that Mr. Levandoski did not have anything to do with the Hours of Service Audit, as he was the Manager of Labour Relations and could not speak to it. After hearing both parties'

submissions, I ruled that R2-66 was admitted into evidence. I told the Complainant at that time that although I was admitting the document, it was at my discretion as to how much weight I would give it. At the November 18 CMCC, the Registry Officer confirmed the ruling. After hearing the parties' submissions at the November 18 CMCC, I did not change this ruling.

Disputed Documents HR1-36, HR1-39, HR1-41, HR1-42, HR1-44, HR1-45 and HR1-46 – Hours of Service Audits

[27] **HR1-36** is an Hours of Service Audit of one of the Complainant's witnesses who was a former Greyhound driver. The Tribunal's Initial Exhibit Lists indicated that HR1-36 had not been entered at the hearing. The Registry Officer confirmed this at the November 18 CMCC.

[28] At the November 18 CMCC, there was no dispute that the Complainant had not questioned his witness about HR1-36. There was also no dispute that he had wanted to cross-examine Mr. Levandoski on it and that the Respondent had objected on the ground that the Complainant should have questioned his witness whose Audit it was if he wanted to cross-examine Mr. Levandoski on it.

[29] The Complainant submitted that during the hearing, whenever he tried to ask any witness about any of the Hours of Service Audits, including Mr. Levandoski, the Respondent objected on the basis that Mr. Levandoski or another witness was not the correct person to ask – that he should have asked someone else. The Complainant submitted that Greyhound created HR1-36, and because Mr. Levandoski was a Greyhound manager, the Complainant asked him about it.

[30] He also argued that Mr. Levandoski and others made the decision to fire the Complainant based on the Hours of Service Audits. Therefore, because Mr. Levandoski represented Greyhound, the Complainant should have been permitted to question him about HR1-36.

[31] At the November 18 CMCC, the Complainant did not make any submissions about why the Complainant's witness had not been asked about his own Hours of Service Audit in HR1-36.

[32] The Complainant also submitted that HR1-36, HR1-39, HR1-41, HR1-42, HR1-45 and HR1-46 were all related to the Driver Audit Spreadsheet.

[33] This Ruling refers many times to a document called the Driver Audit Spreadsheet. In the parties' Books of Documents, the Driver Audit Spreadsheet is found in the Respondent's Books of Documents as Exhibit R1-29 and in the Commission's Book of Documents as Exhibit HR1-31. Exhibit R1-29 is a larger, more readable version of the smaller copy at Exhibit HR1-31. Exhibit HR1-31 also includes a cover email from Respondent counsel to Commission counsel enclosing the Driver Audit Spreadsheet. Notwithstanding that one Exhibit is larger than the other, except for the cover email, the two Exhibits are exactly the same and I call each one the Driver Audit Spreadsheet.

[34] There is a consent order dated October 17, 2013 that governs the use of the Driver Audit Spreadsheet and which provides that its content is proprietary and confidential information belonging to the Respondent. In accordance with its terms, although later in this Ruling I describe the contents of the Driver Audit Spreadsheet generally, and I try to do so in detail which is sufficient for this Ruling, while at the same time complying with the terms of the October 17, 2013 consent order.

[35] At the November 18 CMCC, the Complainant wished to have HR1-36 admitted into evidence because BIRC had done all the Hours of Service Audits, including this one, and they were directly related to the Driver Audit Spreadsheet. He submitted that the Audits and the Driver Audit Spreadsheets were not separate documents, rather they should be considered together as one document. This was because, in his submission, the discipline decisions set out in the Driver Audit Spreadsheet were based on the drivers' Hours of Service Audits, and HR1-36 was an example. The Complainant wanted to show that although there were drivers who committed Hours of Service violations similar to or the same as those the Complainant committed, Greyhound nevertheless disciplined them differently

– specifically, Greyhound did not fire them but fired the Complainant - and HR1-36 was an example of that different treatment.

[36] The Complainant stated at the November 18 CMCC that he was very frustrated at one point in the hearing because of all the Respondent's objections to him questioning certain witnesses on some of the individual Hours of Service Audits. He submitted that I, as hearing Chair, had said to him that at the end of the hearing we would go through each document and decide what he wanted to put in and what he didn't want to put in.

[37] In response to this, the Respondent submitted that at the hearing, the process which was going to be followed was explained to the parties, as was the pulling of documents; the hearing Chair explained this many times during the hearing, including when the Complainant started handling his own case. For example, on February 17, 2015, the hearing Chair explained the process to him, including the process of admission of documents into evidence.

[38] The Respondent further submitted that the Complainant was given the opportunity to decide which documents he wanted to put into evidence – for example, at the end of the first day the Complainant testified, the Tribunal Member encouraged him to think more that night if there were additional documents that he wanted to put into evidence. The Respondent submitted that the process was clearly explained to him.

[39] At the November 18 CMCC, Respondent counsel submitted the same argument against the admission of HR1-36 as she had at the hearing. In addition, the Respondent also submitted that its notes of the hearing were that after the Respondent objected to the Complainant questioning Mr. Levandoski about the Hours of Service Audit in HR1-36, the Complainant indicated he would move on, and then proceeded to question Mr. Levandoski on the Driver Audit Spreadsheet and that this seemed reflected in the Registry Officer's notes.

[40] The Respondent further submitted that all the documents at issue from the Commission's Book of Documents HR-1 had been ruled on at the hearing and that as a matter of procedural fairness, those rulings ought to stand.

[41] **HR1-39** is an Hours of Service Audit on a former Respondent bus driver, who the Settling complainants and the Complainant had planned to call as a witness but could not find. The Tribunal's record shows that on February 17, 2015 at the hearing, the Complainant wished to introduce HR1-39 into evidence during his own direct testimony. Respondent counsel objected on the ground that he was not familiar with it and could not speak to its contents.

[42] In responding to the objection, the Complainant stated that he wanted to use HR1-39 to demonstrate that the Union had been "selective" in who it assisted.

[43] After hearing the parties' submissions, I ruled that HR1-39 was not relevant to the issues in the Complaint and would not be entered into evidence.

[44] At the November 18 CMCC, the Complainant added another ground for the admission of HR1-39 - namely, that being an Hours of Service Audit, it was the reason the Respondent decided on the discipline for this driver, as set out in the Driver Audit Spreadsheet. He again submitted that the two documents were not separate but were essentially one document and had to be read together because the Driver Audit Spreadsheet was based on the individual Hours of Service Audits.

