

MICHELE LARONDE

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

WARREN GIBSON LIMITED

Respondent

REASONS FOR DECISION

MEMBER: J. Grant Sinclair

2003 CHRT 38

2003/11/07

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I. INTRODUCTION

[1] Michele Laronde is the complainant in this matter. Warren Gibson Limited, the respondent, is a large trucking company located in Alliston, Ontario. Ms. Laronde was hired as a driver of tractor trucks on the U.S. board running from Canada to the United States and back. She started as a full time probationary employee on May 4, 1994 and became permanent on April 12, 1995. Tractor trucks are large trucks with sleeping accommodation in the rear of the cab. Ms. Laronde worked at Gibson until October 2, 1996, when Gibson terminated her employment.

[2] Before her termination, Ms. Laronde had filed a complaint dated August 23, 1996 with the Canadian Human Rights Commission. In her complaint, Ms. Laronde alleged that Gibson had, during her employment, disciplined her more harshly than the male drivers for similar incidents, and had denied her promotions, in breach of s.7 of the Canadian Human Rights Act. She also

alleged that Gibson discriminated against her by failing to provide a harassment free workplace contrary to s.14 of the Act.

II. FACTS

[3] Gibson is headquartered in Alliston, Ontario. In its trucking operations, it has four drivers boards, the U.S. board, the Windsor board, the local board and the floater board. Drivers on the U.S. board run cross border from Alliston to the U.S. and return; on the Windsor board from Alliston to Windsor, return; the local board, which involves runs within Canada, usually within a 100-mile radius; and, the floater board which has drivers not assigned to any of the other boards.

[4] Gibson started out a small trucking company with about five trucks hauling tobacco, feed corn, basically, farm products. When Honda Canada built its assembly plant near Alliston, Gibson became its primary carrier for automotive parts. Honda now accounts for about 75 per cent of Gibson's business. Gibson has grown to about 700 employees today. When Ms. Laronde worked there, Gibson had approximately 250 drivers.

[5] Honda's operations are geared to "just-in-time" delivery. Honda does not have a warehouse facility for automotive parts at its assembly plant. Parts are delivered by trailer to Honda and the trailers are assembled in a designated area. When parts are needed for the assembly line, the trailer is moved to the loading dock, and the parts, which are on racking, are wheeled off the trailer directly onto the assembly line.

[6] Just-in-time delivery involves a "window time". A window time is the time scheduled by which the driver must deliver the trailer to the customer. Given the importance of just-in-time delivery for its customers, Gibson has adopted the motto "on time, every time", which is drilled into all of its drivers. Conformance to this motto is the basis for Gibson's success.

A. GIBSON DISCIPLINARY RULES AND PROCEDURES

[7] When Ms. Laronde started at Gibson in 1994, Gibson had in place a handbook of Rules and Regulations, which set out the standards and expectations Gibson had for its employees. This was given to each driver when hired and a copy was posted in the drivers room. In June 1995, Gibson hired Marilyn Lawrence as Manager, Human Resources. Shortly after she started, Ms. Lawrence modified and updated the Rules and Regulations to provide for a system of progressive discipline which came into effect around August 1995.

[8] Under the progressive disciplinary procedures, disciplinary offenses are classified as unexcused, major and minor. Under each of these classifications, there is a list of this type of conduct that is considered to be an offense under the particular classification.

[9] The Rules also provide for step up penalties. For an unexcused offense, the penalty is immediate suspension without pay, with intent to terminate. For a first major offense, the penalty is a written warning; a final written warning for a second offense, and termination for a third

offense. Minor offenses call for a courtesy warning, then a written warning, a final written warning and termination of employment.

[10] In all cases, before issuing a final written warning, the employee's work record must be reviewed by their dispatcher and the Manager, Human Resources. Before terminating an employee, this same review must include another member of management. Extenuating circumstances will be considered.

[11] In addition to these discipline categories, there is also a classification for logbook violations. Logbook violations are treated as a major offense. Without getting into all of the complexities relating to logbooks, it is enough to point out that government regulations, both in Canada and in the United States, require every driver to maintain a logbook for each trip. Departure time, on and off duty time, distance travelled in a particular day, the date and time they started the run, must all be recorded in the logbook. On duty time includes driving time and loading and unloading time. Off duty time is lunch, dinner, and sleeping time or other times when the driver is out of the truck, but not loading or unloading.

[12] Canadian regulations allow 13 hours of continuous driving time and a maximum of 15 hours driving and on duty time. There is some flexibility for heavy traffic or severe weather conditions. When a driver has reached 15 hours, they must go off duty for eight hours and then can resume the 15-hour cycle. The U.S. regulations provide for a maximum of 10 hours continuous driving and a maximum of 15 hours on duty driving.

[13] At the end of each run, drivers hand in their logbooks to Gibson's safety department which run a computer-generated monthly report for each driver. If the printout from the safety department shows that the driver had exceeded their hours, the driver would be notified and asked to discuss it with the safety director. If the driver does not give a reasonable explanation, the driver would be disciplined for an "over hours" or "hours of service" violation.

[14] Both preventable and non-preventable accidents are also recorded on a driver's disciplinary record. Preventable accidents are not specifically listed as an offense in the Rules and it is not clear how they are treated in terms of discipline.

[15] Disciplinary offenses on an employee's record fall off after one year and are not considered for disciplinary action. Logbook violations are not taken into account after six months.

B. APPEALS TO THE MANAGEMENT COMMITTEE

[16] If a driver has not followed the Rules and Regulations, normally, their dispatcher will write up a Drivers Incident Report (DIR). However, anyone in a supervisory or management position at Gibson can write a DIR. The DIR documents the date and details of the incident, the driver's name, the name of the person writing the report, the problem, the company standard and what the resolution should be. The driver can give a written response on the DIR or can respond orally as to their version. The matter is reviewed by Ms. Lawrence, and if the driver does not dispute the DIR, Ms. Lawrence will rate the incident according to the appropriate disciplinary classification, and records it on the driver's disciplinary file.

[17] If the driver does dispute it, Ms. Lawrence will discuss it with whoever wrote the DIR so that she has a complete understanding of the incident. If there is no merit to the DIR, no disciplinary offense is recorded and there are no negative consequences.

[18] If Ms. Lawrence decides otherwise, the driver is informed and may appeal to the management committee. The management committee is composed of management representatives and driver representatives, the latter nominated by their peers. However, anyone in the company can attend at management committee meetings and participate in the discussion of the incident and how it should be treated. The management committee meets once a month to discuss anything of concern to the company including appeals. At the meeting, after discussion, the committee can confirm the incident and/or the penalty, reverse it or substitute another result. Management can override any decision of the committee, although, according to Ms. Lawrence, this tends to be the exception, not the rule. Minutes are taken for all of the management committee meetings.

C. THE THREE ELEMENTS OF THE COMPLAINT

(i) Adverse Differential Treatment, s.7(b) of the Act

[19] The Commission alleges that Ms. Laronde was adversely differentiated in her employment because she was disciplined more harshly for similar incidents than male drivers at Gibson. The Commission called evidence relating to ten incidents, which it argues, supports this contention.

a) Alleged Incidents of Adverse Differential Treatment

1. June 12, 1995 - taking truck home - penalty-loss of "Good Guy bonus"

[20] On June 12, 1995, Ms. Laronde was written up in a DIR for taking her truck home, which involved 25 off-route miles. Ms. Laronde testified that she was on her way back from Ohio when she got a speeding ticket. A conviction would not show well on her driving record and she believed that she had a good defense.

