Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2021 CHRT 27
Date: August 19, 2021
File No.: T2405/6419

Between:

Karen Hugie

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

T-Lane Transportation and Logistics

Respondent

Decision

Member: Gabriel Gaudreault

Table of Contents

I. Background of complaint

[1] This decision of the Canadian Human Rights Tribunal (the "Tribunal") deals with the complaint of Ms. Karen Hugie (the "Complainant") against T-Lane Transportation and Logistics (the "Respondent" or "T-Lane"), under section 7 of the *Canadian Human Rights Act* (the "CHRA").

[2] Ms. Hugie alleges that she suffered adverse treatment when she was terminated by her former employer, T-Lane, because of her disability or age (subsection 3(1) of the CHRA).

[3] T-Lane's main argument is that Ms. Hugie's dismissal had nothing to do with her disability or age and that the reason for her termination was purely financial. Therefore, there is no link, no connection, between the alleged discriminatory act and the prohibited ground of discrimination.

[4] Ms. Hugie's complaint was filed with the Canadian Human Rights Commission in October 2017, and the complaint was referred to the Tribunal in July 2019. Hearings were held via video conference over seven days—August 31 to September 4 and September 23, 2020—and final arguments were heard on October 20, 2020.

[5] For the reasons set out later in this decision, the Tribunal finds that Ms. Hugie's complaint is partly substantiated (subsection 53(2) of the CHRA).

II. Issues

[6] The issues in this complaint are clear:

> Was the Complainant terminated by T-Lane because of her disability or age under section 7 of the CHRA?

[7] If the answer is yes:

> Was T-Lane able to present a defence under the CHRA, that is, was it able to justify the dismissal under section 15 of the CHRA?
>
> Was T-Lane able to rebut the presumption under subsection 65(1) of the CHRA, if applicable?

[8] If the answer is no:

What remedies are available to the Complainant under the CHRA?

III. Legal basis for discrimination

[9] As the Tribunal has consistently stated, the purpose of the CHRA is to ensure that all individuals 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 prohibited grounds (section 2 of the CHRA).

[10] The case law on discrimination is consistent in that a complainant has the initial burden of proof to meet on a balance of probabilities (commonly referred to as a *prima facie* case of discrimination).

[11] To this end, the complainant must present evidence that, in the absence of contrary evidence, "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" (*Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), at paragraph 28 [*Simpsons-Sears*]).

[12] Specifically, Ms. Hugie must establish, as a first step, the following three elements:

1) that her situation implicates one or more prohibited ground of discrimination under subsection 3(1) of the CHRA (in this case, disability or age);

2) that she has been adversely impacted by T-Lane under section 7 of the CHRA (which relates to employment); and

3) that the prohibited ground of discrimination was a factor in the occurrence of the adverse impact, i.e. that there is a link between the prohibited ground of discrimination and the adverse impact.

> (*Moore v. British Colombia (Education)*, 2012 SCC 61, at paragraph 33 [*Moore*] and *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 789, at paragraph 63 [*Bombardier*] ; *Simpsons-Sears*, at paragraph 28).

[13] The case law also recognizes that it is not necessary to show intent to discriminate, just as it is not necessary to prove that the prohibited ground of discrimination was the sole factor in the adverse impact (*Bombardier*, at paragraphs 40 and 44; *Holden v. Canadian National Railway*, (1991) 1990 CanLII 12538 (FCA), at paragraph 7 [*Holden*]).

[14] The Tribunal has repeatedly stated that discrimination is generally not overt or intentional. Therefore, it must consider all the circumstances of the complaint at the hearing to determine whether there is a "subtle scent of discrimination" (*Basi v. Canadian National Railway*, 1988 CanLII 108 (CHRT)).

[15] In addition, inferences may be drawn by the Tribunal from circumstantial evidence where the evidence presented in support of allegations makes such an inference more likely than other possible inferences or assumptions. However, the circumstantial evidence must still be tangibly related to the impugned decision or conduct of the respondent (*Bombardier*, at paragraph 88).

[16] When deciding whether a complainant has met its burden of proof, the Tribunal must analyze the evidence presented – including the respondent's evidence – as a whole.

[17] For example, the Tribunal could determine that the complainant has not met their burden of proof if the evidence presented is not sufficient or complete on a balance of probabilities, or if the respondent was able to present evidence to refute the allegations (*Brunskill v. Canada Pose Corporation*, 2019 CHRT 22, at paragraphs 64 and 65 [*Brunskill*]; *Nielsen v. Nee Tahi Buhn Indian Band*, 2019 CHRT 50, at paragraph 47 [*Nielsen*]; *Tracy Polhill v. Keeseekoowenin First Nation*, 2019 CHRT 42, at paragraph 58 [*Polhill*]; *Willcott v. Freeway Transportation Inc.*, 2019 CHRT 29, at paragraph 12 [*Willcott*]).

[18] Conversely, if the complainant meets their burden of proof, then it is up to the respondent to present a defence under section 15 of the CHRA by demonstrating that its

conduct was justified. The respondent could also present evidence to limit its liability, where applicable, under subsection 65(2) of the CHRA.

[19] It is with these legal foundations in mind that the Tribunal will analyze the evidence presented by the parties at the hearing.

IV. Analysis

A. Preliminary remarks – Ms. Knowles's testimony

[20] The hearing was conducted by videoconference, as authorized by the Tribunal in *Hugie v. T-Lane Transportation and Logistics*, 2020 CHRT 25 [*Hugie*]. The hearing generally went well, with the parties raising difficulties they encountered with the Tribunal. Some technical issues were resolved, and the parties worked very well together. The Tribunal had clear and precise guidelines in place to guide them through the virtual process, including the filing of exhibits, written arguments and case law. The Tribunal acknowledges the efforts of the parties and their counsel to ensure that the hearing ran smoothly.

[21] The Tribunal also ensured that the rules applicable to witnesses were clear and explicit. They were discussed on various occasions with the parties. The Tribunal also ensured that the witnesses who appeared before it to give evidence complied with the rules.

[22] As the Tribunal has already established, holding a hearing by videoconference is "an entirely appropriate alternative to an in-person hearing, one that is fair and equitable and that protects the principles of natural justice and procedural fairness" (*Hugie*, above, at paragraph 21). It is not a perfect solution, but in certain circumstances, such as the global health crisis caused by COVID-19, it is sometimes one of the best solutions available to the Tribunal and the parties to proceed with the hearing. That being said, there are also disadvantages to its use, and it can bring its share of surprises.

[23] In this case, T-Lane called one of its employees, Ms. Rhonda Knowles, to testify. Upon returning from a break, during Ms. Knowles's testimony, counsel for the Complainant raised a particular situation that had come up. While the Tribunal had suspended the hearing for a few minutes for a break, Ms. Knowles walked away from the camera on her computer

without turning off her microphone. According to Ms. Hugie, her counsel and her articling student, they heard a female voice discussing her testimony with two other men. After the break, counsel raised this irregularity with the Tribunal.

[24] After a *voir dire* with the parties during which the parties and the Tribunal agreed on how to proceed with this sensitive and extraordinary situation, Ms. Knowles explained that she had not spoken to anyone else about her testimony. The parties did not request any further action by the Tribunal at that time, despite its prompt intervention to manage the situation.

[25] However, in her final arguments, the Complainant submitted that the Tribunal should take this situation into consideration in assessing the weight and truthfulness of Ms. Knowles's testimony, and also consider her inability to keep her oath.

[26] The Tribunal considers that it is not necessary to go as far as the Complainant suggests. For one thing, virtually all of Ms. Knowles's testimony was given before this incident occurred. And it should be noted that the incident was not recorded as it was a break and neither the Tribunal nor the Respondent saw what allegedly happened. Ms. Knowles also denied, when specifically asked by the Tribunal under oath, that she had discussed her testimony with other individuals.

[27] On the other hand, and more importantly, the testimony of Ms. Knowles, while relevant on some points, was certainly not determinative of Ms. Hugie's case. The Tribunal is well able, as will be discussed in the remainder of this decision, to reach its conclusions without the testimony of Ms. Knowles being fundamentally conclusive in the circumstances (for similar comments, see *Polhill*, at paragraphs 30 to 39).

[28] Moreover, some of her testimony was corroborated by other testimony or documentary evidence, allowing the Tribunal to conclude that her testimony is not irreparably tainted by what allegedly happened. It should also be noted that Ms. Hugie bases some of her final arguments on Ms. Knowles's own testimony. It must therefore be noted that rejecting her entire testimony would certainly be problematic.

[29] Having said all this, the Tribunal will, where necessary, give appropriate weight to Ms. Knowles's testimony in light of the other evidence presented at the hearing and will not exclude her testimony in its entirety.

B. Parties involved – Ms. Hugie and T-Lane

[30] The Tribunal finds it useful to provide an overview of the parties to the complaint in order to put the key players in context.

[31] Ms. Hugie is a woman, aged 62 at the time of the hearing, who was born near Vancouver, British Columbia.

[32] After a difficult childhood, Ms. Hugie began working at a young age. Later on, she decided to continue her education at a vocational school, where she completed her GED (general educational development). She also earned a certificate in stenography.

[33] Several years later, Ms. Hugie married and lived in Lethbridge, Alberta. She remained a stay-at-home mother until her divorce from her husband in 1990. Realizing the need to return to the workforce, she turned to the then-burgeoning new technology and computerization field and took a training program at Lethbridge College to upgrade her knowledge in this area.

[34] Ms. Hugie then went on to work for a company in the transportation field, in Lethbridge. She noted that there were few women working in this field, especially in the 1990s, and even fewer in operations. The industry was male-dominated, with women being relegated to working in administrative, accounting and payroll roles, as examples.

[35] After a few months in this job, Ms. Hugie was able to advance to the role of dispatcher, a role she held for almost a decade. She was then promoted to operations manager, a rare position in the transportation industry at the time.

[36] After working for this company for several years, Ms. Hugie set out to write a manual on operations and dispatch in the transportation field. Based on her experience, she felt that better practices and procedures could be put in place to improve operations in what she described as a dysfunctional field.

[37] Over the next several years and until 2015, Ms. Hugie worked for various transportation companies, first in Saskatoon, then in Winnipeg, and finally in Abbotsford, British Columbia. She worked on restructuring the operations of these companies and played a key role in the complex transfer of a major transportation company's operations from Winnipeg to Toronto and in the merger of the operations of various entities acquired by the same company.

[38] It was in 2015 that the complainant and T-Lane entered into a working relationship. It is not clear from the evidence presented whether it was a mutual acquaintance that introduced them to each other, or whether Ms. Hugie responded to a job advertisement. In any event, it can be concluded that Ms. Hugie and T-Lane came into contact in 2015, regardless of the means, and their professional relationship therefore began during that period.

[39] As for T-Lane, it is a family-owned transportation company based in Mission, British Columbia. The company is run by Mr. Timothy R. Germain ("Mr. Germain"), who owns it with his wife.

[40] At the time of the hearing, the company had been in the business of transporting goods in North America and internationally for over 21 years. At the time of the events, T-Lane owned and operated five different terminals across Canada, each with its own employees.

[41] The evidence shows that T-Lane was, in 2015, a profitable company that was growing nicely and had made several acquisitions in the transportation field to expand its operations. For the Respondent, hiring Ms. Hugie was part of this prosperous period; T-Lane wanted to restructure its operations.

[42] The Respondent created an operations consultant position specifically for Ms. Hugie. Ms. Hugie began her duties on February 5, 2015. Ultimately, T-Lane terminated Ms. Hugie's employment on June 12, 2017, the day the Complainant returned to work following approximately 15 weeks of medical leave.

[43] The Tribunal understands that Mr. Germain was not always the manager of the day-to-day operations of the company during the period that Ms. Hugie was an employee. In 2016 and early 2017, Mr. Dave Holeman was in charge of the day-to-day operations of the company. He left T-Lane in January 2017, and that is when Mr. Germain took the helm of the day-to-day management of the company.