[45] **HR1-41** is an Hours of Service Audit of a Greyhound driver in Edmonton, Alberta which the Complainant wished to testify about and put into evidence at the hearing. The Respondent objected to having the Complainant testify about the document because he was not familiar with it and could not speak to its contents. The Complainant made submissions on his position. I considered the parties' submissions and stated to the Complainant that because he had had nothing to do with the Audit and it was not addressed to him, my ruling was that it would not be admitted into evidence. The Complainant then stated that none of the Hours of Service Audits he wished to enter and testify about, being HR1-41 to HR1-48 were his. I then asked him if he was abandoning those documents, and he responded "yes".

[46] The Registry Officer's records confirmed this and confirmed that HR1-41, HR1-42 and HR1-46 were not entered.

[47] At the November 18 CMCC, the Complainant acknowledged that he knew and understood what he had said at the hearing about abandoning the documents but submitted that at the time he said that, he did not realize that the Hours of Service Audits and the Driver Audit Spreadsheet were related to each other.

[48] The Respondent contended that her notes of the hearing were that the Complainant accepted the ruling, confirmed that he abandoned the documents and moved on to an already admitted Exhibit.

[49] **HR1-44** is an Hours of Service Audit of a Respondent driver in London, Ontario. At the November 18 CMCC I told the parties that my notes indicated that at the hearing, specifically on February 9, 2015, Commission counsel referred the Commission's witness Mr. Al-Khafaji to the document, and then cross-referenced HR1-44 to HR1-31, the Commission's copy of the Driver Audit Spreadsheet. Commission counsel questioned Mr. Al-Khafaji on HR1-31 and asked to have it admitted into evidence; it was admitted as Exhibit HR1-31. Commission counsel did not ask to have HR1-44 admitted.

[50] The Complainant sought HR1-44's admission into evidence because it was an Hours of Service Audit which he contended demonstrated that Greyhound treated drivers in similar situations differently. Further, HR1-44 was also related to the Driver Audit Spreadsheet.

[51] At the November 18 CMCC, the Respondent submitted that if the Tribunal admitted HR1-44 into evidence, it would be admitting a document which was hearsay – it could not speak for itself and this would prejudice the Respondent. To alleviate this prejudice, it would have to call Mr. Butler back to testify. If the Complainant simply wanted to put HR1-44 into evidence and comment about it, Mr. Butler would have to have an opportunity to respond to it, otherwise its admission would be prejudicial to the Respondent.

[52] The Respondent submitted that the Complainant could have put the document to Mr. Butler in cross-examination in order to get an understanding of how to read the document, why the data says what it says and why the driver was or was not disciplined. The Complainant had the opportunity to do so and did not. Putting the document in at this stage without Mr. Butler's testimony would be highly prejudicial to the Respondent.

[53] The Complainant countered that Mr. Butler did not do the Audit, implying that he would not have been able to answer his questions.

[54] The Respondent also submitted that the driver whose Hours of Service were the subject of the Audit in HR1-44 was also named in the Driver Audit Spreadsheet, and that the Respondent's witness David Butler had testified about this driver. The Complainant had therefore had an opportunity to cross-examine Mr. Butler on this driver but did not do so. If the Complainant thought the Hours of Service Audit of that driver was inconsistent with what Mr. Butler testified to, he needed to have put those concepts to Mr. Butler in cross-examination.

[55] The Complainant did not agree that if the Tribunal admitted HR1-44 into evidence, Mr. Butler would have to be recalled to testify about it. He submitted that Mr. Butler's explanation of why he made the discipline decision for the driver in HR1-44 was in the Driver Audit Spreadsheet. He, the Complainant, did not have to ask Mr. Butler any more questions about why he made that discipline decision or why he decided on the discipline for every single person shown in it.

[56] **HR1-45** is an Hours of Service Audit on a driver who is also named in the Driver Audit Spreadsheet. The Tribunal's Initial Exhibit Lists showed HR1-45 as not entered.

[57] At the hearing, the Complainant had wanted to cross-examine Mel Levandoski on HR1-45. The Respondent objected on the ground that Mr. Levandoski had not authored the Audit and did not know about it.

[58] At the November 18 CMCC, the Complainant asserted that he had asked Mr. Levandoski about HR1-45 because Mr. Levandoski had testified that one of the reasons Greyhound fired the Complainant dealt with passenger safety. The Complainant had wanted to show Mr. Levandoski that other drivers, such as the one audited in HR1-45, which the Complainant characterized as showing a great many Hours of Service violations, had done exactly the same thing as the Complainant but Greyhound did not fire them.

[59] The Respondent submitted that the Complainant had asked Mr. Levandoski if he had seen HR1-45 before, and Mr. Levandoski had responded that he had not.

[60] At the November 18 CMCC, the Complainant acknowledged that when the Respondent objected to him asking Mr. Levandoski about HR1-45, he had moved on to question Mr. Levandoski on the Driver Audit Spreadsheet, which contained the discipline issued for the driver whose Hours of Service Audit was HR1-45.

[61] He had also asked Mr. Levandoski whether the discipline for that driver shown in the Driver Audit Spreadsheet was appropriate, and what Mr. Levandoski thought it should have been. The Respondent objected to the question on the ground that it sought an opinion from Mr. Levandoski, who, as Greyhound's Labour Relations Manager, had never seen the Audit before and as Manager of Labour Relations, was not qualified to give that opinion.

[62] The Complainant also acknowledged that at the hearing, he had said that he abandoned HR1-45. He submitted that he had said that he did not need HR1-45 because he thought it was in the Driver Audit Spreadsheet. But then he checked it and found that not everything was there. He submitted that like the other Hours of Service Audits, HR1-45 and the Driver Audit Spreadsheet were not two documents but rather were one.

[63] At the November 18 CMCC, the Complainant submitted that he was asking that HR1-45 be admitted into evidence to demonstrate that Greyhound treated drivers who had committed the same or similar Hours of Service violations as he had differently than it treated him – that Greyhound picked people to discipline for reasons other than the Hours of Service violations.

[64] The Complainant thought that HR1-45 was important to his case because this Audit revealed that the driver had committed a very large number of violations; however, the Driver Audit Spreadsheet showed that the Discipline Issued to the driver was what the Complainant submitted was minimal because the Respondent decided that the violations were "not intentional". The Complainant argued that it was not credible that the driver, who he submitted was born in Canada, did not commit the violations intentionally, and that the Complainant, an immigrant, did commit his violations intentionally. The Complainant wished to have the document admitted in order to demonstrate that the Respondent treated this driver differently than it treated him, a Russian immigrant, even though the driver had committed the same violations as the Complainant and had committed many violations.

[65] At the November 18 CMCC, the Respondent further argued that there had to be some procedural certainty. The parties had dealt with this issue in the middle of Mr. Levandoski's testimony and it was procedurally unfair to deal with it again. At the hearing, the Complainant had stated he was abandoning HR1-45, and the Respondent had and has a right to rely on that statement.