[21] She had to return to Ohio for her court date the next day at 11 a.m., but did not have time to drop the truck in Alliston, go home, pick up suitable clothes for court and return to Ohio. So she drove the truck to her home, stopped for no more than five minutes, and returned the truck to the Gibson yard, picked up her car and drove eight hours to Ohio for her court date. The speeding charge was dismissed.

[22] According to the Rules, taking the truck home is considered an unauthorized use of a company vehicle and is classified as an unexcused offense. Ms. Laronde appealed to the management committee, and explained the situation. The management committee at its meeting on July 28, 1995, recommended that she not be given any penalty. Management, however, overruled the committee and decided that she lose her December "good guy bonus" of \$400. This was reduced to \$200 by the management committee at its August 11, 1995 meeting. The "good guy bonus" is a bonus of \$400 given twice yearly in July and December to recognize drivers doing a good job.

Comparators

[23] The Commission compared this penalty to that received by male drivers at Gibson for the same offense. The minutes of the March 8, 1994 management committee meeting show that Jim Barnes had been taking his truck home at night after being asked previous times not to do so. He was charged \$50, the cost to boost the truck battery, which was deducted from his good guy bonus. The meeting minutes also emphasized the company policy that trucks are not to be taken home and there are no exceptions to this policy.

[24] Bob Watt, once a driver and safety director at Gibson, testified that Mr. Barnes regularly took his truck home, and continued to do so, but was only disciplined that one time. Mr. Watt said that he himself took his truck home a couple of times and was never disciplined.

[25] Charlie Ward was written up in a DIR dated March 21, 1996, for travelling off-route and stopping at his home. He lost his good guy bonus for June 1996, and received a final warning that a repeat would result in immediate termination.

[26] Don Smalley took his truck home regularly and was never disciplined. The company's explanation was that Mr. Smalley lived on Highway 89, which was on the route that the Gibson drivers take when they begin their runs. Apparently, this was acceptable because Mr. Smalley did not run off-route, although there is no "on-route exception" in the Rules.

2. August 15, 1995 - Driving off-route - no discipline

[27] On August 15, 1995, Ms. Laronde was driving north on Highway 50 pulling a 53-foot trailer. She was told that there was an accident in the village of Loretto and the highway was blocked. To avoid this, she took the fifth concession side road. Along the way she met Bing Gibson who was driving southbound on the same side road. They both stopped, Ms. Laronde explained the situation and then went on her way. Bing Gibson wrote up a DIR for this incident. Ms. Laronde provided an explanation. No disciplinary action was taken.

3. May 9, 1996 - Hisan - customer complaint - note to file and apology

[28] Ms. Laronde's account of this incident is that she arrived at Hisan, a parts manufacturer in Mt. Vernon, Ohio, around nine a.m. She parked her truck at the loading dock, went to see Scott, the shipper/receiver, to deal with the status of the load and paperwork. She knew him because she had been to Mt. Vernon a number of times. Scott was talking to another employee (who turned out to be his wife) at the time. After waiting a few minutes, and to get his attention, Ms. Laronde grabbed a comb that was sticking out of his back pocket. She also noticed he had two scratches on his arm and touched his arm commenting "nice job". Shortly after, Ms. Laronde went to the lunchroom to complete her paperwork. Scott's wife came to the lunchroom and according to Ms. Laronde, yelled at her for doing what she did. Ms. Laronde did not consider her actions of any consequence or why this Hisan employee had become so agitated. She completed her paperwork, left Hisan and telephoned Ms. Lawrence to report the matter.

[29] Ms. Lawrence also received a telephone call from the Manager of Human Resources at Hisan, who told her that one of her team leaders had reported that Ms. Laronde had manipulated a comb in the back pocket of a male worker and had caressed his arm. The incident had been reported to the plant manager who requested that Ms. Laronde not return to the Hisan plant. Ms. Lawrence assured them that Gibson would meet this request and would also recommend that Ms. Laronde apologize to all parties involved. After talking to Ms. Laronde, Ms. Lawrence called the Human Resources Manager back and told her that she had spoken to Ms. Laronde.

[30] Ms. Lawrence wrote up the incident as a major offense. Ms. Laronde disagreed very strongly and appealed to the management committee. At the June 28, 1996 management committee meeting, Ms. Laronde told her story. The committee decided that this should not be rated as a major, but rather as a note to file. Ms. Laronde was required to send a letter of apology to Hisan, which she did.

Comparators

[31] The Commission asked that the Hisan incident and discipline be compared to what it considered to be similar incidents involving male drivers at Gibson. On April 25, 1996, Brenda Mckee at Honda called Ms. Lawrence to tell her that a female employee had complained that whenever David Cleary, a Gibson driver, was at Honda, he deliberately went out of his way to locate her and stare at her. He did not talk to her or have any physical contact with her. But she felt very uncomfortable and reported this to her team leader, who had also observed Mr. Cleary's conduct. Honda did not ask that Mr. Cleary be disciplined or that he not return to Honda, but that he be told that such conduct was unacceptable.

[32] Ms. Lawrence spoke to Mr. Cleary about the complaint. His response was he did not think he was causing a problem and was only looking at the assembly process. He was told by Ms. Lawrence that any further complaint would result in disciplinary action. He agreed to stop what he had been doing. He was not required to apologize.

[33] The second incident referred to by the Commission is the case of HW, a Gibson driver. HW was written up in a DIR dated January 20, 1997 because of a written complaint from a Hillsdale Tool Division employee. The employee said that she was offended by remarks made by HW. HW did not deny making the remarks, but said that they were made during a conversation between HW, the complainant, and her co-worker. The remarks were in jest and not intended to offend. The DIR shows that HW had five previous incidents, the details of which are not in evidence. HW was required to send a letter of apology to the complainant and was given a final warning that a repeat would result in immediate termination.

[34] The third incident involved another Gibson driver R.M. According to the June 14, 1995 DIR, Gibson received a complaint from Harry at Meiko Transport, that management at MEI had reported that RM had spoken to a security guard in a loud and abusive voice and was snippy. MEI suggested that Meiko stop using Gibson as a carrier. Gibson considered this to be proven discourtesy to a customer. RM was spoken to by Ms. Lawrence and lost his good guy bonus.

[35] Finally, there is the DIR for Scott McWilliams dated October 2, 1996. The DIR does not give the details of this incident. The evidence is that Mr. McWilliams had behaviour issues. He also had three previous incidents. Mr. McWilliams was suspended for two weeks without pay, was put on six months probation and was not to receive a good guy bonus in that period. He also received a final warning.

4. June 6, 1996 - overslept - late delivery - major offense

[36] The June 6, 1996 DIR shows that Ms. Laronde overslept and was late for a Windsor switch scheduled for seven a.m. Because of the delay, the Windsor switch driver had to be paid for waiting time. Ms. Laronde explained that she was driving back from Ohio with a load for Honda. On the initial run down to Ohio, Ms. Laronde was delayed by bad weather. She made her window time to Ohio, but when she started the run back, she had reached her maximum hours. She decided to stop and sleep for two hours and when she woke up she realized that she would be late for the Windsor switch. She contacted her dispatcher and told him that she would be about an hour late. She made the switch around eight a.m. In fact, the switch trailer from Ohio was delivered at the scheduled window time to Honda.

[37] This incident was rated as a major, the disciplinary offense under the Rules being, arriving late for a window time without a reasonable explanation. Ms. Laronde appealed to the management committee. Her position was that she did not miss a window time because her trailer was delivered on time to Honda. If the violation was that the switch driver had to be paid waiting time, her response was that U.S. waiting time was only paid after the first hour.

[38] The management committee at its June 28, 1996 meeting did not accept her explanation and confirmed the offense as a major. The company's position was that there is no distinction made between a switch time within the Rules. According to Ms. Lawrence, Ms. Laronde was not disciplined because the switch driver was paid waiting time. She was disciplined because of the late switch. A late is a late.