(i) Prohibited grounds of discrimination

[44] The two prohibited grounds of discrimination cited by Ms. Hugie in her complaint to the Tribunal are disability and age (subsection 3(1) of the CHRA).

a) Disability

[45] The Tribunal does not intend to dwell on this prohibited ground of discrimination since it is not disputed by the Respondent. On the contrary, the Respondent acknowledges in its closing argument that age and disability are prohibited grounds of discrimination that apply to Ms. Hugie. Most importantly, the Respondent acknowledges that Ms. Hugie has medical conditions that qualify as “disabilities” within the meaning of the CHRA.

[46] Ms. Hugie presented compelling evidence to the Tribunal of her particular medical condition. Among other things, Ms. Hugie suffers from ischemic heart disease, hypertension and high cholesterol. Ms. Hugie’s testimony as to her medical condition and state of health was precise, detailed and convincing. She was able to describe her diagnosis, the various incidents that occurred and that are related to her health, the state of her heart, her symptoms, her functional limitations, the type of surgery she underwent, her convalescence and the medications she was taking.

[47] The Tribunal adds that her testimony supported the extensive medical documentary evidence submitted at the hearing which also detailed her health status including follow-ups with her health care staff. The evidence also shows that Ms. Hugie suffered two serious cardiac events in her lifetime.

[48] She was able to demonstrate to the Tribunal the limitations imposed on her by her medical condition and the state of her heart. She described experiencing, prior to her surgery, chest pain related to angina, and a general lack of stamina and vigour. She had to be mindful of her stress levels and nutrition and had to get up several times a day and walk, stretch her legs, to get her through her long workdays. She also had to inhale nitro a few times a day to treat her symptoms.

[49] As such, the Tribunal recalls that section 25 of the CHRA defines the term "disability" as follows:

> ***disability*** means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug;

[50] This definition is written in relatively broad terms. As a result, the case law becomes useful in informing and guiding the Tribunal in interpreting the concept of "disability" or "impairment" for the purposes of the CHRA.

[51] In this regard, the Tribunal wrote in *Brunskill* at paragraph 72, recalling *Temple v. Horizon International Distributors*, 2017 CHRT 30, at paragraphs 38 to 40, as follows:

> . . . the ground of "disability" has been subject to interpretation, most notably in *Audet v. Canadian National Railway*, 2005 CHRT 25, at para. 39 [*Audet*]. *Audet* reiterates the Federal Court of Appeal's interpretation of "disability" in *Desormeaux v. Corporation of the City of Ottawa*, 2005 FCA 31, at paragraph 15, and defines this term as "any physical or mental impairment that results in a functional limitation, or that is associated with a perception of impairment".

[52] The same reasoning was used in *Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18, at paragraphs 181 to 183 [*Duverger*] and in *André v. Matimekush-Lac John* Nation Innu, 2021 CHRT 8 (CanLII) [*André*], at paragraphs 39 to 41.

[53] This is all that is required to satisfy the Tribunal that, on a balance of probabilities, the evidence supports the conclusion that Ms. Hugie was physically disabled (subsection 3(1) of the CHRA) at the time of the events alleged in her complaint. Her

physical disability also caused her, as noted above, to have significant functional limitations in her life, including her work.

b) Age

[54] As to the prohibited ground of discrimination of “age”, there is little to be said on this point. This ground is *prima facie* applicable in the circumstances of this case (subsection 3(1) of the CHRA).

[55] That being said, and for reasons that will be detailed later in this decision, the Complainant has not been able to satisfy the Tribunal, on a balance of probabilities, that there is a link between the ground of “age” and her dismissal by T-Lane.

(ii) Adverse effects and link to prohibited grounds of discrimination

a) Legal framework

[56] The Tribunal has carefully reviewed the complaint, the statements of particulars, the evidence presented at the hearing and the closing arguments of each party.

[57] In her final arguments, the Complainant alleges that T-Lane discriminated against her in her employment under section 7 of the CHRA. This is confirmed later in her final written submissions, particularly at paragraph 121, where she correctly states that the burden of proof is on her to show *prima facie* discrimination (*Moore,* above). She adds that once a *prima facie* case of discrimination has been established, the burden of proof shifts to the Respondent to show that the termination was not based on her disability.

[58] Again, in her final arguments, the Complainant writes, at paragraph 123, that she must prove three elements:

a) that she has a disability;
b) that the Respondent terminated her employment; and
c) that her physical disability was a factor in her termination.

[59] Following the same line of reasoning, she alleges, at paragraphs 137 to 139 of her final arguments, that she was subjected to adverse treatment when she was terminated by T-Lane and elaborates, in the following paragraphs, on the link between her termination and her disability.

[60] The Respondent, on the other hand, states in its final arguments that paragraph 7(a) of the CHRA is at the heart of Ms. Hugie's complaint and therefore focuses its analysis on the allegations surrounding the dismissal that occurred on June 12, 2017.

[61] The Tribunal agrees, paragraph 7(a) of the CHRA specifically applies in the present circumstances. It provides that no person shall, by direct or indirect means, refuse to continue to employ an individual because of a prohibited ground of discrimination.

[62] It is with this legal framework in mind that the Tribunal will analyze whether there is a link or nexus between the prohibited grounds of discrimination alleged by Ms. Hugie and her termination by T-Lane.

b) Facts

[63] At the hearing, the parties filed extensive evidence, including much documentary evidence, and called no fewer than eight witnesses. The Tribunal considers that much of the evidence presented by the parties is irrelevant or not determinative or conclusive in the circumstances.

[64] The Tribunal will not dwell on these elements and will focus its analysis only on what it deems necessary, essential and relevant to the determination of the issues and the disposition of the complaint (*Turner v. Canada (Attorney General)*, 2012 FCA 159 (CanLII), at paragraph 40; *Constantinescu v. Correctional Service of Canada*, 2020 CHRT 3 (CanLII) at paragraph 54; *Karas v. Canadian Blood Services and Health Canada*, 2021 CHRT 2 (CanLII), at paragraph 32).

[65] In his testimony, Mr. Germain explained that in 2015, the company had made acquisitions and was interested in Ms. Hugie's specific expertise in restructuring operations in the transportation field.

[66] The Tribunal understands that Ms. Hugie's position was substantial, given her role and responsibilities. That said, the parties disagree as to whether or not this role was a "senior" one in the company. In practice, the Tribunal finds that this issue is not determinative in the circumstances. Suffice it to say that her role was quite significant, given her responsibilities and salary of $102,000 per year.

[67] The evidence does not reveal any particular difficulties at the beginning of Ms. Hugie's employment with T-Lane. She began work on February 5, 2015, and email exchanges between her and the company were positive.

[68] It appears that both Ms. Hugie and T-Lane were eager to begin their professional relationship. At the beginning of her employment with T-Lane, Ms. Hugie was given an orientation day during which she was assigned a desk. She also reviewed with Ronda Knowles various components of T-Lane, including the system used by the company and corporate policies.

[69] The evidence shows that Ms. Hugie's work quickly changed. She explained that although she was hired as an operations consultant, she found herself taking on some of the responsibilities of the dispatch department within her first weeks of employment.

[70] In this regard, she stated that she reported back to Dave Holeman, who was at that time the chief of operations (COO) of T-Lane. Otherwise, she reported directly to the owner of T-Lane, Mr. Germain.

[71] The original plan with Mr. Holeman was that she would travel to various T-Lane offices in New Brunswick and Alberta, among other places, to review their operations. Following this review, Ms. Hugie would be in a position to begin restructuring the company's operations.

[72] The evidence shows that Jeff White, the operations manager, approached Ms. Hugie and asked her to take on responsibilities in the dispatch department due to the departure of an employee, to which she agreed. However, Ms. Hugie quickly realized that the responsibilities she had been assigned were substantial and, in practice, amounted to a full-time position.

[73] Ms. Hugie advised Mr. White and Mr. Holeman of the situation and told them that, because of the high workload, it was impossible for her to travel to the other T-Lane offices as planned to review their operations. Ms. Hugie continued her work as a dispatcher. In the evenings, when she was at home, she worked on her other mandate of restructuring operations in her role as operations consultant.

[74] Later, the Complainant was approached again by her supervisors, Mr. White and Mr. Holeman, to take on another position, that of local and regional dispatcher, which she did. Again, Ms. Hugie said this was also a full-time job. T-Lane attempted to find an employee to fill this role, whom Ms. Hugie trained. Unfortunately, the employee left the job before completing the training.

[75] Ms. Hugie explained that, in the meantime, another employee responsible for long-haul dispatch had been terminated by T-Lane. She was therefore asked to take on that role, which she did. Ms. Hugie also trained another person for the local and regional dispatcher position, but that person had to take time off from work for a period of time. Ms. Hugie ended up doing both jobs for a while.

[76] When the employee returned to work, she resumed her position as a local and regional dispatcher, allowing Ms. Hugie to concentrate on her position as a long-haul dispatcher. However, the heavy-haul dispatcher was also terminated by T-Lane. Ms. Hugie testified that this was when her long-haul dispatcher position and the heavy-haul dispatcher position were merged. Ms. Hugie was the one who ended up in this new unified position. Ms. Hugie explained to the Tribunal that she had a large fleet of trucks in her care at the time, which she maintained until she went on medical leave in March 2017.

[77] At the hearing, the respondent attempted to justify the change in Ms. Hugie's role from operations consultant to dispatcher. In this regard, the Tribunal heard some explanations in the cross-examination of Mr. Germain. Among other things, he tried to explain that employees can change roles, particularly if the employee does not appreciate their work.

[78] With respect to Ms. Hugie and her change of role to dispatcher, the evidence shows that Mr. Germain was not, at the time of the transfer, her direct supervisor; rather, she was

reporting to Mr. Holeman and Mr. White. While Mr. Germain attempted to explain this transfer from operations consultant to dispatcher, the evidence shows that he knew little, in fact, about Ms. Hugie's situation. Moreover, the evidence reveals that Mr. Germain only took back control of his company's activities in January 2017, when the company's financial situation was deteriorating. It was at that time that he realized that Ms. Hugie was a dispatcher, with the same working conditions as an operations consultant. Therefore, the Tribunal considers that Mr. Germain's testimony was not very useful on this point, nor was it determinative in the circumstances.

[79] Moreover, the Tribunal finds that the evidence demonstrates that Ms. Hugie did not choose to become a dispatcher; she was asked by her supervisors to take on responsibilities in the dispatch department. Several witnesses, including David Fehr, Maureen Breu and Ms. Knowles, also confirmed their understanding that Ms. Hugie was simply a dispatcher at T-Lane.

[80] The evidence also reveals that Ms. Hugie's work appeared to be valued and that she had no performance issues. Although the Respondent raised this point initially in its Statement of Particulars, this position was not supported by persuasive evidence at the hearing. On the contrary, the evidence supports the fact that Ms. Hugie was generally doing a good job. This was confirmed not only in Mr. Germain's testimony, but also in the documentary evidence submitted, including an email about the Complainant's performance sent by her supervisor, Mr. Holeman, to Ms. Knowles a few months into her employment.

c) Cardiac events

[81] In July 2016, a tragic event changed Ms. Hugie's life. Specifically, on July 20, 2016, the complainant came home late after a long and difficult day at work. When she went outside to water her garden, her left arm went numb. She had no strength in her hand and experienced severe chest pains. Ms. Hugie was unable to finish watering her garden.

[82] Afterwards, the same sensation occurred in her right arm: numbness, loss of strength, and chest pains. Ms. Hugie went back inside the house and walked around a bit in order to get over her discomfort, which eventually subsided. She got into bed, tried to

sleep, but was unsuccessful. She felt unwell but finally managed to fall asleep on her couch. Around 1:00 a.m., the chest pains returned, but with greater intensity. Again, the complainant tried to walk around the house a bit to get through the pain, but this time the pain and the discomfort did not go away. Ms. Hugie thought it might be a heart attack, so she called emergency services and was taken to the hospital.

[83] After a battery of tests, it was determined that Ms. Hugie had not suffered a heart attack, but an acute angina attack. Ms. Hugie explained her medical condition to the Tribunal in detail, including her diagnosis of ischemic heart disease, hypertension and hypercholesterolemia. It is not necessary for the Tribunal to repeat these elements in greater detail. The key point to bear in mind is that her medical condition required major surgery on her heart, a quadruple bypass. The complainant did not report for work the day after her cardiac event, as she was in hospital. But she explained that she returned as soon as possible.