[66] The Respondent stated that the prejudice to the Respondent if the Hours of Service Audit HR1-45 was admitted was that on its face, it did not provide enough information about why the Respondent disciplined that driver the way it did. To cure that prejudice, the Respondent would have to call a witness to testify on it.

[67] The Respondent also submitted that no driver was fired or disciplined based on the Hours of Service Audit alone. She described an Hours of Service Audit as a review done by BIRC based on the documents the Respondent then had from the driver's Logbook. After this review, someone mandated by Greyhound would have asked the driver for an explanation of any irregularities in the Audit. Only if the driver's response was not satisfactory did the Respondent issue discipline. All of that had to be explained by a witness. Respondent counsel did not know whether she would have to recall Robert Davidson, David Butler or call another witness, because different Regional Managers were responsible for different drivers.

[68] The Complainant stated that on page 8 of the Driver Audit Spreadsheet, using himself as an example, "everything" was in there, including why Greyhound issued the discipline. He submitted that everything about the discipline for the driver in HR1-45 was also there, and there was no reason to recall or call any Respondent witnesses to testify about the Hours of Service Audit.

[69] The Complainant stated that he had not realized at the time that all the Hours of Service Audits were related to the Driver Audit Spreadsheet. He contended that the Hours of Service Audits and the Driver Audit Spreadsheet were in reality one document, because the discipline issued in the Driver Audit Spreadsheet was based on the Hours of Service Audits.

[70] The Complainant further submitted that Mr. Levandoski was making the discipline decision on the drivers based on these Audits. He submitted that the Audit contained in exhibit HR1-45 found that the driver had committed multiple violations, but as the Complainant saw it, Greyhound's discipline was very light. He wanted to use HR1-45 as an example to demonstrate that Greyhound treated drivers who had committed the same Hours of Service violations as the Complainant differently than it did the Complainant, who Greyhound fired.

[71] The Respondent submitted that since the Complainant had confirmed he was abandoning this document during the hearing, it would be procedurally unfair to admit the document into evidence at this stage.

[72] Further, the document on its face did not tell the Tribunal enough about the investigation which was done after the Hours of Service Audits. The Respondent reminded the Tribunal that Mr. Davidson had testified about the investigations he had done, but that to enter HR1-45 into evidence would entail having to call another witness to testify.

[73] HR1-46 is also an Hours of Service Audit. The Registry Officer confirmed that this was one of the documents the Complainant had said he was abandoning at the hearing. At the November 18 CMCC, the Complainant stated that he had abandoned HR1-46 because he did not know that he would not be able to come back to it again.

[74] The Complainant stated he wanted HR1-46 admitted to show exactly which violations this Audit found for the driver. He acknowledged that he could go to the Driver Audit Spreadsheet and refer to the same driver, but he submitted that in order to demonstrate the "complete picture", he wanted to show exactly what the driver had done.

[75] The Respondent's position on HR1-46 was the same as its position on HR1-45.

[76] The Respondent agreed that each one of the individual Hours of Service Audits related to the Driver Audit Spreadsheet but contended that each one of the individual Audits had to be explained by a witness. Further, the Complainant had the opportunity to cross-examine Mr. Butler, for example, when he testified about the Driver Audit Spreadsheet. If there were flaws in the Hours of Service Audits, someone needed to testify about them but

at this stage, they should not simply be put into evidence without having anyone testify about them.

[77] The Respondent also submitted that it was not necessary to admit these individual Hours of Service Audits into evidence because the Tribunal already had the “ultimate evidence”, which was in the Driver Audit Spreadsheet, and which was cross-examined on at the hearing.

(i) Analysis: Disputed Documents HR1-36, HR1-39, HR1-41, HR1-42, HR1-44, HR1-45 and HR1-46

[78] I find that at the November 18 CMCC, the Complainant’s main argument in support of admitting into evidence all the above Hours of Service Audits at issue, including those found in the Commission’s Book of Documents HR1, was that the discipline decisions Greyhound made for non-compliant drivers were based on the results of their Hours of Service Audits. Those discipline decisions were set out in the Driver Audit Spreadsheet. He submitted that the individual Hours of Service Audits and the Driver Audit Spreadsheet were essentially one document. Therefore, he argued that the Tribunal should admit the individual Hours of Service Audits so that it had the “complete picture” of the violations those drivers committed.

The Hours of Service Audits

[79] I find that most of the Hours of Service Audits at issue contain the following information:

- driver’s name;
- their Regional Manager;
- city location of their home terminal;
- date of Audit;
- the period Audited;
- Auditor’s name and Auditor’s dated signature;

- whether the driver was Hours of Service Compliant;
- date or dates of Hours of Service Violations in the period audited;
- a chart for Log Infractions, filled in if the driver had any;
- a Comments section specifying the Hours of Service violations, if any;
- A separate page made up of an Hours of Service Recap for the month or period Audited.

[80] With respect to the Hours of Service Recap, in addition to the requirement to keep the daily Logbook, Greyhound required that each driver also keep a daily running tally of their Hours of Service, covering one month, which was meant to let the driver know how many Hours of Service the driver had available for the next day, the next week and so on. This running tally was called the Hours of Service Recap.

[81] Having said that, BIRC did the Hours of Service Recap in the Hours of Service Audits as part of its Audit process to assist in demonstrating whether the drivers were committing Hours of Service violations.

[82] I note that Disputed Documents R2-59, R2-63, R2-64 and R2-68 (dealt with in next part of this Ruling) are also Hours of Service Audits, but which consist of one page, made up of an Hours of Service Recap purporting to show Hours of Service violations, and at the bottom, has the driver's name, whether and when the driver committed Hours of Service violations in the period audited, and for most of this group, the dates the driver committed them.

[83] None of the Hours of Service Audits contain the discipline which was issued for the drivers who were found not compliant with the Hours of Service.

The Driver Audit Spreadsheet

[84] I find that the Driver Audit Spreadsheet is made up of 13 pages. Each page contains information on BIRC Hours of Service Audits on various drivers, such information divided into columns, titled as follows:

- Driver Name;
- Location;
- Auditor;
- Date of Audit;
- Regional Manager Responsible;
- Month/Year Audited;
- Whether the driver was Hours of Service Compliant;
- Log Infractions, if any;
- Comments on Infractions;
- Discipline Issued

[85] The Driver Audit Spreadsheet covers Audits which BIRC performed between January 2010 and mid-April 2011.

[86] The first six pages of the Driver Audit Spreadsheet contain the above information for between 23 and 35 drivers per page. Almost all these drivers are shown as “Compliant” with the Hours of Service. The Discipline Issued column is blank because the Respondent did not discipline these drivers. Some were given commendations for their Logbook record keeping.