Comparator

[39] Compare this, the Commission argues with the June 27, 1996 DIR for Mike Rumble. Mr. Rumble left too late in the evening to make his seven a.m. window time. He was not disciplined for this incident. Instead, the dispatcher noted on the DIR that this was the first time Mr. Rumble had an incident like this. Because there was no customer complaint, it should be treated only as a note to file. Ms. Lawrence's evidence was that she did not deal with this matter because it was dealt with and resolved by the dispatcher. There is no evidence or any explanation given as to why Mr. Rumble left too late to make the window time.

5. June 18, 1996 - late delivery Honda - major offense

[40] The DIR for June 18, 1996 refers to a late U.S. delivery to MEI by Ms. Laronde on June 17, 1996. The window time was scheduled for nine a.m. Monday, but Ms. Laronde did not make the delivery until noon. Ms. Laronde's explanation was that she had informed dispatch, that on the previous Friday, that she strained her back and wanted to spend the weekend to recover.

Normally she would leave around midday on Sunday for her next run. Her dispatcher told her that he would try and find a load so that she could leave later on Sunday evening or early Monday morning. But when she had reported for work, she was dispatched with a trap load. A trap load is a load for three or more customers. The driver must deal with a custom broker for each customer's load. More time is required to prepare the paperwork and get customs clearance. Ms. Laronde was delayed for about two hours at the border and thus missed the window time.

[41] Ms. Laronde did not appeal this incident. The reason, she said, was because the previous time she appealed a late delivery, she was unsuccessful.

6. June 28, 1996 - Final warning

[42] On July 3, 1996, Ms. Laronde received a written final warning from Ms. Lawrence, dated June 28, 1996. Ms. Lawrence's evidence was that the reason for the final warning was the accumulation of incidents from January 1996 to June 1996, which indicated that Ms. Laronde's overall performance was not up to standard. Earlier, on June 20, 1996 Ms. Laronde met with Ms. Lawrence and Willie Teigesser, her dispatcher. The purpose of the meeting was to point out to Ms. Laronde that, in a short period of time, she had accumulated a number of major offenses and her job was in jeopardy. Ms. Lawrence saw this meeting as an attempt to help Ms. Laronde.

[43] Ms. Lawrence documented the meeting in a memorandum dated June 20, 1996. There she noted that Ms. Laronde had four majors and one preventable accident on her disciplinary record. She also noted that company policy provided that an employee may be terminated after three majors, but before taking such action, Ms. Lawrence felt obliged to make Ms. Laronde aware of the status of her file.

[44] At the June 20th meeting, Ms. Laronde told Ms. Lawrence that she disagreed with two of the offenses, the May 9, 1996 Hisan and the June 6, 1996 overslept late delivery and that she had appealed both to the management committee meeting scheduled for June 28, 1996.

[45] As noted earlier, the management committee, at their meeting, reduced the Hisan incident from a major to a note on file, but left the June 6, 1996 - overslept, late delivery as a major. In the result when the final warning was issued on June 28, 1996, Ms. Lawrence had three major offenses and a preventable accident. One of the majors, the January 31, 1996 hours of service of violation (for which no explanation or evidence has been offered) was to drop off of Ms. Laronde's disciplinary record in two days, on June 30, 1996. Thus, by my reckoning, as of July 3, 1996 when she actually received the final warning, Ms. Laronde had two majors and a preventable accident.

Comparator

[46] The Commission argued that Ms. Laronde's final warning, when compared to the discipline received by Steve Semple, one of Gibson's drivers, is another example of adverse differential treatment by Gibson.

[47] On April 13, 1996 Mr. Semple and Bill Grange, another Gibson driver, were running together, each driving a Gibson truck. They stopped for dinner and had consumed alcohol during their dinner. The Rules provide that it is an unexcused offense for a driver to be under the influence of alcohol or to consume alcohol within eight hours of operating a motor vehicle. Mr. Grange had an accident, which caused about \$100,000 damage to his truck.

[48] Initially, both drivers lied about the drinking, but it was later reported to the company by another Gibson employee that one of the trucks had been seen parked outside a bar and not at a Kentucky Fried Chicken restaurant as reported by the two drivers.

[49] When the management committee met on April 26, 1996 to review this matter, Mr. Semple admitted that he had been drinking and that he had lied about the incident. Mr. Semple had earlier been suspended for two weeks without pay and the management committee suspended him for another week without pay. He was also given a final warning that any further major incident would result in immediate termination.

[50] Ms. Lawrence testified that Mr. Semple was not terminated because he was not involved in the accident. Although he had lied at first, he did come forward and admit that he had broken the eight-hour drinking rule. According to Ms. Lawrence, that was the only company Rule that he had breached.

[51] In addition to the drinking incident, which is an unexcused offense, Mr. Semple's disciplinary record shows speeding, 96/80, on June 6, 1995, a major offense. It also shows an hour of service violation on January 31, 1996, a major offense, and an in-bond load offense on March 11, 1996. It is not clear from the company's Rules how this offense is classified.

[52] On July 23, 1996, Ms. Laronde received two hours of service violations. However, these notices referred to a May 13, 1996 and a June 6, 1996 incident. Because the safety department was behind in its work, these notices of violation were only issued in late July.

[53] Thus, by July 23, 1996, Ms. Laronde had accumulated four majors. In such case, the Rules call for termination. But Ms. Laronde was not terminated at this time. According to Ms. Lawrence, because the notices were issued late, they would not count against the final warning.

[54] There is no evidence explaining the details relating to the May 13, 1996 and the June 6, 1996 over-hours violations. Although the notices could have been appealed, Ms. Laronde did not do so. She also refused to sign receipt of the notices.

7. July 25, 1996 - late delivery - no disciplinary offense

[55] Ms. Laronde was dispatched to pick up a rail container in Welland, drop it off and be at work at JCI, a Gibson customer, for 8 a.m. JCI called dispatch at 8:45 a.m. and advised that Ms. Laronde had not yet arrived. A DIR was written up for being late and Ms. Laronde explained that because of her logbook hours, she could not leave early enough to make the pickup in Welland and be back at JCI by eight a.m. Her explanation was accepted and she did not receive any disciplinary offense.

8. August 2, 1996 - discourteous to dispatch - minor offense and apology

[56] The next incident is the August 2, 1996 DIR, initiated by Willie Teigesser, Ms. Laronde's dispatcher. The DIR details that when Ms. Laronde returned to the Gibson yard after a run on that day, she was in a bad temper, yelled and swore at Mr. Teigesser and failed to complete a delivery to Honda.

[57] Ms. Laronde's version is that she was dispatched to go to JCI in Mississauga. She arrived at the Gibson yard around 5:30 a.m., left the yard shortly after and arrived at JCI around 7 a.m. She had expected to spend the day shunting trailers between the JCI warehouse, although there had been some discussion that she may have to drive to Welland and pick up a container for Honda. It is a five-hour trip from Mississauga to Welland to Alliston and probably longer because it was a long weekend.

[58] She was dispatched to Welland later that day and protested to everyone at Gibson who could do anything about it. In the end, Ms. Laronde made the run, believing that if she didn't, she could be terminated for refusing a load.

[59] By the time she picked up the container and brought it back up to the Gibson yard it was about seventeen hours after she started at JCI that morning. The container was to be delivered to Honda about three kilometres away and her post-trip responsibilities included delivering the container, fueling and cleaning the truck and parking it in its designated spot. Ms. Laronde parked the truck with the container still attached at the back of the yard and went into the office where Mr. Teigesser was, threw the paperwork on the desk in front of him and said, "Your precious fucking container is down at the end of the yard" and left.