[84] Ms. Hugie explained to the Tribunal that between July 2016 and the start of her sick leave in March 2017, she had to be absent from work a few times for medical examinations and follow-ups. When asked how many days she had to be absent, she responded five days, more or less. In addition, she explained that when she returned to work, she was restricted from physical exertion and stress, as much as possible, to avoid making her medical condition worse.

[85] Ms. Hugie testified that following a meeting between her and her surgeon at one of her medical appointments, she had a discussion with Mr. Germain and Mr. White, her supervisor, about her medical condition. They asked her how her appointment went, and she explained to them the surgery she would be undergoing due to her medical condition.

[86] The evidence also reveals that Ms. Hugie discussed the condition of her heart and her surgery with her supervisor, Mr. White, on a number of occasions. She described having a good relationship with Mr. White and testified that he was supportive and caring towards her. It is unfortunate that Mr. White was not called to testify before the Tribunal as he could have shed more light on the discussions he had with the Complainant.

[87] Ms. Hugie's evidence that she provided information to her employer about her medical condition, and that she was transparent with him about her medical condition, was not contradicted. The Respondent did not present any evidence refuting these facts that would allow the Tribunal to be persuaded otherwise. Ms. Hugie's testimony is probative and reliable, and her credibility is beyond reproach.

[88] Nonetheless, the evidence does not show that the Complainant provided her employer with any medical certificates clearly setting out the restrictions established by her surgeon or other health care personnel treating her. Nor does the evidence show that she specifically requested accommodation from T-Lane. But the evidence does show that Ms. Hugie discussed her medical condition, her surgery, and some of her restrictions with Mr. Germain and Mr. White, and that these restrictions included avoiding stress, paying attention to her nutrition, and avoiding physical activity, among other things.

[89] That being said, after her cardiac event in July 2016, Ms. Hugie continued to work in her role as a dispatcher, as she had before the event. However, she had to deal with some health-related challenges, including her angina and pain, the use of a nitro spray, getting up to walk when necessary and watching what she ate. She also had to deal with a lack of endurance, which she described as being like "not [having] enough gas in my tank".

[90] However, the Tribunal understands from the evidence that Ms. Hugie's first cardiac event did not create any hardship in the months that followed. The evidence shows that Ms. Hugie continued to do her job as she did before July 2016. The Tribunal did not receive evidence of any other insurmountable barriers Ms. Hugie may have experienced in the work environment.

[91] However, Ms. Hugie testified that in February 2017, a few months after her first cardiac event and a few weeks before her scheduled surgery in March 2017, she suffered a second cardiac event at her workplace. She had to be taken to hospital by her supervisor, Mr. White, for treatment.

[92] The evidence is contradictory as to when this incident occurred. Ms. Hugie was adamant that it occurred in February 2017 and that it was Mr. White who drove her to hospital. However, the documentary evidence reveals that Mr. White was no longer working

for T-Lane as of January 13, 2017. The reasons for his departure are unknown, but the date of his departure was recorded in the documentary evidence submitted by the Respondent.

[93] In addition, the evidence establishes that Mr. White, who was the operations manager, was replaced by Mr. Cheverie, who began work on January 3, 2017. Ms. Hugie then requested two leaves of absence from Mr. Cheverie by email dated February 1, 2017, for pre-operative medical appointments scheduled for February 6 and 8, 2017. This February 1, 2017 email to Mr. Cheverie thus confirms that he was Ms. Hugie's supervisor in February 2017 and that from then on it was to him that she made her requests for time off.

[94] Accordingly, the Tribunal doubts that Ms. Hugie had her cardiac event in February 2017 and that Mr. White took her to the hospital at that time, as he was no longer working for T-Lane. There is a reliability problem with the complainant's testimony since the sequence of events and the evidence do not match.

[95] Nonetheless, the Tribunal has no reason to question the Complainant's testimony that she did indeed have a cardiac event in the office and that Mr. White took her to hospital. Other witnesses confirmed to the Tribunal that they remembered this incident, including Mr. Germain and Ms. Knowles. Both confirmed in their testimony that they remembered this incident, although Ms. Knowles was not able to provide much detail.

[96] It appears from Ms. Hugie's documentary evidence, and specifically from the Abbotsford Hospital Triage Assessment Forms, that Ms. Hugie was admitted to the emergency room on December 9, 2016, for events similar, if not identical, to what she described at the hearing. Specifically, it is written on the triage assessment form that on that day, Ms. Hugie experienced angina that would not go away and had started at 11:00 a.m. while at work. She took two doses of nitro spray, but her symptoms were not relieved. She described feeling pain in her neck to the base of her lower jaw. She went to the emergency room as had been recommended when she was experiencing angina and her condition was not improving. It is important to note that her admission to the emergency room occurred at 2:04 p.m. Therefore, Ms. Hugie came to the emergency room in the middle of her workday.

[97] The Tribunal can therefore conclude that it is more likely that the incident occurred in December 2016 and not in February 2017. That said, Ms. Hugie's testimony remains

compelling as to all other aspects of this significant incident, which are also etched in the memories of other witnesses.

[98] That being said, a few days before the Complainant went on sick leave, T-Lane decided to hire Angie Gourlie as a dispatcher. Ms. Hugie was assigned to train her for this position in addition to performing her day-to-day work. The evidence reveals that Ms. Gourlie began her employment with T-Lane on February 20, 2017. Ms. Hugie testified that she was only able to provide Ms. Gourlie with two days of training before she went on medical leave. According to her, the Respondent hired her to replace her during her absence beginning in March 2017, which T-Lane denies. The Tribunal will return to this topic later in this decision.

[99] Ms. Hugie's sick leave was planned with T-Lane. Her supervisor, Mr. Cheverie, was aware of this situation and of her absence. Ms. Hugie had the approval of not only her employer, but also her insurance company for her sick leave of approximately fifteen weeks.

[100] According to the documentary and medical evidence submitted by Ms. Hugie, the surgery took place on March 8, 2017. During her recovery, she was periodically monitored by her health care staff. In early June 2017, it was determined that Ms. Hugie would be able to return to work on June 12, 2017, as recommended by her physician, Dr. Jacques West.

d) Complainant's termination on June 12, 2017

[101] Ms. Hugie's termination occurred on the same day as her return to work, June 12, 2017. It took place during a meeting between her and Mr. Germain. The parties each have their own views as to the termination of the employment relationship between T-Lane and Ms. Hugie and, more importantly, as to what occurred at that meeting.

[102] The evidence reveals that on June 12, 2017, Ms. Hugie reported to T-Lane's office to resume work at approximately 8:00 a.m. Upon her arrival, her colleagues greeted her and caught up with her.

[103] She also noted that Ms. Gourlie was still an employee of T-Lane and was sitting at her desk. She also told the Tribunal that she heard Ms. Gourlie ask aloud “who’s gonna dispatch now?”

[104] That said, the Complainant moved to a vacant desk and attempted to log on to the computer system, but her access codes were no longer working. Ms. Knowles ensured that her access to the computer system was restored and explained to the Tribunal that when an employee is away from work for a period of time, it is customary to take away access privileges.

[105] Ms. Hugie explained that she had no work waiting for her, had no phone and could not talk to the truckers. She occupied her time by logging into the dispatch system, updating information and correcting errors.

[106] At approximately 2:30 p.m., Mr. Germain came to meet with her, checked up on her briefly and informed her that he would meet her in his office when she was ready. It was not until her work was done at the end of the day that the Complainant came to Mr. Germain’s office. She explained that as she walked to Mr. Germain’s office, she told her co-workers in a loud voice, “It’s been nice knowing you.”

[107] Ms. Hugie explained that she was apprehensive about this meeting with Mr. Germain, and that she was worried because she was already expecting to be terminated. Ms. Hugie explained to the Tribunal that she got the information about her termination from a former co-worker, Ms. Breu, who was also terminated by T-Lane. Ms. Breu told her that she had heard that Mr. Germain was considering terminating her when she returned from sick leave.

[108] The evidence shows that this was a rumour, as Ms. Hugie never received this information from Mr. Germain. In fact, the evidence shows that Mr. Fehr received the information that Ms. Hugie might be terminated directly from Mr. Germain. He then shared the information with Ms. Breu, who informed Ms. Hugie.

[109] Mr. Fehr made it clear at the hearing, when asked, that Mr. Germain had not given him any reasons for the termination. He did not know the underlying reasons for it. He was

simply informed by Mr. Germain that he was going to terminate the Complainant. Mr. Fehr then passed on the information to Ms. Breu.

[110] The evidence is contradictory as to when Ms. Breu shared the rumour with Ms. Hugie. Ultimately, when Ms. Hugie heard the news, whether shortly before her departure or during her sick leave, is not determinative of whether discrimination occurred.

[111] Ms. Hugie testified that she was aware during her recovery that she might be terminated upon her return to work. She was concerned about her future and was apprehensive about returning to work. The knowledge that she might lose her job caused her great stress and worry during her sick leave.

[112] The evidence also suggests that it is more likely than not that Mr. Germain had previously considered terminating Ms. Hugie and had shared this information with Mr. Fehr. Although it was only a possibility, termination had indeed been considered. The Tribunal will return to this later in its decision.

[113] It was in this context that Mr. Germain informed the Complainant that he wished to meet with her on the day she returned to work. At the end of the day, Ms. Hugie went to Mr. Germain's office. A short discussion between them ensued.

[114] Ms. Hugie gave the following version of this meeting. At the hearing, she testified that Mr. Germain was sitting in his office. She approached him and said that she knew why he wanted to meet with her. Mr. Germain nodded and told her that he found the situation difficult because he liked her. He went on to mention that he had made some bad business decisions and had hired a lower paid employee to do her job. He told her that he could no longer afford to pay her salary. Ms. Hugie asked him if he was terminating her employment, and he answered yes. She told him that the end of this employment was going to be devastating to her and that she had already been under a lot of financial stress because of her sick leave. The conversation lasted only a short time, and Ms. Hugie left the office.

[115] As for Mr. Germain, his recollection of this meeting on June 12, 2017, is more general and less detailed. On cross-examination, he testified that Ms. Hugie had come to his office and that she was the one who had initiated the discussion. According to him, she mentioned

that she knew why he had called her to meet him in his office, and that she knew he was going to terminate her. Mr. Germain said he answered yes. He explained that the meeting had lasted only 90 seconds and that everything had happened quickly.

[116] The parties attempted to introduce evidence as to who controlled the meeting or who allegedly spoke first. They also attempted to attack the credibility of each other's witnesses. Frankly, this is not helpful to the Tribunal in making its decision. Moreover, the elements the parties challenge are not determinative in the circumstances.

[117] For the Tribunal, although the parties have different understandings of what happened at that meeting, it appears that the general pattern remains essentially the same in both versions. Over time, between the June 12, 2017 meeting, the January 2018 interviews with the Commission, and the Tribunal hearings in August and September 2020, the witnesses' recollections may have become less precise.

[118] On a balance on probabilities, the Tribunal finds that Ms. Hugie went to Mr. Germain's office on June 12, 2017, at Mr. Germain's request. Ms. Hugie was expecting to be terminated because of information that had been shared with her by Ms. Breu. During this discussion with Mr. Germain, she told him that she knew the reason for the meeting and that she was going to be let go. Mr. Germain agreed. Ms. Hugie was in fact terminated by Mr. Germain at that point.

e) Work environment at T-Lane

[119] The evidence submitted by Ms. Hugie also shows on a balance of probabilities that Mr. Germain shared information with her about his poor business decisions and that he had hired someone to do the dispatch work at a lower salary. Mr. Germain did not testify specifically about this. There is no basis for the Tribunal to question the Complainant's testimony, which was not contradicted by the Respondent.

[120] In addition, it is clear from the evidence that in this discussion between Ms. Hugie and Mr. Germain, no mention was made of Ms. Hugie's disability or age. Nor was Ms. Gourlie's age or health discussed.

[121] Mr. Germain explained on cross-examination that he had no particular plan for this meeting with the Complainant. He had wanted to discuss her future in the company and how to make it happen. He had thought about keeping the Complainant in her position as a dispatcher, or even assigning her to another role, such as sales. Mr. Germain explained that he was open to exploring different options.