[87] Pages seven, eight, nine and ten contain the names of fewer drivers – for example, page 10 contains the names of 10 drivers - because some of the drivers who the Audits found not to be Hours of Service Compliant were either audited more than once or seemed to have required more room for the information in the Comments on Infractions and Discipline Issued columns.

[88] Page 11 has the information on the Audits of 14 drivers; page 12, information on the Audits of 23 drivers, and page 13, information on the Audits of 11 drivers.

[89] In the first nine pages, if an Audit found that a driver was compliant with the Hours of Service, the column titled Hours of Service Compliant states “Compliant”. In the last four

pages, if the Audit found the driver was compliant with the Hours of Service, that column states "Yes".

[90] The Complainant submitted that the Respondent based its discipline decisions, including its decisions to fire him, on the Hours of Service Audits. The Respondent countered that no driver was disciplined or fired based on the Audits alone, and that the Respondent also took into consideration the findings from its further investigations. I find that both these arguments deal with substantive issues that are beyond the scope of this Ruling which addresses only the admissibility of certain documents. The Decision on the merits will address these arguments.

[91] I find that the Driver Audit Spreadsheet's Comments on Infractions column and Discipline Issued columns, when read together, provides the reader with not only the relevant information from the drivers' individual Hours of Service Audits but additionally with any discipline Greyhound rendered, and many times, a brief note on the reason Greyhound rendered that discipline. This gives the reader sufficiently comprehensive information about the Hours of Service violations.

[92] I further find that there was no evidence that there were any errors in the information transferred from the individual Hours of Service Audits at issue to the Driver Audit Spreadsheet – in other words, there was no evidence that what was in the Driver Audit Spreadsheet was not accurate. The individual Audits sometimes contained more information about specific violations, but I find that the relevant information in the individual Audits is contained in the Driver Audit Spreadsheet.

[93] With respect to the discipline decisions Greyhound made for the drivers as a result of the Hours of Service violations found in their Hours of Service Audits, each time the driver's name appears in the Driver Audit Spreadsheet, the Comments on Infractions column sets out, with what I find is reasonably ample specificity, what their Hours of Service violations were.

[94] The Complainant acknowledged at the November 18 CMCC that the information from these individual Hours of Service Audits is in the Driver Audit Spreadsheet.

[95] He seeks to have them admitted so that the Tribunal can have what he referred to as the complete picture of what the Hours of Service violations in most of these Audits were, which in turn he submits would demonstrate that the Respondent fired him but did not fire the drivers in these Hours of Service Audits who committed the same Hours of Service violations as he did.

[96] The Complainant also submits that the Respondent does not need to recall Mr. Davidson or Mr. Butler to testify about these Hours of Service Audits because both already testified about the Driver Audit Spreadsheet.

[97] I find that almost all the information from the individual Hours of Service Audits at issue is contained in the Driver Audit Spreadsheet. I find that on its face, the Driver Audit Spreadsheet provides sufficient relevant information about the Hours of Service violations committed by the drivers in these disputed Hours of Service Audits without requiring the admission into evidence of those drivers' specific Hours of Service Audits comprising Disputed Documents HR1-39; HR1-41; HR1-42; and HR1-46.

[98] I find it reasonable that in order to alleviate the prejudice to it if the Tribunal were to admit these individual Hours of Service Audits into evidence, the Respondent would need to recall witnesses such as Mr. Butler or Mr. Davidson or both to testify about the individual Hours of Service Audits.

[99] I think the main question for the Tribunal here is whether, at this stage of the proceedings, the probative value of the above group of Disputed Documents is outweighed by the prejudice to the Respondent and to the proceedings.

[100] The Complainant seeks to have these Hours of Service Audits entered into evidence because he contends that a) they form the basis of the Discipline Issued shown in the Driver Audit Spreadsheet; b) they and the Driver Audit Spreadsheet are in essence one document, and not many; c) they show precisely what the Hours of Service violations of the audited drivers were; d) these drivers committed the same or similar Hours of Service violations as the Complainant, yet the Respondent treated the Complainant differently – more harshly by firing him – than it did the other drivers, in that many are still working for the Respondent,

and that the admission of these Hours of Service Audits would provide the Tribunal with the complete picture of the Driver Audit Spreadsheet.

[101] I conclude that the prejudice in terms of the additional time, expenditure of financial and manpower resources of both the parties and the Tribunal inherent in re-convening the hearing at this stage in order to have witnesses testify about these individual Hours of Service Audits outweighs any probative value the individual Hours of Service Audits might have. I also take into account that the Tribunal has ruled on them at the hearing and that the Complainant's submissions at the November 18 CMCC did not establish that there would be a prejudice to the Complainant if the documents were not admitted, because ample information from the Hours of Service Audits are in the Driver Audit Spreadsheet. Further, the Driver Audit Spreadsheet itself was entered into evidence and witnesses proffered by the Commission, the Complainant and the Respondent testified on it. The Tribunal has also heard testimony about the Comments and Discipline Issued on drivers in the Driver Audit Spreadsheet, and since this document contains the relevant information about the same individuals found in the Hours of Service Audits and also contains Greyhound's disciplinary decisions for these drivers, and many times, the reasons for such decisions, I conclude that it is not necessary to admit the individual Hours of Service Audits into evidence.

[102] For the foregoing reasons, the Tribunal does not admit them into evidence.

Disputed Documents R2-57, R2-58, R2-59, R2-60, R2-61, R2-63, R2-64; R2-65; R2-68, R2-69, R2-70, R2-71, R2-72; and R2-74, R2-75, R2-76, R2-77

[103] The above Disputed Documents are all in the Respondent's Book of Documents. Each is an Hours of Service Audit of a Greyhound driver. According to the Tribunal's Initial Exhibit Lists, none of them were ever referred to by any party during the hearing.

[104] The Registry Officer confirmed at the November 18 CMCC that the Tribunal's records were that except for R2-66, Disputed Documents R2-57 through to R2-65 and R2-67 through R2-72 were never referred to during the hearing.

[105] At the November 18 CMCC, the Complainant acknowledged that he had not asked to admit these documents. He submitted that he had not done so because the Respondent

had objected to him asking questions to witnesses about other Hours of Service Audits, and he became frustrated and discouraged about asking about these particular Audits. He thought he could wait until the end to put the documents he wanted to into evidence.

[106] The Complainant also submitted that after the Settling complainants withdrew from the hearing, including the Settling complainant who had handled the complaints and the hearing for all five original complainants, he was left by himself, to represent himself. He had not realized he had to ask a particular person about certain documents. He thought he could ask another person about these documents and he didn't know he was "supposed" to ask Rob Davidson about these specific documents.