[60] Ms. Laronde wrote a letter to the company the same day explaining her actions and she also appealed to the management committee. The management committee decided at its August 30, 1995, that the incident should be noted as a minor offense and that she apologize to her dispatcher, which she did. The charge of failing to complete an assignment, which would have been a major offense, was dropped.

9. September 18, 1996 - bad attitude - no disciplinary offense

[61] Ms. Laronde was dispatched for a London switch which involved dropping a trailer for the U.S. and picking up a trailer coming from the U.S. When she arrived, the U.S. driver had dropped the trailer and was sleeping. According to Ms. Laronde, the understanding between drivers is that you do not wake a sleeping driver, and so she had no opportunity to speak to the driver. She drove to the Alliston yard, dropped the trailer and left a note at the office asking that dispatch send a message to the other driver telling him where she had left the paperwork for the trailer, and to check the trailer weight. The dispatcher felt that it was the responsibility of the driver, not dispatch, to take care of these matters and wrote up a DIR. Ms. Laronde provided an explanation. Nothing came of this incident.

10. September 27, 1996 - failure to verify load - major offense

[62] This has been described as the culminating event that led to Ms. Laronde's termination. On September 27, 1996, Ms. Laronde was written up for "failure to verify load" which was noted as a major offense. The DIR indicated that she did not verify whether the trailer was empty or loaded with empty racks.

[63] Ms. Laronde's version of this incident is that she was dispatched to SPS to pick up a trailer and deliver it to Manchester Plastics. When she arrived at SPS, it was raining, very windy and very muddy. She was not inclined to open the back door of the trailer because of the dangerous weather conditions. Dispatch had directed her to pick up trailer #554, empty or loaded with empty racking. If there was a problem with the trailer number, or if there was no racking, she was to see the shipper at SPS and call dispatch for further instructions.

[64] Ms. Laronde did not open the trailer to see what was inside. Instead she went inside the SPS office and spoke to the supervisor who told her that the trailer #554 was empty, there was no paperwork indicating there was no load, and that it was to go to Manchester Plastics. So Ms. Laronde drove the trailer to Manchester Plastics.

[65] When she arrived there and opened the trailer door, the trailer was not empty, but was loaded with empty containers. She reported this to the supervisor at Manchester Plastics who was expecting an empty trailer. After discussing the matter with Gibson, it was decided that Ms. Laronde would bring the trailer back to SPS and another driver would bring an empty trailer to Manchester Plastics.

[66] Ms. Laronde agreed that, given the dispatch message, she should have checked to see if the trailer was empty or loaded with racks. But she relied on the information from the supervisor at SPS who told her that the trailer was empty and there was no bill of lading. Ms. Laronde did concede that if the supervisor had given her bills of lading that showed there was empty racking in the trailer, she would have checked the load and, given the weather conditions and her safety concerns, she would have asked someone in the SPS office to help her. This incident was rated as a major offense.

Comparator

[67] The Commission's comparator is the evidence of Steve Holt, who recalled that sometime in 1992-1993, there was an incident involving Billy Cain, who did not check the load before leaving for a Windsor switch. The trailer was to have empty racking only, but when the U.S. switch driver opened the trailer to check the load, the racking was loaded with parts. Mr. Cain was not paid for the trip and he had to pay for the fuel costs of the trip. There is no documented evidence of this incident.

b) Conclusion on Adverse Differential Treatment

[68] Both the Commission and the respondent Gibson took the position that this is not a case of wrongful dismissal. Rather, the issue is whether Gibson discriminated against Ms. Laronde when applying its disciplinary procedures to her. And, if so did the discrimination play a role in the termination of her employment.

[69] Of the ten incidents put forward by the Commission, three, August 15, 1995, July 25, 1996 and September 18, 1996 did not lead to any disciplinary offense. It remains somewhat of a mystery to me why these were proffered, other than to show that Ms. Laronde had to defend herself to avoid disciplinary consequences. But there was no comparative evidence demonstrating that male drivers at Gibson did not have to do the same.

[70] The June 12, 1995 incident had fallen off from Ms. Laronde's discipline record and was not a factor in the termination decision. The August 2, 1996 incident was rated a minor and does not appear to have had any role in the decision to terminate Ms. Laronde.

[71] As to the culminating incident of September 27, 1996, it is not for me to decide whether or not Gibson was justified in disciplining Ms. Laronde, but whether there was discrimination. The comparator was the Billy Cain incident, which occurred sometime in 1992-93. This was based on a rather vague recollection of Mr. Holt with no supporting documentation and which incident occurred well before Gibson's new disciplinary procedures took effect. I attach little weight to it.

[72] There remains the following incidents, all of which have comparators. These are the May 9, 1996 - Hisan incident; the June 6, 1996 and June 18, 1996 - late delivery; and the June 28, 1996 - final warning.

[73] Dealing first with the Hisan incident, the comparators are David Cleary, HW, RM and Scott McWilliams. In my opinion, all are valid comparisons in terms of the time frame in which they occurred and the similarity of the incidents. Dealing first with Hisan and Cleary, both were customer complaints, Cleary had no physical contact or verbal confrontation and there was no request that Cleary not return to the customer's plant. There was a request from the customer that he not be disciplined, but be spoken to.

[74] Cleary received a verbal warning. Ms. Laronde's final discipline was a note to file and an apology. In my opinion, Ms. Laronde's misconduct was much more serious than that of David Cleary. If her discipline was harsher, a conclusion that I do not necessarily accept, it was justified.

[75] As to Hisan and RM, both were customer complaints. In the case of RM there was no physical contact, but a concern that Gibson may no longer be used as a carrier. RM was loud and abusive to the customer's security guard. He was given a verbal warning and because this was not the first occurrence, he lost his good guy bonus.

[76] In my opinion, Ms. Laronde's actions were more serious than that of RM. But she only received a note to file. RM received a verbal warning and suffered a financial loss.

[77] As to HW, this was a customer complaint regarding unacceptable remarks HW made to a female employee of a Gibson customer. There was no physical contact, no request that he not return to the customer. At the time, HW had five previous incidents (no details given). He received a final warning and was required to give a written apology. On these facts, I do not consider that Ms. Laronde received harsher discipline.

[78] The case of Ms. Laronde and Scott McWilliams is hard to assess because there is no evidence about his conduct other than he had behavioural issues. He was given a final warning, was suspended for three weeks without pay, was put on probation for six months with no good guy bonus in that period. It would be very difficult to conclude on these facts that Ms. Laronde was more harshly treated than Scott McWilliams.

[79] In the result, I have concluded that the Hisan incident and the comparators, do not support a conclusion of adverse differential treatment for Ms. Laronde.

[80] The Commission argued that both Ms. Laronde and Steve Semple received final warnings, but Mr. Semple's actions were much more egregious. There is no common ground between these two fact situations. The events leading to the final warning are totally dissimilar. If they are to be considered similar situations, then to be treated more harshly, Ms. Laronde should have received more than a final warning and more three weeks suspension without pay.

[81] There remains to be considered the June 6, 1996 and the June 18, 1996 late delivery incidents. The comparator is Mike Rumble. In my view, this comparator is troublesome for Gibson. The facts of the incidents are very similar. They both involve late deliveries; all occurred within June 1996. In the June 6, 1996 incident, Ms. Laronde was late for a switch. There was no late delivery of the load to Honda. Her explanation appeared reasonable, yet she was given a major on the basis that a "late is a late". On June 18, 1996, Ms. Laronde was late for her window time. She did not appeal on the understanding that a late is a late.

[82] On the other hand, Mr. Rumble was late for his window time, because he left late. No explanation was given as to why. Yet this incident was treated only as a note to file. The onus is on Gibson to offer an explanation as to why this was so. The only explanation offered was that of Ms. Lawrence who said that the matter was dealt with and resolved by the dispatcher.