[122] However, the Tribunal understands that these options were not discussed with Ms. Hugie. Mr. Germain simply terminated her at the first opportunity. When asked why he did not correct the Complainant when she expressed concern about being terminated, given that he had not previously considered doing so, Mr. Germain replied that it was because of his management style.

[123] In this regard, he explained that he had monthly meetings on business management with other business owners. During these meetings, speakers came to discuss various topics. Mr. Germain learned and retained an important lesson: when an employee has a desire to leave the company or a fear of being terminated, they will quit. He explained that he believes employees who do not see themselves working at the company are disconnecting from what they need to accomplish. So the message needs to be clear from the manager: if you do not want to be here, leave.

[124] Having adopted this management style, Mr. Germain testified that he understood from that meeting on June 12, 2017, that Ms. Hugie no longer wished to work for T-Lane. As she had revealed her fear of being terminated, he simply agreed that she was indeed terminated. The Tribunal does not accept this argument as it is not persuasive. The Tribunal will return to this subject later in its analysis.

[125] Mr. Germain's management style was also echoed by various witnesses in their testimony, including Ms. Hugie and Ms. Breu, who explained that Mr. Germain had a rather intimidating and disrespectful management style that made extensive use of reprimands.

[126] The evidence also reveals that Mr. Germain held townhall meetings at which he told his employees that if they did not want to work for the company, they could leave. He made it clear that T-Lane was his company, that he could do whatever he wanted, and that if someone did not like it, they could "get lost," as he said, but using more vulgar words.

Mr. Germain explained that his townhall meetings are also the product of his monthly business meetings. He did confirm that the “F***” word was part of his everyday vocabulary.

[127] Some witnesses, such as Mr. Fehr and Stephanie Beck, also confirmed that 2016 and 2017 were not the most pleasant years at T-Lane. The company was running deficits and finding itself in financial difficulty. Some witnesses told the Tribunal that all employees were tense and afraid of losing their jobs. There was a high turnover of staff in the company. Janet Shaw, who was employed there until October 2016, also confirmed that after 2015, and until she left the company, the situation was more difficult, different from previous years. She explained to the Tribunal that the employees were unaware of the direction in which the company was heading, and that Mr. Germain did not treat his employees as he had previously. She also described Mr. Germain as being difficult, even intimidating at times.

[128] Mr. Fehr also testified that the work environment at T-Lane was toxic and that employees were walking on eggshells, afraid of what Mr. Germain might do or decide. He went on to tell the Tribunal that he once heard Mr. Germain tell one of his co-workers in the security department’s office that he could hire two Indians at five dollars an hour to replace him. Mr. Fehr characterized the T-Lane employees as minions and Mr. Germain as a bully.

[129] As for Mr. Germain, he was candid with the Tribunal. He described himself as a passionate manager, but aggressive when he wants something done. He also confirmed that during this period (2016 and 2017) the company was in financial difficulty and that the business was not being managed as he had envisioned.

[130] In this regard, he testified that he had to divest himself of company property and assets in order to inject money into T-Lane’s cash flow. The evidence reveals that he even invested personal money in his business, a total of approximately $2 million in 2016 and 2017, which was confirmed by Mr. Haydu of the accounting department. The company’s financial difficulties also caused T-Lane’s bank to call in their loan and monitor the company’s financial situation closely. Mr. Germain admitted that during this period, he was stressed.

[131] He also testified that in the past, the company had donated money to charity and organized activities for its employees such as a golf tournament or a Christmas party. But all this was cut off during this difficult financial period.

[132] Mr. Germain added that the financial difficulties of his company caused him to consider laying off all his employees in order to reduce expenses. This statement confirms the concerns expressed by some witnesses, including Mr. Fehr, Ms. Knowles and Mr. Haydu, that employees during this period were worried about losing their jobs; some employees were indeed laid off.

[133] The complainant attempted, during the hearing, to rebut the Respondent's evidence of financial difficulties, arguing, among other things, that the company was not downsizing, shrinking or in crisis. The Complainant did not convince the Tribunal on this point. In fact, the Respondent has very clearly established that it was in financial difficulty, and the evidence is clear and convincing in this regard. Both the documentary evidence and the company's financial statements between 2015 and 2018, as well as the testimony, support the fact that T-Lane was indeed in financial difficulty in 2016 and 2017.

[134] Regardless of how the Complainant or the Respondent wishes to characterize this state of affairs, whether it was a restructuring, downsizing or budget or staffing cuts is not determinative in the circumstances. The Tribunal has received overwhelming evidence that, generally speaking, in 2016 and 2017, T-Lane was in financial difficulty and took measures to get out of that crisis. The Tribunal notes that it is not its role to judge a company's business decisions, actions that were taken in a particular context and which may sometimes be easy to criticize in hindsight (*Moffat v. Davey Cartage Co. (1973) Ltd.*, 2015 CHRT 5 (CanLII) [*Moffat*], at paragraph 45).

[135] While the Respondent was able to demonstrate that financial hardship was a factor in Ms. Hugie's termination, the Tribunal is also satisfied, on a balance of probabilities, that disability **was also** a factor in that dismissal.

f) Termination under paragraph 7(a) of the CHRA

[136] The Tribunal will first address the Complainant's argument that T-Lane terminated her because of her age. On this point, Ms. Hugie alleges that T-Lane replaced her with a younger, healthier employee who is also paid less than she is because of her age.

[137] Ms. Hugie argues that Ms. Gourlie, the employee who replaced her in her position when she went on sick leave, was younger and healthier. She adds that, had it not been for her disability and her sick leave, she would not have been replaced by this younger, healthier and less well-paid employee. Therefore, she would not have been terminated by T-Lane.

[138] The Complainant's arguments on the ground of age are not persuasive. While the evidence supports the fact that Ms. Gourlie was younger, there is nothing in the evidence to suggest that she was necessarily healthier than Ms. Hugie. No evidence of Ms. Gourlie's health was presented at the hearing, nor was there any link to her younger age. The Tribunal simply does not know the health status of this employee, given the lack of evidence in this regard.

[139] In addition, the Complainant testified that during the June 12, 2017 meeting with Mr. Germain, he told her that he had made poor business decisions and that he had hired an employee who could do her job for less pay. The Tribunal is not satisfied that, based on the evidence presented, the Complainant's age was a factor.

[140] Nor is there any evidence to suggest that, because of Ms. Gourlie's young age, she was necessarily paid less than Ms. Hugie. On the contrary, the evidence shows that Ms. Gourlie earned a relatively high salary of $85,500 per year and that she brought a significant amount of business to T-Lane when she was hired. Unequivocally, Ms. Hugie's salary of $102,000 is higher than Ms. Gourlie's. Nonetheless, this salary was to compensate her for the role of operations consultant for which she had been hired. As has been shown, this more senior position in the company necessarily commanded a higher salary.

[141] The Complainant has therefore failed to satisfy the Tribunal, on a balance of probabilities, that there is a link between age and termination. This aspect of the complaint is dismissed.

[142] That being said, the Tribunal is of the view that the crux of the Complainant's allegations lies in the link between her disability and her termination. And on this point, the Tribunal is satisfied, on a balance of probabilities, that Ms. Hugie's disability was one of the factors in the occurrence of the adverse impact, i.e. her termination by T-Lane (*Moore*, above).

[143] The Tribunal recalls that discrimination is often subtle and is not generally committed overtly. There are several elements that allow the Tribunal to conclude that there was a subtle scent of discrimination in T-Lane's termination of Ms. Hugie (*Basi*, above). The Tribunal will deal specifically with those elements which, taken together, permit the inference and conclusion, on a balance of probabilities, that Ms. Hugie's disability was a factor in her termination by T-Lane (*Bombardier*, at paragraph 88).

[144] First, the Tribunal considers that Ms. Gourlie's arrival on February 20, 2017, a few days before Ms. Hugie's departure on sick leave, was not as random as the Respondent attempted to show. The timing of her hiring is significant.

[145] Although the Respondent gave evidence that it is always looking for dispatchers in the dispatch department and that if a person submits their CV and their profile is interesting it will seize the opportunity, the Tribunal is not persuaded that Ms. Gourlie's hiring was purely coincidental.

[146] In fact, the evidence shows that Ms. Gourlie was an acquaintance of Mr. Cheverie. Mr. Cheverie was Ms. Hugie's supervisor, and it was he who replaced Mr. White. He was necessarily aware of the Complainant's departure as he authorized her sick leave and planned with Ms. Hugie for her absence.

[147] Several witnesses, including Mr. Germain, also confirmed that the dispatch department is a stressful environment that operates under pressure. There is constant turnover in staff, and T-Lane is always looking for dispatchers. Nevertheless, Ms. Hugie's departure was planned and scheduled for a relatively long period of time, 15 weeks. Mr. Germain also confirmed that Ms. Hugie was doing a good job and that there was no evidence to the contrary.

[148] It is therefore difficult for the Tribunal to believe that T-Lane did not need reinforcements in the dispatch department because of the Complainant's departure. The Complainant and the Respondent have been at pains to show that Ms. Gourlie did or did not replace Ms. Hugie in her position as dispatcher. The Tribunal found that, in general, the department was losing a key employee.

[149] The Tribunal also notes from both Ms. Hugie's and Mr. Germain's testimony that the dispatch department is a "service": while employees appear to be assigned to a particular type of dispatch (e.g., heavy-haul or long-haul), in the absence of one employee, others take over the duties. Ms. Hugie confirmed this in her testimony, citing the example of Mr. Lechner, whose responsibilities she took over when he went on vacation, and Mr. O'Brien, who was sent to the Atchinson office to cover for another employee's absence.

[150] In the same vein, it should also be recalled that Ms. Hugie changed responsibilities a few times in her early days at T-Lane, sometimes working as a local and regional dispatcher. The Tribunal therefore finds that there is a sort of interchangeability between positions when necessary.

[151] The Tribunal understands very well that reinforcements may have been required as a result of Ms. Hugie's departure and that Ms. Gourlie was hired to shore up the dispatch department. This is entirely consistent with Ms. Hugie's testimony and Ms. Gourlie's comment, aloud, "who's gonna dispatch now?" when Ms. Hugie returned to work on June 12, 2017. The evidence of this is overwhelming and has not been rebutted by the Respondent. The Tribunal can therefore infer that Ms. Gourlie, who understood that Ms. Hugie was returning from sick leave and would be resuming her position as a dispatcher, was also questioning the impact of this return on her own work.

[152] The evidence supports the view that Ms. Hugie's departure was anticipated, and that T-Lane did in fact hire Ms. Gourlie to fill in during her absence. It is in this context that the hiring must be understood.

[153] Moreover, the Tribunal must also consider, in the overall context of Ms. Hugie's termination, the rumour that Mr. Germain might terminate the complainant. Mr. Germain testified that he had considered laying off all his employees during the financial crisis at T-

Lane. This may be part of the reason for the rumour that the Complainant was to be terminated. What is clear is that the rumour proved to be true and did in fact materialize. The evidence shows that Mr. Germain shared the information with Mr. Fehr, who told Ms. Breu, who told Ms. Hugie.

[154] The Tribunal can therefore infer from the evidence presented at the hearing that the termination of the Complainant was anticipated by the Respondent. The Tribunal believes that this was not simply an option or a possibility as T-Lane attempted to present it. Although Mr. Germain explained that he had considered other options for the Complainant, such as keeping her in the same position or transferring her to sales, it is difficult for the Tribunal to be persuaded.

[155] Another factor caught the Tribunal's attention, namely the comments made by Ms. Knowles to Ms. Hugie at Mr. Lechner's farewell party. Ms. Hugie testified that after her termination in June 2017, she saw her former colleagues at a party organized in August 2017 for Mr. Lechner from the dispatch department who was leaving the company. This statement is indeed consistent with Mr. Lechner's leaving on August 25, 2017, according to the documentary evidence filed by the Respondent.