[107] He further submitted that he thought he could put these documents into evidence at the end of the hearing, because of what I, as hearing Chair, had said to him about how the parties would go through the Exhibit Books at the end of the evidentiary portion of the hearing, before the parties made their final arguments and submissions. The Complainant submitted that I had said that the parties would then decide which documents were in and which were out, and he thought he could put these documents into evidence at that time. The Complainant also submitted that I had said that he could not put in any new documents, but he thought that "new" meant documents which were not in the Exhibit Books at all. He thought that so long as documents were in the Exhibit Books, they were not "new", and could therefore be put into evidence at the end of the hearing.

[108] The Respondent replied that the Complainant had reiterated the same point in the hearing as he did in the November 18 CMCC, namely that he was left alone by the Settling complainant who had handled the complaints of all five complaints. However, after the Settling complainants left the hearing, including on February 17, and thereafter, the Respondent pointed out that the hearing Chair had explained the process to the Complainant numerous times.

[109] The Respondent further submitted that I, as hearing Chair, had given the Complainant opportunities to ask for documents he or others had testified about to be admitted. The Respondent also said that I explained the procedure of culling of documents from the Exhibit Books to the Complainant. The Respondent further submitted that it was

always made clear that any document which had not been admitted by the end of the evidence portion of the hearing would be taken out of the Books of Documents.

[110] The Complainant reiterated his submission that all these separate Hours of Service Audits were connected to the Driver Audit Spreadsheet at Exhibit R1-29, because the Driver Audit Spreadsheet was based on the individual Audits. As he had for the Hours of Service Audits in the HR1 group of documents, he reiterated that the R2 Hours of Service Audits and the Driver Audit Spreadsheet were in reality one document, and not separate documents. He asserted that the Respondent made its discipline decisions based on this document and he wanted to show that even though there were drivers who had committed the same Hours of Service violations as the Complainant, the Respondent treated them differently – specifically, the Respondent had not fired them, but had fired the Complainant. He reiterated that these R2 Hours of Service Audits would show the “full picture” of the Respondent’s different treatment.

[111] The Respondent’s position was that these R2 Disputed Documents should remain out.

[112] The Respondent stated that its submissions with respect to these R2 Hours of Service Audits were the same as its submissions on the previous Hours of Service Audits, with the added factor that the Complainant had not even attempted to put them in at the hearing, including by putting them to any of the Respondent’s witnesses, including David Butler and Robert Davidson.

[113] The Respondent submissions regarding the prejudice to the Respondent if R2-57 through R2-77 were admitted into evidence were the same as its submissions against the admission of the previous group of Disputed Documents.

[114] Further, the Respondent submitted that it had chosen to put these R2 Hours of Service Audits into its own Book of Documents and at some point during the hearing, had formulated a litigation strategy as the evidence unfolded not to put them into evidence. For the Tribunal to do so at this stage would be procedurally unfair to the Respondent.

[115] The Complainant also submitted that with respect to these R2 Hours of Service Audits in dispute, the Respondent did not have to bring any witnesses back to testify about them because everything was in the Driver Audit Spreadsheet.

[116] When I asked the Respondent what the prejudice would be to them if these documents were admitted, the Respondent counsel answered that all of her prior comments applied equally to these documents, with the additional objection that they were in the Respondent's potential production and the Respondent had anticipated at some point they might be entered, and then at some point during the hearing, had decided not to do so. The Respondent had made a conscious decision during the hearing to choose not to put them into evidence. Respondent counsel submitted that if these documents were admitted without any explanation, it would prejudice the Respondent. To alleviate that prejudice, the Respondent would have to recall witnesses such as Mr. Davidson and perhaps other witnesses to speak to these Hours of Service Audits.

(ii) Analysis

[117] With respect to the R2 Hours of Service Audits at issue in the Disputed R2 group of documents, I find it significant that during the hearing, neither party sought to elicit testimony about any of them or introduce any of them into evidence. In short, these documents were not referred to in the hearing.

[118] Further, I note that R2-60 and R2-61, two of the R2 Disputed Documents, are Hours of Service Audits of one of the Complainant's witnesses - also a former Greyhound driver. Despite the fact that this former driver was one of the Complainant's witnesses, he did not take the opportunity to question him on either of those Audits.

[119] In addressing the Complainant's submissions that he had been left to represent himself after the Settling complainants withdrew from the hearing, I am mindful of the fact that not only did the "point man" Settling complainant withdraw from the hearing, but the Commission, which had participated in the hearing, also withdrew and the Complainant was left to represent himself at the hearing. Having said that, the five original complainants were always self-represented by the "point man" Settling complainant.

[120] I find that the record demonstrates that near the beginning of the Complainant's testimony, one of the procedural items I explained to him was that just because a document was in the Book of Documents did not mean that it was admitted into evidence – he would have to state that he wished to put it into evidence, and if the Respondent objected, I would rule on whether the document could be put into evidence. The record also shows that I asked the Complainant several times throughout the hearing whether he wished to put the documents he was referring to into evidence, and at least once told him to make sure that evening as to which documents he wanted to ask to be admitted into evidence so he could advise the Tribunal and the Respondent the next morning. He did so. There were also times during the hearing when the Complainant checked with the Tribunal to make sure certain documents had been admitted into evidence, which I find established that he was aware of the process and requirement to specify documents he sought to have admitted.

[121] The record also shows that I explained to him the procedure used before final arguments and submissions regarding the culling of documents in the parties' Exhibit Books by all parties and the Registry Officer at the hearing, confirming which documents had been admitted into evidence and which had not, the reasons for removing those documents prior to final arguments and submissions, and the actual removal of the documents.

[122] I conclude that the record demonstrates that the Tribunal gave the Complainant ample opportunities to understand and ask questions about the procedure of putting documents into evidence and actually permitting him to put documents into evidence which he had forgotten to do after he or another witness had testified about them.

[123] I find that it would be prejudicial to the Respondent to admit these R2 Hours of Service Audits forming this group of Disputed Documents without testimony about them. I also find that it was reasonable for the Respondent to take the position that to alleviate the prejudice if these documents were admitted, the Respondent would need to recall witnesses to testify about them. I further find that as with the HR1 group of Hours of Service Audits which formed part of the previous group of Disputed Documents, and for the same reasons previously stated in this Ruling for not admitting them, the Driver Audit Spreadsheet at Exhibit R1-29, copied in Exhibit HR1-31 contains the relevant and necessary information from the Hours of Service Audits on drivers who were not compliant with the Hours of

Service without having to resume the hearing after both parties have closed their cases, recall witnesses, and hear evidence about each individual Hours of Service Audit in this R2 group of Disputed Documents. In summary, the evidentiary or probative value of these individual Hours of Service Audits does not outweigh the prejudice to the process if the Tribunal admitted them. The Tribunal does not admit them into evidence.

Other Disputed Documents

[124] Disputed Document C1-6 contains two letters to the other parties from the “point man” Settling complainant on behalf of the five complainants.