[83] In my opinion, this explanation does not satisfy the onus. Ms. Laronde was treated more harshly than Mr. Rumble on these two occasions for a late delivery. She was adversely differentiated in the course of her employment. Accordingly, I find that Gibson discriminated against her contrary to s. 7 (b) of the Act.

[84] Equally as significant is the fact that these two disciplinary offenses were a major factor in her termination. If Ms. Laronde had received the equivalent discipline to that given to Mr. Rumble then, as of June 28, 1996, her discipline record would show only one major offense, the hours of service violation, which would drop off on June 30, 1996, leaving Ms. Laronde with no major offenses. Thus, there would have been no occasion for Gibson to issue a final warning and the culminating major offense of September 27, 1996 would not have been a culminating event leading to her termination.

(ii) Sexual Harassment - s.14 of the Act

[85] When Ms. Laronde received her final warning on July 3, 1996, she wrote a letter to Gibson the same day to say that she was very concerned that she had three major incidents and faced

termination. She requested that she be transferred from the U.S. board to one of the other driver boards, Gibson agreed to her request and she was put on the floater board.

[86] In her evidence, Ms. Laronde said that the reason she wanted off the U.S. board was because she felt that she was regularly being tracked on the satellite system and this had led to her accumulating the recent number of disciplinary offenses that put her on the edge of keeping her job. Because only trucks running on the U.S. board had the satellite system, once off the U.S. board, Ms. Laronde thought that her problems would end.

[87] The satellite system is a two-way communication between the U.S. dispatch office and the driver. The message that is sent out from the office appears on an LDS screen in the truck and can only be read on that screen. The driver can respond to the message by using the keyboard in the truck. The satellite system is operated by the dispatcher for the U.S. board and is located in a separate dispatch room in the Gibson office.

[88] The satellite system can be used to track the location of each Gibson truck on the U.S. runs, how far it has gone, how long it has been on that run, whether the truck is parked, whether the ignition is on or off, etc. A paper copy of all the messages sent and received by the satellite can be printed but this is not normally done unless there is a reason to do so.

[89] Both Ms. Laronde and the Commission agreed that the allegations of sexual harassment relate to the conduct of Steve Holt only and no one else at Gibson. When Ms. Laronde joined Gibson, Mr. Holt was a driver on the U.S. board. In September 1994, Mr. Holt moved from driver to become the night supervisor. As the night supervisor, Mr. Holt was not a dispatcher and had no supervisory or disciplinary control over the drivers. His main responsibility was to prepare the billing and payroll for the accounting staff to work on in the morning. His other function was to deal with problems that drivers may encounter during the night shift or deal with customer inquiries during that period. Mr. Holt could direct a driver if there was a clear need to do so, but that was the extent of his authority.

[90] The evidence is undisputed that Mr. Holt resigned as night supervisor near the end of September 1995, and went back as a full time driver on the U.S. board. He left Gibson on April 19, 1996, to become a coach driver. There was no contact between Ms. Laronde and Mr. Holt after that date.

a) Alleged Incidents of Sexual Harassment

1. The trip envelope - Did you make coffee for Steve

[91] There is a drivers room at the Gibson offices with a large table and chairs. Drivers would use the room to sit and drink coffee, tell stories and generally socialize in a work context. The drivers room also has individual mail slots for each driver located on one of the walls.

[92] Each driver has a large manila envelope, their "trip envelope" with their name and employee number which is kept in their mailbox. When they finished a run, they would put their paperwork inside their trip envelope, and put the envelope into a large bin in the room used by all the

drivers. The paperwork would go to the accounting office to be processed and the envelope returned to the driver's mailbox.

[93] Steve Holt had written on Ms. Laronde's envelope "Did you sign your bills" and "Did I make fresh coffee for Steve?" She testified that Mr. Holt bragged that he was a "man's man" and a woman is subservient to him. Every time she handed in her paperwork, there was Mr. Holt's reminder to her of her subservient position. Ms. Laronde did not give any time frame for this.

[94] Mr. Holt agreed that he had written this, but his explanation was that drivers would come into the drivers room and fill their thermos with coffee. If there was no coffee available, they would complain to him. He said that he made probably 50 to 60 pots a week. His recollection is that probably Ms. Laronde came in, complaining that there was no coffee and that was his response.

[95] Mr. Holt also testified that everybody had access to the trip envelopes and drivers would often write comments on other driver's envelopes. Some were rude or vulgar, other comments related to a driver not refueling or cleaning their truck. Often drivers' nicknames were written on their envelopes identifying their distinguishing attributes such as Eddy the human tripod, Billy long dong, Old fart, Newfie, etc. The driver's mailboxes were open to everybody and often such things as woman's underwear, jockstraps, cheese, tools would be found there. He also pointed out that a driver could go through an envelope a week, depending on how much paperwork they stuffed in it. If it got torn, they would get a new one, by asking anyone in the office.

[96] Mr. Holt said that Ms. Laronde never complained to him about what he had written on her envelope and she could easily have replaced it with a new envelope. Ms. Lawrence also said that Ms. Laronde could have asked for a new envelope at any time. Ms. Laronde agreed that she could have done so, but she choose not to, even after Mr. Holt had left Gibson.

2. The encounter on the fuel tank

[97] Ms. Laronde testified that Mr. Holt would often boast in the drivers room about his exploits on the road. He was a storyteller. Ms. Laronde recalled that not long after she started at Gibson, she walked into the drivers room and Mr. Holt was there recounting one of his exploits to some of the other drivers. He was driving for Zavitz Transport. He went to a bar, met a lady in the bar and the two of them went outside and they had sex on the fuel tank of his truck. He told how her husband came out of the bar and he and the husband got into a fight in the parking lot.

[98] Mr. Holt's version was that he was in a bar, came outside and got tangled up with some woman out there. As he described it, she was on the fuel tank of his truck and they were fooling around. A car pulled up, the passenger door flew open, this little old man sitting in the car told her to get in the car and away they went.

[99] Mr. Holt could not recall whether he told this story in the drivers room or on the CB radio. Nor could he recall if he told in the drivers room and whether or not Ms. Laronde was there at the time. She never complained to him that this tale was inappropriate or unwelcome.

[100] Mr. Holt described the drivers room as having the character of a men's locker room. There were a lot of jokes told, hooting and hollering, vulgar language and things like that. Drivers would talk about things they had seen going down the road. According to Mr. Holt it is quite amazing what a driver sees going down the road sitting ten feet up off the highway inside the truck, from things that are comical or funny to outright sexual goings on in the front seats of cars. Drivers would often retell these experiences. In his view, his story was like many stories told in the drivers room.

[101] Mr. Holt said that truck drivers are storytellers. "Ninety percent of what a truck driver tells you is bullshit and the other ten percent is questionable. You never knew what was true or not, so you never put much stake in it."

3. Working the parking lot - satellite message

[102] Ms. Laronde testified that she was on a U.S. run and stopped at her usual truck stop to sleep. She received a satellite message from Mr. Holt asking, "What are you doing? Working the parking lot?". In her view, Mr. Holt was suggesting that she was trying to make extra money by working the parking lot as a prostitute. Her evidence is that that this occurred in November/December 1995. Ms. Laronde said that she was very upset by this message. She did not send a return message or speak to Mr. Holt about it. Mr. Holt did not recall sending the message.