[156] Ms. Hugie testified that Ms. Knowles attended the event. In the course of the evening, the subject of Ms. Hugie's termination came up: Ms. Knowles was sitting on the couch in the living room, and while other guests were in the dining room, she spoke. She apologized to the Complainant for how she had been treated and for the awful manner in which she had been terminated. Ms. Knowles went on to confide in Ms. Hugie that Mr. Germain's original plan had been to terminate her as soon as she arrived at the office on her first day back, but he had not been at work that morning.

[157] The conversation continued, and Mr. Lechner and another colleague, Mr. Brown, confirmed that they had known before she went on sick leave that Mr. Germain was going to terminate her. They both knew that Ms. Hugie would not come back to work after her surgery.

[158] Later that evening, Ms. Hugie and Ms. Knowles sat down together, and Ms. Knowles confided in her that she was angry about the manner in which Mr. Germain had handled her

termination. Ms. Hugie then told her that she appreciated her apology but that it did not change anything. She also told her that the situation was difficult and that she was going to have trouble finding another job. Ms. Knowles told her that she was not obliged to tell future employers about her health and that she should not do so.

[159] This event is important as it directly contradicts the case T-Lane has attempted to build in respect of Ms. Hugie's termination. The Tribunal has no reason to question Ms. Hugie's testimony on this aspect, which the Respondent was unable to refute in any way.

[160] The Tribunal concludes from the evidence presented by the Complainant that her termination was indeed planned by the Respondent. And the comments made by Ms. Knowles on Ms. Hugie's health, and her advice that she keep that information to herself and not disclose it to any future employers, leave the Tribunal even more puzzled about the reasons underlying her termination.

[161] Ms. Knowles did not make the decision to terminate the Complainant, but she is an employee of long standing at T-Lane (since 2006) and was still working there at the time of the hearing before the Tribunal, in 2020. Her comments must be viewed from this perspective, that is, she has been familiar with the work environment for a long time and also knows Mr. Germain and his management style. Her comments should not be taken lightly: why would she have made them if they had never crossed her mind? This factor, considered in light of all the circumstances and in combination with other factors, strengthens the Tribunal's conviction that the subtle scent of discrimination permeates Ms. Hugie's termination (*Basi*, above).

[162] Another factor supporting the Tribunal's finding of discrimination is the day the Respondent chose to terminate the Complainant, June 12, 2017, the day on which the Complainant came back from sick leave.

[163] The Tribunal is well aware that, taken in isolation, the timing of the termination is not necessarily a factor that invariably leads to a finding of discrimination. However, depending on the circumstances and other evidence, the Tribunal may draw certain inferences from

the timing of a complainant's termination which, on a balance of probabilities, might weigh in favour of finding a discriminatory practice.

[164] In this respect, the Complainant drew the Tribunal's attention to the following decisions of the British Columbia Human Rights Tribunal ("BCHRT"): *Parry v. Vanwest College*, 2005 BCHRT 310, and *Morris v. BC Rail*, 2003 BCHRT 14. While these decisions are interesting and broadly reflect the Tribunal's conclusions about the timing of the termination and the inferences that might be drawn from it, they were rendered by the BCHRT and are therefore not binding on the Tribunal.

[165] The Respondent cited the Tribunal's decision in *Moffat*, above, in which the respondent had terminated the complainant on the day he came back from sick leave. The complainant had had a car accident and had to take time off work. In his absence, during which another employee had assumed the complainant's responsibilities, the respondent noticed several irregularities in the complainant's work as well as performance problems. In addition, the respondent was in the midst of a financial crisis, and the complainant was a highly paid employee. The complainant was terminated on his return from sick leave. The member found that the respondent had rebutted the complainant's evidence and was satisfied that the complainant's termination was not related to the complainant's disability. Other factors, such as the financial crisis, the performance problems and the complainant's high salary, contributed to this conclusion.

[166] Even though the Tribunal's decision in *Moffat* is interesting and has several similarities with Ms. Hugie's case, the two cases can be distinguished in respect of some key factors. In *Moffat*, the respondent had discovered irregularities in the complainant's work, during the complainant's absence. It also established performance problems and the fact that it was in the midst of a difficult time financially. All these factors led the member to accept the respondent's rebuttal of the evidence.

[167] In the case before the Tribunal, and just as in *Moffat*, the Respondent was also able to demonstrate that it was going though tough times financially and that Ms. Hugie was earning a high salary. However, in contrast to the situation in *Moffat*, the Respondent was

unable to prove irregularities in Ms. Hugie's work or show that she had performance issues. These differences are important.

[168] The Tribunal reiterates that Ms. Hugie does not have to satisfy the Tribunal that her disability was the sole factor in her termination by T-Lane: it is enough for it to have been a factor in the occurrence of the adverse impact (*Bombardier*, at paragraphs 40 and 44; *Holden*, at paragraph 7). According to the evidence presented at the hearing, Ms. Hugie's disability was, on a balance of probabilities, a factor in her termination, but the Tribunal accepts that T-Lane's financial difficulties were another factor.

[169] The June 12, 2017 meeting between Mr. Germain and Ms. Hugie was very short, not because, as Mr. German alleges, the meeting was led by Ms. Hugie or because Ms. Hugie resigned or even provoked her own termination, but because T-Lane had already made its decision and had planned the termination. That is confirmed not only by the rumours that were circulating, but also by what Ms. Knowles said at Mr. Lechner's farewell party. Mr. Lechner himself and Mr. Brown also confirmed this, both knowing full well that Ms. Hugie would not come back to the office after her sick leave.

[170] The Tribunal finds it hard to imagine that, had Mr. Germain really wanted to keep Ms. Hugie and had provided her with alternatives, he would not have spoken to her about them at this meeting. The Tribunal also wonders why Mr. Germain terminated Ms. Hugie, an experienced member of the dispatch department, when the evidence clearly establishes that it is hard to find employees for this department, where staff turnover is high. Why did he not offer her a salary cut? And indeed, why did he not propose a different position in the company? The evidence does not corroborate Mr. Germain's statements, and the Tribunal is not persuaded by the evidence presented by the Respondent and more specifically Mr. Germain's testimony on these points. The Tribunal finds that no such option was proposed because Ms. Hugie was going to be terminated on her return from sick leave, come what may.

[171] In addition, the company did not plan for Ms. Hugie's return to work, according to the evidence presented at the hearing. In fact, Ms. Hugie, who had been away for only a few weeks, had clearly planned her surgery and her sick leave with her employer, but she

returned to work without any preparation or any accommodation having been made. Even though she was a key dispatcher at the company, her desk was occupied, her IT accesses had been disabled, and no work had been assigned to her. She had had to wait the whole day to see Mr. Germain. All of these factors support the Tribunal's finding that, in fact, Ms. Hugie was not coming back to work at T-Lane.

[172] The termination also has to be considered in the overall context, in light of the atmosphere reigning in the company's work environment. The evidence reveals that T-Lane was not particularly interested in Ms. Hugie's medical condition between July 2016 and March 2017. It was Ms. Hugie who decided to share the information with her employer, including Mr. White and Mr. Germain. However, despite her disclosure concerning her health, T-Lane had shown no interest in finding out more.

[173] Moreover, the Tribunal notes in passing that the evidence reveals that the work environment at T-Lane in 2016 and 2017 was indeed unhealthy and toxic. Townhall meetings and Mr. Germain's harsh, offensive language and intimidating management style were certainly not aspects that encouraged the company's employees to confide in their employer.

[174] The Tribunal can easily imagine that employees were afraid of losing their jobs. Over those years, Mr. Germain had created a work environment in which employees may well have been nervous about sharing their personal situations, their problems and their concerns with their employer at the risk of being seen as being a problem, thereby risking their jobs.

[175] Such was the culture of fear created by Mr. Germain. From the evidence presented at the hearing and on a balance of probabilities, the Tribunal can infer that someone in a particularly vulnerable situation, such as a person with a disability like Ms. Hugie, would be even more afraid of losing their job in that context. It was also in this context that Ms. Hugie was terminated.

[176] Therefore, for all the above reasons, the Tribunal finds that Ms. Hugie was discriminated against by being terminated by T-Lane and that her disability was a factor in her termination, which is contrary to paragraph 7(a) of the CHRA.

C. Respondent's defence and exculpation from CHRA presumption (paragraph 15(1)(a) and subsection 65(2) of the CHRA)

[177] The Tribunal heard the Respondent's evidence at the hearing, carefully read its Statement of Particulars and reviewed its final arguments.

[178] The Tribunal notes that T-Lane did not rely on a defence under paragraph 15(1)(a) and subsection 15(2) of the CHRA, by attempting to establish that

> any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment [was] . . . based on a *bona fide* occupational requirement.

[179] Indeed, the Respondent did not attempt to establish that Ms. Hugie's termination had *bona fide* justification because of undue hardship, and it is its prerogative to concentrate its evidence on other factors if it chooses to do so.

[180] The Respondent's evidence focuses on the fact that there is no link between Ms. Hugie's disability and the alleged discriminatory practice, and that the only reason for her termination was actually financial.

[181] On this point, the Tribunal determined above that there is a link between Ms. Hugie's disability and her termination. The Tribunal also accepted as evidence that the Respondent's financial situation was a factor in the termination, but that it was not the only one. It is settled case law that the prohibited ground does not have to be the sole factor in the occurrence of the adverse impact (*Bombardier*, at paragraphs 44 to 52; *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (CanLII), at paragraph 25; *Holden*, above, at paragraph 7).

[182] The Respondent's other arguments have more to do with the concept of reasonable accommodation. The Respondent alleges that it was unaware of Ms. Hugie's limitations, that she had not requested any accommodations for her disability and that she had not provided any medical documents or notes from her doctor in that regard. This evidence is irrelevant in the circumstances since the discriminatory practice the Respondent is being criticized for under paragraph 7(a) of the CHRA is the termination. After Ms. Hugie was

terminated, accommodation was no longer possible: Ms. Hugie had already left the company.

[183] In light of the above, the Tribunal finds that T-Lane was unable to justify the termination under section 15 of the CHRA.

[184] Finally, the Respondent also did not make any submissions regarding the presumption of responsibility or about potential exculpation under section 65 of the CHRA.

D. Remedies

(i) Compensation for lost wages and other expenses (paragraph 53(2)(c) of the CHRA)

a) Lost wages between June 12, 2017, and early March 2018

[185] The Complainant has asked to be compensated for her lost wages, her benefits and her pension contributions since the date of her termination, including the difference between her old salary at T-Lane and her new salary at her current employer, Goodtogo Moving, between March 12, 2018, and August 31, 2020. She is also claiming the wages she would have earned had she not been terminated and carried on working for the Respondent. Finally, she has claimed an additional amount to cover the extra tax she would have to pay on a one-time lump-sum payment ordered by the Tribunal. It should be noted that in her remedies the Complainant is not seeking to be reinstated by T-Lane.

[186] The Respondent objects to these claims and argues, in the alternative, that should the Tribunal decide to order compensation for lost wages, the amount should be reduced because of the Complainant's failure to mitigate her damages.

[187] As the Respondent rightly stated, the Tribunal has, in accordance with paragraph 53(2)(c) of the CHRA, the discretion to award compensation for any or all of the wages the victim was deprived of as a result of the discriminatory practice.

[188] It should further be noted that one of the objectives of the CHRA is to make the victim of discrimination whole, that is, to restore the victim to the position or status they would have

been in had the discrimination not occurred (*Public Service Alliance of Canada v. Canada Post Corporation*, 2010 FCA 56, at paragraph 299, aff'd 2011 SCC 57 [*Public Service Alliance*]; *Canada (Attorney General) v. McAlpine* (C.A.), 1989 CanLII 9094 (FCA), at paragraph 13; *Chopra v. Canada (Department of National Health and Welfare)*, 2004 CHRT 27 (CanLII), at paragraph 6), in accordance with certain guiding principles in the awarding of compensation for lost wages, such as the mitigation of damages (*Chopra v. Canada (Attorney General)*, 2007 FCA 268, at paragraph 40 [*Chopra*]).

[189] In the Federal Court of Appeal's decision in *Chopra*, the Court held that there must necessarily be a causal connection between the discriminatory practice and the amount of wages lost as a result of it (see also *Canada (Attorney General) v. Morgan*, 1991 CanLII 8221 (FCA), at paragraphs 4 and 16).