[125] The first letter, dated January 21, 2015, sets out in turn each of the five complainants’ claims for lost wages to the end of 2013, and how they calculated the losses. Page 1 of this letter deals with the Complainant’s wage loss claim. The letter’s last page seeks the maximum amount in the Act for both pain and suffering for each of the five complainants and special compensation based on defamation of character.

[126] The second letter, dated February 3, 2015, seeks disclosure from the Respondent of the Records of Employment for the Complainant and two of the Settling complainants and contains some other information about the “point man” Settling complainant.

[127] The Tribunal Registry Officer’s records were that C1-6 was never referred to.

[128] At the November 18 CMCC, the Complainant’s reasons for the Tribunal to admit C1-6 were that although Exhibit C1-3, already admitted, referred to earning and other amounts in the years set out, C1-3 contained only Canada Revenue Agency T-4s and Notices of Assessments. It was C1-6 that set out all the remedies the Complainant sought, including for pain and suffering and how the lost wages he seeks are calculated.

[129] The Respondent submitted that one of the Settling complainants and not the Complainant, wrote the letters, and the first letter did not state the source of the amounts claimed. The Complainant responded that he had given the letter writer all the information in the letter about his own losses.

[130] The Respondent also submitted that a great deal of the documents contains the Settling complainants' requests for remedies which are not relevant to the Complainant's case. Further, Respondent counsel had cross-examined the Complainant on Exhibit C1-3 because he had referred to it in his testimony – he had not referred to C1-6. He had the opportunity to refer to C1-6 when he testified, and did not do so, and because he did not enter C1-6 as an exhibit, the Respondent did not have an opportunity to cross-examine on it. This prejudiced the Respondent as it would have no opportunity to examine the Complainant on the reliability of the figures in C1-6. It contained only averages and the Complainant needed to be cross-examined on it. The Respondent also characterized the second letter as the chief prejudice.

[131] I asked Respondent counsel at the November 18 CMCC whether, if I admitted Document C1-6, she could cross-examine the Complainant on that document on the first day of the resumption of the hearing. Respondent counsel responded that she could do so if need be.

[132] At the November 18 CMCC, the Complainant submitted that when I, as hearing Chair, asked him what he wanted by way of remedies, he responded that everything he wanted was in his Book of Documents and I, as hearing Chair, stated that I wanted to hear his testimony as to what remedies he sought. Therefore, he did not refer specifically to C1-6.

[133] He also submitted that he was by himself when he testified and could not remember the specific documents when I asked him what he wanted. When he testified, he thought that whatever he had in the Books of Documents was all evidence, although he admitted that I told him that he had to choose the documents he wished to put into evidence.

(iii) Analysis

[134] Disputed Document C1-6 contains, in writing, almost all the remedies the Complainant seeks if his Complaint is substantiated, except that he testified that he also wishes to be reinstated in his job at Greyhound. C1-6 also includes a claim for compensation for pain and suffering and special compensation.

[135] The Tribunal record (including the Tribunal's recording) demonstrates that in his testimony, the Complainant did not specifically refer to C1-6 but did specifically refer to Exhibit C1-3, which contains only his CRA T4s, Notices of Assessment and other like government documents. The Respondent cross-examined him on Exhibit C1-3.

[136] The record also demonstrates that as hearing Chair, I explained to the Complainant just after he started testifying in direct examination that not every document in the Book of Documents went into evidence, and that he had to specify which document he wanted to put into evidence, and then put it into evidence or try to put it into evidence.

[137] I think it is fair to the Complainant and relevant to admit C1-6 into evidence so that together with his testimony, he has placed every remedy he seeks on the record.

[138] I find it reasonable that the Respondent would be prejudiced if C1-6 was admitted without giving the Respondent an opportunity to cross-examine the Complainant on it.

[139] The resumption of the hearing for final argument and submissions was scheduled for three days starting December 14, 2016. I saw no reason why, if the Respondent chose to cross-examine the Complainant because of the admission into evidence of C1-6, the Complainant could not testify on it right at the beginning of the hearing and the Respondent cross-examine him. I also thought his testimony and cross-examination would not take long and, once completed, the parties would still have ample time and opportunity to submit fulsome final arguments and submissions. As set out in paragraph 176 below, the Respondent decided to address the admission of C1-6 in its closing argument.

[140] The Tribunal admits Disputed Document C1-6 as Exhibit C1-6.

Other Disputed Documents: C1-9

[141] Disputed Document C1-9 consists of several newspaper articles. At the November 18 CMCC, the Registry Officer stated that it was shown as entered on February 17, 2015 and that it was the same document as Exhibit HR1-50, which was entered on February 11, 2015. There was no dispute that Exhibit HR1-50 had been entered into evidence.

[142] The Respondent's position was that C1-9 was not entered; that the Complainant began to refer to it on February 17 but did not enter it as an exhibit because he had not intended to enter it. The Respondent also submitted that both Document C1-9 and Exhibit HR1-50 contain news articles but was not sure the same newspaper articles were in both.

[143] At the November 18 CMCC, the Complainant submitted the following:

- a. at the hearing, he had thought that C1-9 was already admitted;
- b. the relevance of C1-9 was that he thought it contained articles again reporting on the Respondent cutting routes, but could not remember its specific contents and would have to read it again;
- c. the Complainant thought, but was not sure, that the Commission's counsel had referred to it.

[144] I asked the Respondent what the prejudice would be if C1-9 was entered. The Respondent stated that no witness testified about it, including the Complainant, and the Respondent had not had an opportunity to cross-examine anyone on it. Therefore, for the Complainant to refer to HR1-50 in argument would be unfair to the Respondent.

[145] At the November 18 CMCC, the Complainant stated that the relevance of C1-9 was that he thought it again reported on Greyhound cutting runs but could not remember its specific contents and would have to read it again.

(iv) Analysis

[146] I find, from the record and my notes, that what occurred at the hearing with respect to C1-9 was the following: when the Complainant finished his testimony for the day on February 17, 2015, he sought to have certain documents put into evidence. Once he completed that group of documents, I asked him if there were any documents in any of the other Document Books he wanted to put into evidence. He said he would like to put C1-9 into evidence. I asked him what the document was, and he responded that he believed it was an announcement about route cuts. He then looked at it and said that he had made a mistake. I then asked him if he was referring to the other newspaper articles and he

responded yes and that he thought they were already in evidence. The Respondent's counsel stated they were admitted as HR1-50, and the Complainant agreed.