4. The Chris Reid message

[103] Chris Reid was an owner/operator for Gibson and a friend of Ms. Laronde. Ms. Laronde testified that Mr. Reid was returning from a U.S. run and had contacted Mr. Holt to see if there were any drivers in the area that were running home. Drivers like to run together, because it makes the time go faster and keeps them more alert. Mr. Holt sent her a satellite message, "Chris Reid is waiting for you in Tilbury with a chub on. Hurry." When she arrived at Tilbury, Mr. Reid was in his truck. She knocked on his truck door, told him that she had received a message to meet him there. She then bought them both coffee at Tim's and they headed back to Alliston in their trucks.

[104] While they were driving back, Mr. Reid told Ms. Laronde on the CB radio that he had checked the message in her truck while she was buying the coffee. The reason he did that, he told her, was because when he first asked Mr. Holt about a driver in the area, Mr. Holt insinuated that Mr. Reid wanted Ms. Laronde for sex. Mr. Reid told her that he vehemently objected to this suggestion and told Mr. Holt so. Mr. Reid wanted to check the satellite message from Mr. Holt to see exactly what the message said. Ms. Laronde's evidence was that this incident occurred in September 1995.

[105] Mr. Holt recalled sending this message, but his recollection of the facts was somewhat different. According to Mr. Holt, Mr. Reid was in the U.S. dispatch room and told him that they were running a switch. He asked where Ms. Laronde was and asked Mr. Holt to tell her that he will meet her there with a chub on.

[106] Mr. Holt's understanding of the situation was that Ms. Laronde and Mr. Reid were good friends and this comment was just a joke. Mr. Reid just wanted to meet up so they could run together.

5. Bob Watt - sharing her bunk with Chris Reid

[107] Bob Watt testified that Ms. Laronde had complained to him that one night she received satellite messages from Mr. Holt that she did not consider appropriate. Mr. Watt went to the U.S. dispatch office and read the satellite message printout. The one that stuck out in his mind is a message about Ms. Laronde sharing a bunk with Chris Reid. Mr. Watt said that the message must have been sent by Steve Holt, because he was the night supervisor. Mr. Watt could not remember whether any names appeared on the message, but he says he knew who the message was sent to because it had the truck number.

[108] Mr. Watt's recollection was that he saw these messages sometime in January, February or March 1995. In cross-examination, Mr. Watt said that he could not pin down the exact date, but he thought it was sometime in the mid-nineties. More specifically, it was within a year of him being terminated by Gibson. He was actually terminated on May 22, 1996, and agreed that these messages could have been sent somewhere between May 1995 and May 1996.

6. John Hepburn - stay at home on back with legs open

[109] John Hepburn was a friend of Ms. Laronde at Gibson and worked as a driver at Gibson from 1993 to 1999. He testified that Ms. Laronde had spoken to him and was upset sometimes about the satellite message Mr. Holt sent to her, and derogatory remarks that he made to her. He also testified that Mr. Holt always spoke to him that Ms. Laronde "should stay home lying on her back with her legs open and not be out driving" and that Ms. Laronde had a "nice ass". When Mr. Holt said this to him, there were other drivers in the drivers room. Mr. Hepburn could not recall whether Ms. Laronde was there when Mr. Holt supposedly made these comments. Nor did he say that he passed on these comments to Ms. Laronde. Ms. Laronde did not give any evidence that she heard these remarks or was told about them. Mr. Hepburn did not give any time frame for these comments. He did not see any of the satellite messages.

[110] Mr. Holt denied making those comments. His evidence was that this is a comment that Mr. Hepburn was more likely to have made and he might have agreed with it. It is not something that he would have said.

7. Gary Kitchener - have that bitch fired

[111] Gary Kitchener was also a friend of Ms. Laronde at Gibson and worked as a driver from 1994 to November 1995 when he was terminated. Mr. Kitchener testified that, in the summer, 1995, Ms. Laronde told him that Steve Holt had sent her harassing and sexual messages over the satellite. He also recalled an occasion when he was in the drivers room with some other drivers. Mr. Holt came in and was upset with Ms. Laronde and said that "I am going to have that bitch fired. I'm tired of her being here". Ms. Laronde was not in the drivers room at the time.

[112] Mr. Kitchener felt that Mr. Holt should not have said that, especially in front of the other drivers. He wrote down the time and date and when he saw Ms. Laronde about a month later, he told her about this. He did this because he was concerned about Ms. Laronde's safety and her job. At the hearing, Mr. Kitchener could not remember the exact date, but believed it to be in July/August 1995.

[113] Mr. Holt denied making this comment. As night supervisor, he did not have any authority to discipline a driver and certainly lacked the ability to fire any employee of Gibson.

8. Satellite tracking

[114] Ms. Laronde testified that she felt that Mr. Holt spent a lot of his time tracking her every night on the satellite. She gave three examples of this, one in early 1996 when she was driving back from the U.S. in a very bad storm, and she received a satellite message from Mr. Holt: "Do you realize it has taken you nine hours to go 235 miles?" She testified that this was very upsetting for her because she had made great efforts to deliver the load safely and felt that Holt had belittled her professionalism in getting to where she was and still being on the road in the face of severe and icy road conditions. When asked about this, Mr. Holt said it was probable that he sent this message, but not in 1996, maybe a year earlier.

[115] Ms. Laronde also referred to satellite printouts which showed that Mr. Holt had been tracking her on June 15, 1995, the night she took the truck home and which led to her losing half of her good guy bonus.

[116] On another occasion, Ms. Laronde was on the final leg of U.S. run from Vincennes and had planned to stop for four hours sleep in Orangeville. She received a satellite message from Mr. Holt telling her to bring the truck back to the Alliston yard. Ms. Laronde was scheduled to be back in the yard much later, between 6:30 a.m. and 7 a.m. and with the four hours sleep, she would have made it well in time. She replied that she was beyond her logbook hours, but Mr. Holt sent another message that he wanted the truck back right away. Ms. Laronde parked the truck at Orangeville between two other trucks and slept for four hours.

[117] Mr. Holt well remembered this incident. Gibson needed Ms. Laronde's truck and he had given her various options. In the end, he arranged for a switch driver to pick up her truck and allowed Ms. Laronde sleep time so she did not go over hours. He also arranged for her to drive a day cab to the Gibson yard in the morning and for someone else to pick up her gear, which did not fit in the day cab.

[118] As to Ms. Laronde's allegations, Mr. Holt's evidence was that he would only track a driver on the satellite if there was a need to do so. He tracked the truck not the driver when he was the night supervisor, and he did not follow Ms. Laronde on the satellite system any more than any other U.S. driver. It was his experience that any driver who drives a satellite truck feels that they are being tracked.

[119] Ms. Laronde testified that she felt intimidated by Mr. Holt. She said that she avoided Mr. Holt at all costs. If she returned from a run at night, she would not go into the drivers room to

complete her paperwork. Instead, she would complete it in the truck and would just go into the drivers room to hand in the truck key and paperwork. She would then leave as quickly as possible.

[120] In her evidence, Ms. Laronde said that she complained to a number of people at Gibson about what she considered to be Mr. Holt's harassing conduct. In addition to her friends at Gibson, such as Gary Kitchener, John Hepburn and Chris Reid, she also spoke to persons who she thought had supervisory authority and who could stop Mr. Holt's behaviour. At the time, there were no company policies or procedures that she knew of that she could refer to or rely on.

[121] The first person she said she spoke to around January 1996 was Mike Morton. He was Mr. Holt's supervisor. Mr. Morton told her that he didn't think there was much chance of anything being done about it, because of the close relationship between Mr. Holt and the Gibsons.

[122] Ms. Laronde then talked to Willie Teigesser, her dispatcher. She asked him if he had seen the satellite messages that were being sent to her and he said that he had. There is no evidence as to what messages he had seen. This was about a week after she had spoken to Mike Morton. She asked that Mr. Holt be told to stop sending her satellite messages that were not work related. Mr. Teigesser's response was the same as that of Mr. Morton.