[190] In assessing lost wages, the Tribunal has to determine whether the discrimination suffered by the victim has ceased to have an effect on the victim's income earning capacity. And the supervisory judge has to—from the decision of the trier of facts—be able to understand that judge's reasons for choosing a particular date to assess the lost wages (*Tahmourpour v. Canada*, 2010 FCA 192, at paragraph 47 [*Tahmourpour*]).

[191] Based on the circumstances of this complaint and the evidence presented at the hearing, there is an undeniable causal connection between the lost wages claimed by Ms. Hugie and her discriminatory termination; however, the Tribunal notes that, according to the evidence, the discriminatory practice did not affect the Complainant's ability to find another job in March 2018 (*Tahmourpour*, at paragraph 47).

[192] Although the Tribunal is sensitive to the Complainant's arguments, it will not award her everything she is seeking, as the Respondent was able to persuade the Tribunal that the damages should not extend to the date of the decision. However, the Tribunal does not agree with the date of November 2017 advocated by the Respondent, for the following reasons.

[193] The evidence reveals that when the Complainant was dismissed, she started looking for jobs in the Fraser Valley area, in British Columbia. She did so with varying degrees of intensity in the months after she was terminated.

[194] The Tribunal does indeed agree with the Respondent that her job search was half-hearted at times, and although the Complainant described her job search as being adequate, the Tribunal does not accept that argument.

[195] Ms. Hugie testified that she had registered on two job sites, LinkedIn and Indeed. She also started her job search on June 16, 2017, four days after she was terminated. The evidence reveals that between June 16, 2017, and July 28, 2017, Ms. Hugie made nine attempts to find a job in various transportation companies. The Tribunal certainly acknowledges these efforts, which were adequate in the circumstances.

[196] The evidence reveals that following these attempts, Ms. Hugie clearly slowed down her search for a few weeks in August and September, and until mid-October 2017.

[197] This makes sense as she testified that in late July 2017, she finally made the decision to put her house up for sale and return to Lethbridge to be supported by her family, get back on her feet, recover properly and find a new job.

[198] The evidence also supports her decision as it reveals that as of August 30, 2017, her job search focused exclusively on Lethbridge. She told the Tribunal that she moved there in late October 2017, after she had sold her house.

[199] The evidence reveals that between August 30, 2017, and February 24, 2018, when she was hired by her current employer, Goodtogo Moving, Ms. Hugie made a dozen or so attempts to find a job.

[200] That being said, the Tribunal finds that there were also times where her job search was rather limited; these times coincide with her decision to leave British Columbia in late July 2017. Ms. Hugie made it clear under cross-examination that her decision to leave the province was made in late July 2017. The Tribunal therefore understands why there was no longer any reason for her to look for a job in the Fraser Valley, given that she had decided to move to Lethbridge.

[201] The evidence reveals that between July 29, 2017, and August 29, 2017, Ms. Hugie did not take any steps to find a job, be it in British Columbia or in Alberta.

[202] On August 30, 2017, she resumed the search and applied for a job in Lethbridge. The evidence shows that a month and a half went by between September 1 and October 18, 2017, without the Complainant applying for any jobs. She resumed her job search on October 19, 2017.

[203] However, between October 27 and December 3, 2017, Ms. Hugie's job searches again shifted into neutral. It resumed more intensively almost a month later, from December 4, 2017, until February 24, 2018.

[204] In the end, Ms. Hugie was hired by Goodtogo Moving, her employer at the time of the hearing.

[205] The Tribunal was persuaded by the Respondent that the Fraser Valley is one of British Columbia's transportation hubs. The Respondent spent some time cross-examining the Complainant on her dealings with several transportation companies in the Fraser Valley. The Respondent attempted to verify whether Ms. Hugie had actually made a reasonable effort to find a job.

[206] In that regard, even though the Tribunal appreciates the Complainant's efforts and even though she sustained these efforts for several weeks following her termination, the periods when her job searches ceased, as revealed by the evidence, are perplexing.

[207] The Complainant argued that she made a reasonable effort to mitigate her damages. Yet, on a balance of probabilities, it is clear that between late July and August 2017, between September and mid-October 2017, and finally, during the whole month of November 2017, her job searches came to a standstill. Consequently, the Complainant did not establish that she made a serious attempt to find a job. In short, over the eight and a half months following her termination, there were three and a half months for which there is no evidence of her looking for a job. The Tribunal therefore finds that her efforts were not adequate, contrary to what Ms. Hugie alleges.

[208] Moreover, nothing in the evidence suggests that Ms. Hugie was unable to look for a job. On the contrary, the evidence is clear that as of June 16, 2017, she was already in the

process of looking for one. The Tribunal can infer from this that she was able to look for a job.

[209] That being said, the Tribunal does not agree with the Respondent that the Complainant should not receive any compensation for her lost wages. Ms. Hugie is indeed entitled to be compensated in order to restore her to the position or status she would have been in had the discrimination not occurred (*Public Service Alliance*, at paragraph 299).

[210] The Respondent has asked in the alternative that if compensation for lost wages is awarded, the period should stop in November 2017. The Respondent argued that this coincides with Ms. Hugie's move to Lethbridge.

[211] The Tribunal is unable to understand the Respondent's reasoning and to establish why Ms. Hugie's move to Lethbridge in late October 2017 should have a direct impact on the compensation for lost wages. Ms. Hugie was terminated by T-Lane in a discriminatory manner and was deprived of wages, and T-Lane must be held responsible for this, regardless of whether the Complainant lives in British Columbia or in Alberta. The Tribunal has to examine the causal connection between the damage claimed and the discriminatory practice itself, while keeping in mind certain guiding principles in the awarding of damages, such as the principle of mitigation.

[212] What is clear to the Tribunal is that the Complainant cannot be compensated for the entire time spanning June 12, 2017, the date she was terminated, to early March 2018, when she was hired by her current employer. The Tribunal is satisfied that she did not do enough to mitigate her damages and finds that the Respondent should not be held responsible for the times her job searches came to a standstill.

[213] The Tribunal therefore has to deduct from this period (June 12, 2017, to early March 2018) the months during which Ms. Hugie was inactive.

[214] More specifically, eight and a half months elapsed between June 12, 2017, and March 2018. Because of the Complainant's periods of inactivity, and in order to take into account the Complainant's failure to mitigate her damages, the Tribunal deducts the following periods from the eight and a half months: one month between July and

August 2017, one and a half months between September and mid-October 2017, and one month for November 2017.

[215] In conclusion, the Complainant is entitled to be compensated for the wages she was deprived of over five months between June 12, 2017, and early March 2018. The Tribunal orders that Ms. Hugie be compensated for the wages she was deprived of for these five months as a result of her discriminatory termination by T-Lane, in accordance with paragraph 53(2)(c) of the CHRA.

[216] Ms. Hugie is to receive a lump sum representing her wages and all of her pension and other benefits and various contributions, as if she had continued to be a T-Lane employee and never been terminated. The money she has already received as severance, including the wages in lieu of notice and the severance pay paid by T-Lane, must also be deducted from the compensation.

b) Lost wages for salary difference

[217] In her arguments, the Complainant is seeking compensation for the difference between her salary at Goodtogo Moving and the salary she was earning at T-Lane, until the date of the decision. She justifies this reasoning by the fact that she should never have been terminated in a discriminatory manner and the fact that she had left her former employer, Vedder Transport Ltd., for T-Lane because her job there was supposed to be long-term. In other words, she transferred to the Respondent thinking that this would be her last career change and that she would retire after 10 years there, at the age of 68.

[218] The Respondent objects to this claim, relying on various arguments. It argues, for example, that the Complainant would have left the company in any event given the work environment, which she had described as being abusive and intimidating. It adds that the Complainant would have left the company because she had not been doing the work she had wanted to do (operations consultant rather than dispatcher) and wanted to move closer to her family and friends. Finally, the Respondent states that because of the culture change that was initiated in 2017, Ms. Hugie would, in any event, have probably been dismissed at the end of that year because she was no longer the right fit for the company.

[219] The Tribunal will not deal with these arguments of the Respondent at any great length because many of them are speculative and hypothetical and unsupported by any compelling evidence.

[220] It is surprising that T-Lane maintains the argument that Ms. Hugie would have left the company because of the culture change given that it is mainly based on Ms. Beck's testimony. Yet the evidence clearly establishes that Ms. Beck did not know Ms. Hugie personally, had not actually worked with her and had not been in Human Resources when Ms. Hugie was still working at T-Lane. Her testimony relies on impressions and assumptions and has the appearance of being based on her understanding of the situation rather than on concrete facts. This is not a very compelling argument and certainly not determinative in the circumstances from T-Lane's perspective.

[221] As for the fact that Ms. Hugie wanted to move closer to her family and loved ones, the evidence does indeed reveal that she moved closer to her family after she was terminated. But it is speculative to say that Ms. Hugie would have left her employment in any event in order to be closer to her loved ones since there is no evidence for this before the Tribunal.

[222] The same comments apply to the fact that the Complainant was not doing her dream job. The evidence does indeed support the fact that Ms. Hugie was originally not hired as a dispatcher but as an operations consultant tasked with reorganizing the company's operations. However, nothing in the evidence suggests that the Complainant intended to leave T-Lane for this reason.

[223] The Respondent's argument that the Complainant would not have continued working for the company beyond 2017 because of the intimidating culture there is just as speculative. The evidence clearly establishes that the work environment at T-Lane was toxic. Ms. Hugie characterized and considered it as being intimidating. However, nothing in the evidence suggests that Ms. Hugie planned to leave the company for those reasons. She continued to do her job despite the tensions at T-Lane, and there is no evidence that she would have left her job for this reason.

[224] That being said, the Tribunal is well aware that her salary at Goodtogo Moving is much lower than what she received at T-Lane. But it is important to remember that Ms. Hugie's salary was established on the basis of her key position within the company, that of operations consultant; the salary had not been negotiated for her work as a dispatcher.

[225] On this subject, the Respondent was able to establish that a person working in the dispatch department generally does not earn $102,000 a year. The salary range in this type of position is quite variable. For example, in 2017, the Tribunal found that some dispatchers at T-Lane earned as little as $35, 000 a year while others earned $96,000. Of course, the evidence also reveals that some employees were earning much higher salaries than the Complainant, such as Mr. Cheverie ($120,000) and Mr. White ($120,000), but they were managers with greater responsibility.

[226] The Tribunal is therefore not persuaded that it would be reasonable to extrapolate Ms. Hugie's wage losses until the date of its decision, as the Complainant is asking, on the assumption that she would always have earned $102,000 a year as a dispatcher at T-Lane.

[227] The Tribunal further finds that Ms. Hugie's termination had absolutely no effect on her income earning capacity (*Tahmourpour*, at paragraph 47). And the evidence is clear that she did end up finding a job at Goodtogo Moving, with a decent salary and benefits.

[228] Finally, the Tribunal also agrees with the Respondent that Ms. Hugie's employment contract was clear that her position was for an undefined duration. Even though Ms. Hugie explained to the Tribunal that she firmly intended to end her career at T-Lane, on her retirement at 68, she cannot contradict her employment contract, which provides that the employment relationship could be terminated at any time, subject to the compensation provided in that contract.

[229] The Tribunal recognizes that Ms. Hugie fully intended and wanted her job at T-Lane to be her last one before she retired, but the fact remains that her employment contract did not guarantee her immunity within T-Lane. It would be unreasonable for the Tribunal to find that her job was fully guaranteed when her employment contract provides otherwise.

[230] For these reasons, the Tribunal will not extend the compensation for her lost wages beyond the date she was hired by Goodtogo Moving in March 2018.

c) Extra taxes

[231] The Complainant is seeking additional compensation to cover the extra taxes she would have to pay on receiving a lump sum. The Complainant is relying on the decision in *Stevenson v. Canada (Canadian Security Intelligence Service)*, 2001 CanLII 8497 (CHRT) at paragraphs 100 and 119 [*Stevenson*].

[232] The Tribunal reviewed *Stevenson*. With respect, it seems that the member who heard that case was not explicit in his analysis establishing the legal basis for such an order.