[147] Exhibit HR1-50 is in evidence. It consists of 12 pages, printed on both sides. The first page is an "Employee Announcement" from Greyhound, dated September 3, 2009 to all Greyhound employees and announces that Greyhound will be ceasing passenger operations in Manitoba effecting October 2, 2009 and in the northwestern part of Ontario, effective December 2, 2009. It also states that Greyhound is in discussion with the federal and provincial governments for a solution to the problems. The rest of the 11 pages are articles from various newspapers, dated from September 4, 2009 to July 7, 2010, about various developments and changes in the situation, including that Greyhound ended up maintaining passenger services in Manitoba.

[148] The Complainant and the Respondent agree that Document C1-9 contains newspaper articles, although Respondent counsel was not certain that the articles in C1-9 were the same as those in HR1-50. The Complainant thought that the C1-9 articles were also about Greyhound cutting runs and C1-9 was relevant for that reason but could not remember exactly and stated he would have to read them again.

[149] I have briefly described the contents of Exhibit HR1-50. Those contents include an announcement by the Respondent about route cuts, and a number of articles about the situation around Greyhound stating it would cut runs, and includes reports on some of the events which transpired in the months thereafter. The Complainant seeks to have C1-9 admitted into evidence. According to the parties' submissions during the hearing and during the November 18 CMCC, and according to the Tribunal's record, it seems that Exhibit HR1-50 and C1-9 contain some of the same documents, including a Respondent announcement about route cuts and newspaper articles on route cuts. I also find that it was the Respondent's announcement that the Complainant was particularly concerned about finding and putting into evidence, and once he realized that this had been done through Exhibit HR1-50, he did not further seek to put C1-9 into evidence.

[150] I do not think it is reasonably necessary or adds to the probative value of Exhibit HR1-50 already in evidence to include another set of newspaper articles on the same subject,

especially when there was no testimony on it. Exhibit HR1-50 deals with the point the Complainant wishes to establish – that there was a time when Greyhound was publicly stating that it would cut runs. Whether he establishes that point is a different matter, but I conclude that Document C1-9 is not necessary because Exhibit HR1-50 on the same topic is in evidence. Therefore, the Tribunal does not admit Disputed Document C1-9.

Other Disputed Documents: R4-135, R4-169, and R4-176

[151] At the beginning of the November 18 CMCC, the Complainant added Disputed Documents R4-135, R4-169, and R4-176 to the documents he wished to have admitted into evidence.

[152] At the November 18 CMCC, there was no dispute that each of these three documents contain the handwritten notes of the Respondent's witness Robert Davidson, who at the hearing testified generally that he wrote notes during his investigation of the five complainants' Logbooks. There was also no dispute that these three sets of documents were Mr. Davidson's handwritten notes made when he investigated the Logbooks of three of the Settling complainants.

[153] The Complainant wished to have each admitted into evidence because, he submitted, they demonstrated that the Settling complainants were violating the Hours of Service about one year before Greyhound terminated their employment and that Mr. Davidson knew it at that time. Yet Greyhound waited until May 2010 to terminate the Complainant and the Settling complainants' employment. He submitted that this meant that Mr. Davidson was watching out for the Complainant and the Settling complainants for a long time. The Complainant also wanted to know, why, if Mr. Davidson had found out that "we were violating" in January and February 2009, he waited until 2010 to request Hours of Service Audits on them. Therefore, Mr. Davidson knew a year before that they were violating in January and February 2009. Then suddenly, in 2010, the Respondent fired the Complainant and the Settling complainants. The Complainant submitted that these circumstances revealed discrimination.

[154] The Complainant also submitted that he had just read these documents before the November 18 CMCC.

[155] The Respondent's position was that when Mr. Davidson was testifying, the Respondent put into evidence as Exhibit R4-160, which were the handwritten notes Mr. Davidson wrote as he was examining the Complainant's Logbooks.

[156] The Respondent stated that the Complainant had not attempted to question Mr. Davidson about any of R4-135, R4-169 or R4-176.

[157] The Respondent also submitted that these handwritten notes pertained to three of the Settling complainants and not to the Complainant – they were therefore not relevant. The Respondent argued that the whole point of having the four Settling complainants out of the case was that the Respondent did not have to establish anything about the Settling complainants. All three of the sets of Mr. Davidson's handwritten notes at issue dealt with the investigation conducted on the Settling complainants and were not relevant.

[158] The Respondent submitted that it was conjecture by the Complainant that Mr. Davidson knew the Settling complainants were violating in January and February 2009. These were all things that the Complainant needed to have asked Mr. Davidson when Mr. Davidson was testifying. The Complainant had theories about what these documents said and he should have put those theories to Mr. Davidson.

[159] The Complainant contended that Mr. Davidson did not have to answer these questions. He contended that Greyhound knew that drivers were violating before that and then suddenly, it fired the Complainant and the Settling complainants. He argued that he did not know and it did not matter when Mr. Davidson made those notes – but if it was before the investigation, Mr. Davidson should have shown them to BIRC.

[160] When I asked the Complainant why he didn't ask Mr. Davidson about these documents when Mr. Davidson testified, the Complainant responded that he had not seen them at that time and was not prepared. Further, he was by himself, had lots of witnesses to go through and did not know the procedure. He stated that if he knew then what he knew at the November 18 CMCC, he would do it completely differently.

[161] The Respondent submitted that the prejudice to it would be having to call Mr. Davidson back to testify about these handwritten notes.

(a) Analysis

[162] There is no dispute and I find that each of Disputed Documents R4-135, R4-169 and R4-176 are Rob Davidson's undated handwritten notes on his review of three of the Settling complainants' Logbooks.

[163] There is also no dispute that Mr. Davidson's undated handwritten notes made during his review of the Complainant's Logbooks were admitted into evidence as Exhibit R4-160.

[164] There is further no dispute that the Settling complainants and the Respondent entered into a settlement of their complaints and withdrew their complaints against the Respondent.

[165] The Complainant wishes to enter R4-135, R4-169 and R4-176 to demonstrate that they are undated and that they demonstrate that Mr. Davidson knew that the Settling complainants were violating their Hours of Service one year before the BIRC Audits were done, and that therefore Mr. Davidson tacitly let the Settling complainants and the Complainant violate until the Respondent decided to fire them for discriminatory reasons.

[166] Exhibit R4-160 was admitted into evidence at the hearing and are Mr. Davidson's undated handwritten notes about the Complainant's Logbooks, including a note with respect to the Complainant's Hours of Service in January and February 2009.

[167] The Complainant's stated purpose in seeking the admission of R4-135, R4-169 and R4-176 are to establish the Complainant's submission that Mr. Davidson knew earlier than 2010 that the Settling complainants were violating, and that he waited for a time convenient to the Respondent to terminate their employment in 2010; therefore, the firing was really on account of discrimination.