[123] Ms. Laronde went to Bob Watt, the safety director at Gibson, she said, in early 1996. She told him that she was getting satellite messages from Mr. Holt that were uncalled for and were scaring her. She did not know what to do and was looking for some direction. Mr. Watt did not feel that he could do anything because he did not supervise Mr. Holt. He told her that Stacey Beckstead, who worked in the office, had had some problems with Mr. Holt as well, and suggested that Ms. Laronde speak to her. Ms. Laronde did discuss this with Stacey Beckstead who was not very forthcoming, but told her to raise it with her father, Rick Beckstead, Gibson's vice president of operations.

[124] Ms. Laronde testified that she met with Mr. Beckstead in his office in March 1996. She explained to him that she felt that Mr. Holt was harassing her over the satellite, and give him the example of the 235 miles/nine hours message. She told Mr. Beckstead that she wanted to do the best job she could, but Mr. Holt's interference was getting to be too much. Mr. Beckstead did not say anything or acknowledge anything at this meeting. Ms. Laronde testified that, after this meeting, Mr. Holt's behaviour changed. He would not speak to her directly and there was a lot of animosity.

[125] Ms. Laronde also spoke to Ms. Lawrence about Mr. Holt after Ms. Lawrence started at Gibson. Her evidence was that this took place in April or May 1996. Ms. Lawrence confirmed that Ms. Laronde had raised this question with her, not in 1996, but in August, 1995, shortly after she became Human Resources Manager. Ms. Laronde told her that Mr. Holt was sending her offensive messages on the satellite and making crude comments about her in the drivers room. Ms. Lawrence said that she would speak to Mr. Holt which she did. She told him about Ms. Laronde's concerns and he denied that anything like that had happened. They discussed the question of harassment, how it was not condoned by the company and that if it was happening, it

must stop, Ms. Lawrence also told Mr. Holt that in the event there were incidents of any kind with Ms. Laronde, he was not to deal with her directly, but refer them to Ms. Lawrence.

[126] Ms. Lawrence reported back a short time later and told Ms. Laronde that she has spoken to Mr. Holt, that he had denied doing these things and that he agreed to have contact with Ms. Laronde only if necessary for operational requirements. According to Ms. Lawrence, Ms. Laronde seemed to accept this and that was the end of it. She never heard another thing from either party regarding harassment. To the best of her knowledge, there was no further contact between Ms. Laronde and Mr. Holt.

b) The Law - Sexual Harassment

[127] Section 14 of the Canadian Human Rights Act makes it a discriminatory practice to harass an individual on a prohibited ground of discrimination. Under s.14(2) sexual harassment is deemed to be harassment on a prohibited ground. The Act does not define what constitutes sexual harassment, but there are a number of judicial decisions that deal with this. The leading decision is that of the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252. In this case, the Supreme Court defined sexual harassment as being "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. (p.1284) The Court went on to describe sexual harassment as "demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. (p.1284)

[128] Later court decisions have particularized the types of conduct that are considered to be sexual harassment. In this regard, the Federal Court in *Canadian Human Rights Commission v. Canadian Armed Forces and Kimberley Franke*, [1999] 3 F.C. 653 (FCTD), referred to Professor Aggarwal's book, *Sexual Harassment in the Workplace*, 2d.ed. (1992), in which Professor Aggarwal suggests that sexual harassment may be grouped into three categories, verbal, physical and psychological. Verbal would include unwelcome remarks, jokes that might cause embarrassment; gender based insults, telephone calls or other types of conversations or messages with sexual overtones. Physical implies just that, grabbing, mugging, patting, brushing against etc. Psychological can involve persistent intimate proposals, propositioning, promising favors for sex.

[129] The Court in *Franke* also spoke of other factors that may be considered. Once it is found that the conduct is sexual in nature and unwelcome, unless it is a single, serious incident there must be an element of persistence or repetition for the conduct to be sexual harassment. The more serious the conduct and its consequences, the less repetition is necessary. The less serious the conduct and its consequences, the more persistence must be shown.

c) Analysis and Conclusion

[130] It is against this legal backdrop that I now consider the incidents that the Commission and the complainant have alleged to constitute sexual harassment.

[131] There are issues of credibility both for some of the incidents of alleged harassment and with respect to the dates of Ms. Laronde's efforts to have management deal with her complaints about Mr. Holt.

[132] Dealing first with the incidents, they are three in number. The first is the "working the parking lot" satellite message, that Ms. Laronde claims Mr. Holt sent her in November/December 1995. Mr. Holt was not the night supervisor at that time. When this fact was put to Ms. Laronde, she speculated that Mr. Holt, a driver at that time, could have gone at night to the U.S. dispatch office, on his time off and sent her that message. Ms. Laronde was not willing to revise her estimate of the date that she received the message (unlike what she did for other incidents for which she initially gave that had the wrong time frame).

[133] Given these facts, there are three possible conclusions. Ms. Laronde did not receive the message. She did receive it, but it was not sent by Mr. Holt. She did receive it, but had the wrong date, which she was not willing to concede. In my opinion, her speculation as to how it came to be that Mr. Holt sent the satellite message is just not credible. The burden is on the Commission and the complainant to establish that this message was sent by Mr. Holt. In my opinion, the evidence does not show this and I can not take this incident into account in determining the question of sexual harassment.

[134] As to the John Hepburn, "stay at home on her bed with her legs open", there is a conflict in the evidence. Mr. Holt denied making these comments. Mr. Hepburn did not give any time frame for the alleged comments. He could not recall whether or not Ms. Laronde was present when these comments were made. Nor could he recall whether he passed these comments on to Ms. Laronde while she was employed at Gibson. He was a friend of Ms. Laronde at Gibson and as such has an interest in supporting her position.

[135] On the other hand, Mr. Holt, in his evidence was willing to admit that he had sent certain satellite messages to Ms. Laronde; that he had told the encounter on the fuel tank story. He also agreed that he had sent the 235 miles/nine hours satellite message and even provided a date which made it believable, as opposed to the date that Ms. Laronde had given on the question of credibility, I prefer Mr. Holt's evidence over Mr. Hepburn.

[136] Finally, there is Mr. Watt's evidence that he read a printout of a satellite message sent at night by Mr. Holt about Ms. Laronde "sharing the bunk" with Chris Reid. Initially, Mr. Watt's recollection was that he saw this message sometime between January-March 1995. When cross-examined, he changed his evidence to say that he saw it sometime in the mid 90's, possibly between May 1995 and May 1996. Obviously this time frame is problematic because Mr. Holt was not the night supervisor after September 1995. Further, Ms. Laronde who would have received this satellite message and who had a very good recollection of satellite messages that she had received from Mr. Holt, made no mention of this in her evidence. Finally, there is no context for this message or what would have prompted Mr. Holt to send this message, either in January-March 1995 or in May 1995 and May 1996.

[137] In my opinion, the appropriate conclusion is that there were not two "Chris Reid" satellite messages. Rather, Mr. Watt, in his recollection, has confused this satellite message with the

"Chris Reid" satellite message referred to in Ms. Laronde's evidence. This evidence is not credible and should not be taken into account on the question of sexual harassment.

[138] As to the Vincennes satellite message, Ms. Laronde said she received it in February 1996. She later changed this date to February 1995. However, she maintained that she received the 235 miles/nine hours satellite message in early 1996.

[139] Ms. Laronde was also very confused about the time frame when she spoke to management. Initially, her evidence was that she had spoken to all the persons mentioned, from Mike Morton, in early January 1996, through to Ms. Lawrence in April/May 1996. But when she was cross-examined, she tied these conversations to the date that she filed her complaint with the Commission, namely, in August 1996. Her revised evidence was that she had met with Mr. Beckstead in July/August 1996; Mr. Teisegger in March 1996 and Mr. Morton, a couple of weeks later.