[233] In her submissions, the Complainant essentially reiterated the orders from the *Stevenson* decision, but without presenting the Tribunal with compelling evidence to this effect. Nor did she justify her claim, and the evidence is lacking in this regard.

[234] Since the Tribunal has determined that the Complainant is only entitled to compensation for five months of lost wages and did not conclude that she is entitled to compensation for wages from her dismissal until the date of this decision, additional compensation to cover extra taxes necessarily becomes questionable and unnecessary in the circumstances.

[235] The Tribunal therefore rejects this claim.

[236] A final comment: as the Tribunal pointed out in *Willcott*, at paragraph 265, Ms. Hugie should be fully reimbursed for the wages she lost in 2017 and early 2018. That being said, the evidence shows that Ms. Hugie received Employment Insurance benefits.

[237] The Tribunal does not have the jurisdiction to enforce the *Employment Insurance Act*, S.C. 1996, c. 23 [EIA]. Suffice it to say, however, that the parties will necessarily have obligations under that EIA depending on the compensation ordered by the Tribunal (see, for example, sections 45 and 46 of the EIA).

d) Order to appoint an actuary

[238] Finally, the Complainant has asked the Tribunal to order that an actuary calculate her wage losses. In that regard, the Complainant again relies on the Tribunal's decision in *Stevenson*.

[239] This case can be distinguished from *Stevenson*, in that in *Stevenson*, the Commission and the respondent were the ones to inform the Tribunal at the hearing that the wage losses would be calculated with the help of an actuary chosen by the parties. It is clear that this is one of the reasons that would allow a member to agree to such an option.

[240] In the case now before the Tribunal, no arguments have been made in this regard. The parties did not present the Tribunal with a joint consent, a plan providing for this option. It would be highly unwise for the Tribunal to order the parties to hire an actuarial expert or any other expert to make this calculation when no foundation for this has been established before the Tribunal.

[241] Since the Tribunal is ordering the Complainant to be compensated solely for five months, but not for the wage losses until the date of this decision, it seems unnecessary to appoint an actuary.

[242] Now, if the parties wish to calculate the compensation with the help of an expert, they are free to do so, and they can agree to this between themselves. However, it will not be part of the Tribunal's orders.

[243] The Tribunal therefore rejects this claim.

(ii) Expenses incurred as result of discriminatory practice (paragraphs 53(2)(c) or (d) of the CHRA)

a) Travel expenses to attend hearing

[244] The Complainant is asking the Tribunal to compensate her under paragraph 53(2)(c) of the CHRA for her travel to her lawyer's office so that she could attend the hearing.

[245] When the Tribunal asked Ms. Hugie's counsel in final arguments to point it to where it could find the amount of this claim and the evidence presented at the hearing to support it, she had no choice but to admit that in fact no evidence had been presented on this subject.

[246] Indeed, the Complainant did not submit the cost of travel to her counsel's office so that she could attend the hearing at any point during the hearing, be it through testimony or documentary evidence.

[247] The onus is on the complaining party to establish a causal connection between the discriminatory practice and the losses (*Chopra*, at paragraph 32), based on the balance of probabilities (*Duverger*, at paragraph 255).

[248] It is therefore not necessary for the Tribunal to review this claim more in-depth since the Complainant has presented no evidence to support it, based on the balance of probabilities.

[249] The Tribunal rejects this claim.

b) Cost of moving to Alberta

[250] The Complainant is asking the Tribunal to be compensated under paragraph 53(2)(c) of the CHRA for the costs she incurred to move to Lethbridge, Alberta. She is seeking the amount of $4,225.59.

[251] The Respondent objects to this claim since there is no causal connection between the discriminatory practice and the Complainant's moving expenses (*Chopra*, above). According to the Respondent, the evidence presented at the hearing does not establish that Ms. Hugie had previously moved from Lethbridge to Kelowna, British Columbia, in order to work for T-Lane. Instead, the evidence reveals that the Complainant moved to Kelowna and then started working for her former employer, Vedder Transport Ltd.

[252] In addition, the Respondent is of the view that the evidence does not support the fact that Ms. Hugie also moved to Lethbridge to mitigate her damages, but suggests, rather, that she wanted to be closer to her son and her support network. Finally, it notes that the evidence submitted by the Complainant to justify her claim is incomplete in that all she has

provided is an illegible receipt from MoverOne Van Lines on which she herself wrote the amount of $4,225.59 on the exhibit filed in evidence.

[253] I agree with the Respondent that the evidence does not support this claim by the Complainant.

[254] The Complainant has not persuaded the Tribunal that she moved from Lethbridge to Kelowna in order to work for T-Lane. On the contrary, the evidence shows that Ms. Hugie had moved to British Columbia again before starting to work for her former employer, Vedder Transport Ltd. She explained her family situation and some of her reasons for deciding to perhaps re-enter the workforce. She later accepted the position of operations consultant at T-Lane, which has no bearing on her move to British Columbia.

[255] Moreover, nothing in the evidence suggests that Ms. Hugie necessarily had to move to Lethbridge as a result of her termination. Rather, it supports the fact that Ms. Hugie decided on her own initiative to move to Lethbridge in order to be closer to her friends and family. While the Complainant did take steps to find a job in the Fraser Valley, she quickly gave up the search towards the end of July 2017. It was at that point that she decided to leave the area for reasons that have nothing to do with her being terminated.

[256] The Complainant has therefore not persuaded the Tribunal that there is a causal connection between the damage being claimed and her dismissal by T-Lane (*Chopra*, at paragraph 32).

[257] The Tribunal rejects this claim.

c) Reimbursement of medical expenses

[258] In her Statement of Particulars, the Complainant is seeking $981.00 for the medical expenses she incurred as a result of her dismissal.

[259] The Respondent objects to this claim, arguing that the Complainant has been unable to establish a causal connection between the damage being claimed and the discriminatory practice.

[260] It is surprising that the Complainant's final arguments are completely silent on this claim given that she made specific submissions on it in her Statement of Particulars. The Tribunal does not intend to spend much time on this claim given the complete lack of evidence to support it.

[261] As noted earlier, the onus is on the complainant to establish the merit of their claim, based on the balance of probabilities (*Duverger*, at paragraph 255). In her failure to present any testimonial or documentary evidence to support her claim, the Complainant did not meet this burden.

[262] The Tribunal therefore rejects this claim.

d) Expenses

[263] The Complainant has asked the Tribunal under paragraph 53(2)(c) of the CHRA to be compensated for the expenses she has incurred in her complaint against T-Lane. There appear to be various reasons for the Complainant's expenses: the legal costs of instituting the proceeding, Ms. Knowles's alleged violation of her oath not to discuss her testimony with other individuals and alleged failures by the Respondent to provide documents of possible relevance to the dispute.

[264] In support of her claim, the Complainant again submitted the *Stevenson* decision in which the Tribunal awarded the complainant compensation in the amount of $2,000 for the out-of-pocket expenses incurred by the complainant as a result of the complaint. The Tribunal included legal costs in that compensation.

[265] The Respondent correctly cited the decision in *Canada (Canada Human Rights Commissions) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII) [*Mowat*]. In *Mowat*, the Supreme Court of Canada specifically dealt with the issue of whether the CHRA, and in particular paragraphs 53(2)(c) and (d), allows the Tribunal to award costs.

[266] There is no need to describe the review performed in *Mowat*, which continues to be the applicable law before this Tribunal to this day. Suffice it to say that at paragraph 64 of

Mowat, the Supreme Court clearly states that in accordance with the text, context and purpose of the CHRA, the Tribunal has no authority to award legal costs.

[267] It should also be noted that the *Stevenson* decision, on which the Complainant relies, dates back to 2001 and came long before *Mowat*, issued in 2011. And the Tribunal has applied *Mowat* repeatedly in subsequent years, for example at paragraph 263 of *Duverger*, which is dated April 2019.

[268] Even though the Tribunal asked her to point it to decisions or a line of authority in her book of authorities to support distancing itself from the Supreme Court of Canada's decision in *Mowat*, the Complainant did not submit any other decision or authority, aside from *Stevenson*, or any legal argument that would allow the Tribunal to depart from *Mowat*.

[269] Consequently, regardless of the reasons raised by Ms. Hugie to support her claim for legal costs, the Tribunal does not have the jurisdiction to award them.

[270] The Tribunal therefore rejects the Complainant's claim.

(iii) Pain and suffering (paragraph 52(2)(e) of the CHRA)

[271] The Tribunal has written many times that damages for pain and suffering are intended to compensate the victim, to the extent possible, for the pain and suffering they have experienced as a result of the discrimination (*Nielsen*, above, at paragraph 142; *André*, above, at paragraph 174).

[272] The Complainant is asking the Tribunal to be compensated in the amount of $20,000 for the pain and suffering she has suffered; this is the maximum provided for by the CHRA.

[273] The Respondent finds that the Complainant has not established pain and suffering as a result of her termination. In the alternative, it submits that if the Tribunal decides to award a remedy for pain and suffering, it should award $1,000.

[274] The Tribunal has historically exercised its discretion in the adjudication of damages under the CHRA and awarded the maximum amounts allowed for the most blatant, striking,

or even the worst cases of complaints (*Premakumar v. Air Canada*, D. T. 03/02, April 4, 2002 [*Premakumar*]; *Duverger*, above, at paragraph 272; *André*, above, at paragraph 173).

[275] Even though the Tribunal agrees with the Respondent that Ms. Hugie's complaint does not warrant the maximum amount of $20,000 allowed for pain and suffering, as she is claiming, it does not agree that the amount of $1,000 is reasonable in the circumstances.

[276] Ms. Hugie testified about the consequences of her termination and how she felt during her sick leave, knowing that she would most likely be terminated on her return to work because of her disability.

[277] She also explained how her termination by T-Lane has affected her, describing it as one of the most difficult things she has ever experienced. Her testimony on those subjects was emotional, heartfelt and very moving. Ms. Hugie had trouble holding back her tears and suppressing her emotions while testifying, having to take breaks on occasion to compose herself. The Tribunal finds that the termination continues to affect her.

[278] The Tribunal has no reason to question the Complainant's credibility in this regard. The termination was not a trivial incident in Ms. Hugie's life.

[279] After her surgery and while she was recovering, Ms. Hugie had to live with the fear of losing her job as a result of her disability. The evidence reveals that she had been informed that she may be terminated by the Respondent.

[280] The Tribunal also understands from her testimony that she was afraid of being a burden on the company, given the field and T-Lane's assertive management style. In that regard, Ms. Hugie testified that when Mr. Germain asked during townhall meetings whether any employees were afraid of losing their job, she had raised her hand. However, she never went to Mr. Germain's office to discuss the situation, as was suggested, because she was already afraid of losing her job. It seems certain in fact that Ms. Hugie had reasonable grounds to believe that her candour would not have been well received had she confided in Mr. Germain. She already knew that she was in an exceptional, and possibly problematic, situation in this work environment.

[281] It is also in this context that the Tribunal must consider Ms. Hugie's disability and her entire experience with T-Lane in respect of this disability. The weight on Ms. Hugie, and the burden she had to carry, in this environment, which give context to the termination, are also part of the violation of Ms. Hugie's dignity (*Beattie and Bangloy v. Indigenous and Northern Affairs Canada*, 2019 CHRT 45 (CanLII) [*Beattie*], at paragraph 206; *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39 (CanLII), at paragraph 223).

[282] In light of the evidence before it, the Tribunal finds that $12,000 is reasonable in the circumstances.

[283] As the Respondent rightly submits, this is not the most blatant, striking, or even the worst case of complaints, as described in *Premakumar*. However, Ms. Hugie must be adequately compensated for the breach of her dignity.

[284] In assessing these damages, the Tribunal also considered the fact that even though Ms. Hugie described the event in question as one of the worst things she has ever experienced, she seems to have been able to regain control of her life. The Tribunal notes her resilience: she was able to rebuild her life, move closer to the people who are important to her and find another job she seems to like, despite it not being her job at T-Lane with its great benefits.

[285] For all of these reasons, $12,000 for pain and suffering is a reasonable amount in the circumstances, in accordance with paragraph 53(2)(e) of the CHRA.