[168] The Settling complainants formally settled on February 16, 2015 and undertook to withdraw their complaints. Therefore, they were no longer complainants from that time on. I find it reasonable for the Respondent to require Mr. Davidson to testify about the theories

the Complainant submitted about what the three sets of notes established if the Tribunal was to admit these documents into evidence. I conclude that these documents are not relevant to the Complainant's case because they concern the Settling complainants who are no longer part of this inquiry. In these circumstances, it would be unfair to the Respondent to have to bring Mr. Davidson back to testify about these Disputed Documents.

[169] Further, Exhibit R4-160 is in evidence, is undated, and in his final argument, the Complainant can make his submissions on this exhibit, including what he thinks the fact that it is undated and Mr. Davidson's notes on the Complainant's Logbooks establish about when Mr. Davidson knew the Complainant was violating and how this is relevant to his allegation that the Respondent discriminated against him when it fired him.

[170] The Tribunal does not admit into evidence Disputed Documents R4-135, R4-169 and R4-176.

Other Disputed Documents: HR1-52

[171] Disputed Document HR1-52 was the Commission's Investigative Report into the complaint of one of the Settling complainants. The Tribunal's Initial Exhibit List recorded this as not entered. At the hearing, the Complainant had sought to enter it into evidence. He submitted at that time and at the November 18 CMCC that the Commission's Investigative Report into his own Complaint was exactly the same as that in HR1-52, with only the name changed to his own. The Respondent objected.

[172] After hearing further submissions from both parties, I ruled that HR1-52 was not admitted as an exhibit for the following reasons: the statements made by individuals who the Investigator interviewed were not made under oath, in contrast to testimony at a Tribunal hearing, where a witness makes an oath to tell the truth; the information in the interviewed individuals' statements came from the Investigator and not from the individual – they are therefore entirely hearsay; the Tribunal's inquiry and hearing constitute a fresh start for a complainant and his complaint, in which the Tribunal goes back to the beginning of the circumstances of the complaint. A lesser, but still relevant reason I did not admit HR1-52

into evidence was that the Investigation Report was about one of the Settling complainants' complaint, and not about the Complaint at issue.

[173] At the November 18 CMCC, the Respondent's position was that the Tribunal's ruling at the hearing should stand.

[174] I concluded that the Complainant did not raise any material issue at the November 18 CMCC which would change this ruling. Therefore, at the November 18 CMCC, I reiterated to the Complainant the reasons for not admitting HR1-52 and that my ruling at the hearing would remain unchanged.

The December 2, 2016 Tribunal Letter to the parties and post-Ruling submissions

[175] I wish to note that the Tribunal sent the parties the December 2, 2016 Letter containing the Rulings in paragraphs 177 and 178 below. A copy of the December 2, 2016 Letter is attached as Schedule "A". The December 2, 2016 Letter also contained a paragraph stating that if any of the parties wished the opportunity to respond to the admission of the documents in paragraph 1 of the Letter (paragraph 177 below), they should advise the Tribunal and the other parties no later than Friday, December 9, 2016 of their intent to provide a response and indicate the form of that response, whether it would be the recall of witnesses, or in final submissions, in writing or orally, or another form of response.

[176] On December 6, 2016, the Respondent advised the Tribunal that it objected to the admission into evidence of C1-6, the reasons why, and that it would make this argument in its final submissions. On December 9, 2016, the Complainant emailed the Tribunal to say that he wished to recall himself as a witness. However, at the December 14, 2016 resumption and continuation of the hearing, he did not do so.

III. Ruling

[177] Documents C1-6, HR1-20, HR1-23, R2-66, and R4-159 are admitted into evidence as exhibits and the parties shall keep them in the applicable Books of Documents.

[178] Disputed Documents C1-9, HR1-36, HR1-39, HR1-41, HR1-42, HR1-44, HR1-45, HR1-46, HR1-52; R2-57, R2-58, R2-59, R2-60, R2-61, R2-63, R2-64, R2-65, R2-67, R2-68, R2-69, R2-71, R2-72, R2-74, R2-75, R2-76, R2-77, R4-135, R4-169, and R4-176 are not admitted into evidence and the parties shall remove them from the applicable Books of Documents before they make their final arguments and submissions.

Signed by

Olga Luftig
Tribunal Member

Ottawa, Ontario
July 29, 2020.

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1853/8312

Style of Cause: Dmitri Izrailov v. Greyhound Canada Transportation Corp.

Ruling of the Tribunal Dated: July 29, 2020

Representations by:

Dmitri Izrailov, for the Complainant

Giacomo Vigna, for the Canadian Human Rights Commission

Joyce A. Mitchell, for the Respondent

Schedule A



December 2, 2016

By E-Mail

Dmitri Izrailov
[Complainant's address deleted for privacy
purposes]

Joyce A. Mitchell
McLennan Ross LLP
1000 First Canadian Centre
350 – 7 Avenue SW
Calgary Alberta T2P 3N9

Dear Parties:

Re: Dmitri Izrailov v. Greyhound Canada Transportation Corp.
Tribunal File: T1853/8312

Member Luftig's ruling regarding the documents which were the subject of the November 18, 2016 CMCC is set out below. In the interests of time, the reasons for the ruling will be in her final Decision.

1. The following documents **are admitted into evidence** as exhibits:

C1-6; HR1-20; HR1-23; R2-66; R4-159.
2. The following documents **are not admitted** into evidence:

C1-9; HR1-36; HR1-39; HR1-41; HR1-42; HR1-44; HR1-45; HR1-46;
HR1-52; R2-57; R2-58; R2-59; R2-60; R2-61; R2-63; R2-64; R2-65;
R2-67; R2-68; R2-69; R2-71; R2-72; R2-74; R2-75; R2-76; R2-77;
R4-135; R4-169; R4-176.
3. a) Should any of the parties wish the opportunity to respond to the admission of the documents in paragraph 1 above, they are to advise the Tribunal and the other parties **no later than Friday, December 9, 2016** of their intent to provide a response and to indicate the form of that response – for example, the recall of witnesses, or whether they will deal with the additional exhibits in their final submissions, whether in writing or orally, or another form of response.

3. b) Subject to paragraph 3a) above, it is Member Luftig's hope that the hearing dates scheduled for December 14-16, 2016 can still be utilized to conclude the hearing of this Complaint.

However, if in response to paragraph 3a), a party seeks an adjournment of the December hearing dates, they are asked to advise the Tribunal and the other parties **no later than Friday, December 9, 2016**, along with reasons for that request in their response to the Tribunal. The other party shall provide its response to any adjournment request **no later than Monday, December 12**. The Tribunal will then rule on the adjournment request on or before December 13, 2016.

Should you have any questions with regard to this matter, please do not hesitate to contact me at 613-947-1161, or by e-mail at registry.office@chrt-tcdp.gc.ca.

Respectfully,

[Registry Officer's signature deleted]

Nicole Bacon
Registry Officer

c.c. Giacomo Vigna, CHRC counsel