(iv) Special compensation (subsection 53(3) of the CHRA)

[286] With regard to the special compensation under subsection 53(3) of the CHRA, Ms. Hugie is claiming the maximum amount of $20,000, for wilful or reckless conduct by the Respondent.

[287] The Respondent objects to such a claim, arguing mainly that Ms. Hugie's termination was in no way tied to her disability or her age and that there is no evidence to support the conclusion that there was wilful or reckless conduct.

[288] In *Cassidy v. Canada Post Corporation and Raj Thambirajah*, 2012 CHRT 29 (CanLII), the Tribunal wrote, at paragraph 192 [*Cassidy*]:

> The goal of the *CHRA* and other anti-discrimination human rights statutes is to "make a complainant whole", to put that person in a position s/he would have been in "but for the discrimination" the complainant suffered. The *CHRA* is a remedial statute. Its goal is to compensate, not punish a respondent. That said, aggravating (as opposed to punitive) and mitigating factors are relevant to the award of compensation. The remedy must be reasonable and have a nexus or causal link to the discriminatory practice found to have occurred.

[289] To award compensation under subsection 53(3) of the CHRA, the Tribunal must simply determine whether the conduct was wilful or reckless.

[290] A few years later, the Tribunal repeated the following in *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)* 2015 CHRT 14 (CanLII), at paragraph 21 [*Child Caring Society 2015*]:

> [T]he Federal Court has interpreted this section as being a "…punitive provision intended to provide a deterrent and discourage those who deliberately discriminate" (*Canada (Attorney General) v. Johnstone*, 2013 FC 113, at para. 155, aff'd 2014 FCA 110 [*Johnstone FC*]). A finding of wilfulness requires "…the discriminatory act and the infringement of the person's rights under the Act is intentional" (*Johnstone FC*, at para. 155). Recklessness involves "…acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly" (*Johnstone FC*, at para. 155).

[291] It must be noted that when the Tribunal determines special awards, it analyzes the conduct of the respondent, not the effect of the conduct on the victim (*Beattie,* above, at paragraph 210).

[292] The Tribunal considers, having regard to the evidence and on the balance of probabilities, that Ms. Hugie's termination was wilful and, at the very least, reckless, within the meaning of subsection 53(3) of the CHRA. Several elements lead to these conclusions.

[293] First, it is clear from the evidence that Ms. Hugie's termination was premeditated. Mr. Fehr essentially confirmed that Mr. Germain had confided that Ms. Hugie would very likely be terminated when she returned from her sick leave.

[294] Beyond these elements, the Tribunal did not accept Mr. Germain's argument that he had not anticipated the Complainant's termination. This was also confirmed by Mr. Lechner and Mr. O'Brian during that evening in August 2017, when they were frank with Ms. Hugie that both knew she would not be returning to the company.

[295] Lastly, Ms. Knowles' revelation that same evening to Ms. Hugie again confirms that her termination was premeditated. In fact, when Ms. Hugie went to the office the morning of June 12, 2017, she should have been terminated immediately by Mr. Germain. Moreover, the anticipation of her termination is also indicated by the fact her access to the computer system was cut off and her desk was still occupied by Ms. Gourlie.

[296] It must also be noted that Ms. Knowles informed Ms. Hugie that in future, she should keep all references to her health issues to herself and that she was sorry for the way things had happened.

[297] With just these elements, T-Lane's intention to terminate the Complainant is clear to the Tribunal.

[298] There is more. The evidence also supports the conclusion that T-Lane's actions were reckless as well. The entire context surrounding Ms. Hugie's termination supports this conclusion.

[299] The toxic environment created by Mr. Germain, for example, during his townhall meetings, is concerning for the Tribunal. This type of environment clearly prevents employees from confiding in their employer.

[300] During the hearing, Mr. Germain's testimony was misleading. Mr. Germain leaves the impression that he is open to discussions with his employees if they fear they will be terminated. However, in reality, this only encourages an unhealthy work environment of worry and fear. Several witnesses confirmed this conclusion, including Ms. Hugie, Mr. Fehr and Ms. Breu, who testified to the toxicity of the work environment. The Tribunal can therefore understand why Ms. Hugie, who raised her hand during one of these meetings, did not go to Mr. Germain's office to discuss her medical condition.

[301] That being clarified, the Respondent submitted that the Complainant was never denied leave to attend a medical appointment. That said, the evidence indicates that Ms. Hugie requested very little leave for this reason. Thus, this element is not very persuasive for the Tribunal.

[302] Moreover, no other steps were taken by T-Lane that would show it was interested in Ms. Hugie's medical situation and her needs. This is the context in which the termination must be assessed: a vulnerable employee, facing major health issues, who had to take leave to have surgery and who, ultimately, was terminated by her employer as soon as she returned to work.

[303] It must also be noted that the time Mr. Germain chose to terminate Ms. Hugie was another element that supported the finding of reckless conduct. While the Complainant was supposed to be recovering from her surgery and taking care of herself during this time, she knew her termination was imminent. When she returned to the office, T-Lane had cut off her access to the computer systems, her desk was occupied by another employee, and she had to wait the whole day before finally meeting with Mr. Germain. All of that just to be terminated, in particular because of her disability. In the manner the termination occurred, the Tribunal finds there was a subtle scent of discrimination (*Basi*, above).

[304] For all these reasons, the Tribunal concludes that the discriminatory practice was not only wilful, but also reckless as provided in subsection 53(3) of the CHRA.

[305] Now, as previously noted, special compensation is intended to provide a deterrent and discourage those who wilfully or recklessly discriminate (*Child Caring Society 2015*, at paragraph 21; *Johnstone CF*, above).

[306] In the case of T-Lane, the attitudes of the company and especially of Mr. Germain justify significant compensation, in order to achieve the deterrent objective as described in *Child Caring Society 2015* and *Johnstone CF*, above. In the circumstances, the Tribunal must send a clear message to Canadian employers who are subject to the CHRA's obligations: this type of willful and reckless discriminatory conduct, such as T-Lane committed, must be avoided and discouraged.

[307] For these reasons, the Tribunal concludes that $12,000 is reasonable and justified in the circumstances.

a) Ms. Knowles and her alleged breach of oath

[308] The Tribunal does not intend to address this argument by the Complainant at length, and it must be said that the argument is surprising.

[309] Suffice it to say that the Complainant asked the Tribunal to consider, in granting special compensation, Ms. Knowles' alleged breach of her oath. The Tribunal addressed this situation previously in this decision and will not repeat the details of this incident.

[310] The Tribunal again states that there must be a causal connection between the damages sought and the discriminatory practice itself (*Beattie*, at paragraph 200). Subsection 53(3) is clear on this:

> 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**.
>
> [Emphasis added.]

[311] The phrase "if the member of panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly" is clear: if the Tribunal determines that the discriminatory practice committed by the Respondent was willful or reckless, it can award special compensation.

[312] In the case of Ms. Knowles and her alleged breach, there is no link between this incident and discriminatory practice, namely, the termination (*Cassidy*, at paragraph 192).

[313] For these reasons, the Tribunal has not considered this argument by the Complainant in the adjudication of special compensation.

b) Situation involving Ms. Germain at hearing

[314] Ms. Trotti, counsel for the Complainant, pleaded in her closing arguments that during Ms. Hugie's testimony, Ms. Germain, co-counsel for the Respondent, made facial expressions resembling mockery.

[315] In her opinion, considering that Ms. Germain is a relative of Mr. Germain, the owner of T-Lane, this is an extension of the intentional and reckless actions of the company towards her client.

[316] Once again, the Tribunal will not address this argument at length.

[317] First, it is unfortunate that Ms. Trotti did not raise her client's concerns at the appropriate time. Although the Tribunal is aware of the emotions Ms. Hugie may have experienced, this intervention took place at the very end of the proceeding, which did not allow the Tribunal to intervene promptly, as needed.

[318] Ms. Trotti refrained from intervening and took the Respondent and the Tribunal by surprise in her closing arguments.

[319] The Complainant asked that this element be considered during the adjudication of the special compensation, which the Tribunal will not do. As previously noted, under subsection 53(3) of the CHRA, it is the discriminatory practice itself that must be willful or reckless. Therefore, this alleged incident involving the possible actions of Ms. Germain has no connection with the discriminatory practice, which was the Complainant's termination by T-Lane.

[320] For these reasons, the Tribunal has not considered this argument by the Complainant in the adjudication of the special compensation.

(v) Interest

[321] The Complainant is seeking interest on the damages that should be awarded by the Tribunal under subsection 53(4) of the CHRA.

[322] As the Tribunal wrote in *Willcott*, at paragraphs 277 to 282:

> [277] Pre-judgement interest is not a separate category of damages that a complainant can claim. Interest is part of the claim as a whole. Therefore it does not need to be claimed expressly because it naturally arises from the original loss.
>
> [278] Interest is a component of the compensation process. The purpose of awarding damages is to restore the aggrieved person to where he or she should have been in the first place had the harm not occurred (see *Apotex Inc. v. Wellcome Foundation Ltd.* [*Apotex*], 2000 CanLII 16270 (FCA), [2001] 1 FC 495, at paras. 120 and 121).
>
> > [279] In addition, interest:
> >
> > . . . on compensation has the objective of, among other things, preventing the person found to have engaged in a discriminatory practice from benefiting from deadlines triggered by the quasi-judicial process and especially, to fairly compensate the victim of the discriminatory practice for the prejudice he or she has suffered and consequently, for the delay in being compensated.
> >
> > (*Duverger v. 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18, at para. 318. The same idea is expressed in *Apotex*, above, at para. 122).
>
> [280] The member of the panel has the discretion to award interest on damages and the amount granted (see *Brunskill*, above, at para. 168). Subsection 53(4) of the *CHRA* reads as follows:
>
> 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.
>
> [Emphasis added]
>
> [281] The Tribunal also has rules for calculating interest on damages. In that respect, Rule 9(12) of the *Rules of Procedure* (03-05-04) provides that:

> 9(12) Unless the Panel orders otherwise, any award of interest under s. 53(4) of the *Canadian Human Rights Act*
>
> > a. shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada; and
> > b. shall accrue from the date on which the discriminatory practice occurred, until the date of payment of the award of compensation.
>
> [282] The combination of subsection 53(4) of the *CHRA* and Rule 9(12) of the *Rules of Procedure* clearly inform the parties that when they appear before the Tribunal, the member of the panel has the discretion to order interest on the compensation. They are also aware of the manner in which interest could be calculated and the date from which interest will accrue, that is, **the date on which the discriminatory practice occurred**, until the date of payment of the award of compensation.

[323] As a result, as requested by the Complainant, the Tribunal indeed concludes that interest on compensation must be granted, under subsection 53(4) of the CHRA.

[324] As set out in rule 9(12) of the *Rules of Procedure* (03-05-04), interest accrues from the date the discriminatory practice occurred until the date of payment of the award of compensation. In Ms. Hugie's case, the discriminatory practice was her termination, which took place on June 12, 2017. Therefore, that date is the starting point for calculating this interest, until the date T-Lane pays the award of compensation.

[325] Interest will be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada.

V. Orders

[326] For the above reasons, the Tribunal concludes that Ms. Hugie's complaint is substantiated in part.

[327] Accordingly, the Tribunal orders T-Lane to compensate the Complainant in the following amounts:

- compensation for lost wages equal to five months' wages as described at paragraph 216 of this decision (paragraph 53(2)(c) CHRA);
- compensation for pain and suffering in the amount of $12,000 (paragraph 53(2)(e) CHRA); and
- special compensation in the amount of $12,000 (subsection 53(3) CHRA).

[328] All interest shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada from June 12, 2017, until the date of payment of the compensation ordered in this decision.

[329] The Tribunal does not reserve jurisdiction in this case.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
August 19, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2405/6419

Style of Cause: Karen Hugie v. T-Lane Transportation and Logistics

Decision of the Tribunal Dated: August 19, 2021

Date and Place of Hearing: August 31 to September 4, September 23 and October 20, 2020

By videoconference

Appearances:

Jennifer Trotti and Aanchal Mogla, for the Complainant

Jessie Legaree and Jelaina Germain, for the Respondent