[140] It is difficult to resolve the conflicts in this evidence. If these conversations had taken place in 1996, Mr. Holt was long gone from the position of night supervisor. He left Gibson in April 1996. If I accept Ms. Lawrence's evidence that the harassments stopped in August 1995, how can one explain the Chris Reid satellite message which was sent in September 1995.

[141] In spite of the conflicts, I think that the evidence does support the conclusion that Ms. Laronde did speak to the management persons referred to above. Gibson did not seriously challenge this. I have concluded that these discussions did take place sometime either in 1995 or 1996 or both.

[142] There remains four incidents to consider on the issue of sexual harassment. The first is Mr. Holt writing on Ms. Laronde's trip envelope, "Did I make fresh coffee for Steve?" Ms. Laronde considered it to be a constant reminder of her subservient position. No doubt, this can be interpreted as belittling, as suggestive of a "woman's place". It could be characterized as having gender implications, rather than being sexual in nature. But, for the purposes of this analysis, I will assume it to be conduct having sexual connotations.

[143] The "meet Chris Neil, he is waiting with a chub on" satellite message clearly has sexual implications. Mr. Holt agreed that he sent it, but on the urging of Mr. Reid, a good friend of Ms. Laronde. Ms. Laronde's account is otherwise. I need not choose between the two versions. Mr. Holt was in control of the satellite messaging system and it was his decision to send the message. If Gibson wanted to show that this message was not unwelcome, that it was just a joke between friends, Gibson could have called Mr. Reid as a witness.

[144] Thirdly, there is the encounter on the fuel tank. Ms. Laronde testified that she was in the drivers room when Mr. Holt told it. She was offended by the story. Mr. Holt's description of the drivers room, could lead one to conclude that it had somewhat of a ribald atmosphere. This is not to say that Ms. Laronde was a willing participant, but the evidence is that, from time to time, she was not immune from such goings on.

[145] I refer to two events in evidence, the 1995 Gibson Christmas after-party and Bob Gauley's birthday celebrations at Crossroads. After the Christmas party, a number of drivers, including Ms. Laronde, had taken rooms at the Red Pines Inn in Alliston. They assembled in Ms. Laronde's room and at one point in the festivities convinced a very inebriated Bob Gauley to put on Ms. Laronde's party dress (which she had changed out of) which he did, complete with corsage and tinsel. Pictures were taken and shown around the Alliston yard by Ms. Laronde and others, much to the consternation of Mr. Gauley, but to the amusement (Mr. Gauley was quite a large man) of the other drivers.

[146] On another occasion, a number of drivers, of which Ms. Laronde was one, celebrated Bob Gauley's birthday by taking him out for dinner and after to Crossroads, a strip club in Barrie. Ms. Laronde said that much of the entertainment was getting lap dances for Mr. Gauley. She agreed that this involved a near naked woman sitting on Mr. Gauley's lap. Ms. Laronde contributed to the pool of money to pay for the lap dancers.

[147] In referring to these instances, I am not suggesting that Ms. Laronde accepted or condoned conduct of a sexual nature in her workplace. Rather, from this evidence, it seems that Ms. Laronde was comfortable with a certain level of conduct which had sexual connotations.

[148] As Mr. Holt said, truck drivers are story tellers. He was telling a story, boasting about one of his sexual exploits. This does have a sexual connotation. But the story was not directed to Ms. Laronde, nor was she the object of the story.

[149] Gary Kitchener's account of Mr. Holt's saying about Ms. Laronde, that he was going to "have the bitch fired", is offensive and demeaning to women. This was not said to her directly, but was reported to her by Mr. Kitchener about a month later.

[150] Ms. Laronde also complained about Mr. Holt tracking her on the satellite. Ms. Laronde identified three occasions, the June 1995 taking the truck home; the run back from Vincennes; and, the 235/nine hours satellite message. I do not see any sexual connotations or sexual nexus in any of these three events. Mr. Holt's evidence was that he tracked the truck, not the driver. He would only track the driver on the satellite if there was a need to do so. A good example of this is the Vincennes satellite messages. Mr. Holt sent these messages because Gibson required Ms. Laronde's truck back well before the scheduled time.

[151] There is no evidence as to why Mr. Holt sent her the message about the amount of time it took her to go 235 miles, or why Ms. Laronde was tracked when she took her truck home. On the other hand, there is no evidence that Ms. Laronde was tracked on the satellite any more than any other Gibson driver. In my opinion, none of these three incidents can be characterized as sexual in nature.

[152] After this analysis, there remains four incidents that may be considered as being sexual in nature. These are, the trip envelope; the encounter on the fuel tank; the Chris Reid incident; and, having the bitch fired. As noted earlier, unless the conduct is very serious, a single incident or isolated incidents of offensive sexual remarks generally do not create a hostile or detrimental work environment. In my opinion, none of these remarks considered individually are so severe as

to have this effect. Nor, taken collectively, do these remarks present a persistent pattern of offensive conduct. The evidence is that they were spread over at least 18 months from March 1994 to September 1995.

[153] For these reasons, I have concluded that the Commission and the complainant have failed to establish a contravention of s.14 of the Act.

iii) Failure to be Promoted to Owner/Operator

[154] The final element of Ms. Laronde's complaint is that she was not selected to be an owner/operator. Owner/Operators are another category of drivers at Gibson. They are licensed AZ drivers who own their own tractor truck, pay for their fuel costs, licence plate, insurance, a portion of the WSIB premiums and part of their benefits package.

[155] Gibson's practice is to contract with owner/operators for one year, which is automatically reviewed unless notice is given two weeks prior to expiry. But either party can terminate at any time on two weeks notice. Under the contract, the owner/operator agrees to provide services exclusively to Gibson. The owner/operator is the primary driver of the unit, with exceptions made for vacations or illness, or some other unforeseen situation. In such cases, relief drivers could driver the unit. Owner/operators drive only on the U.S. board.

[156] Around January 1996, Ms. Laronde had told Ms. Lawrence that she was interested in becoming an owner/operator. She was told to put her name on the list to make sure that management knew of her interest and then wait.

[157] According to Ms. Laronde, Rick Beckstead called her on March 28, 1996, and asked her if she was still interested in becoming an owner/operator. He told her that Gibson would be hiring out of the driver pool and she was being considered. Ms. Laronde understood that if she could meet the criteria, she would be selected. She had spoken to a truck dealer, earlier in January 1996, in anticipation of becoming an owner/operator.

[158] However, on March 29th, the very next day, Mr. Beckstead told her that he didn't need her to go and buy a truck now. She learned that Gibson has selected four drivers, Scott Armstrong, Chad Horan, Ken Johnson and Warren Snell to become owner/operator.

[159] She also testified that in August 1996, Gibson selected three more drivers to be owner/operators. Norrie Sarcen was one of them but she could not recall the others. Ms. Laronde was not even considered. She was not, said Ms. Lawrence, because her overall performance was not up to company standards. Also, she was not on the U.S. board. Owner/Operators only run to the U.S.

[160] There was always a certain number of drivers at Gibson who wanted to own their vehicle. Prior to 1996, there was nothing to which drivers could refer to tell them how go about becoming an owner/operator with the company. In 1996, after discussions with the owners, Ms. Lawrence prepared a document called "Broker Requirements". This set out certain criteria that must be met before a driver would be considered, including, presently running to the U.S.; good attitude;

ability to finance a new truck of certain dimensions and color; and full time with Gibson for a minimum of two years.

[161] The Broker Requirements were viewed by the owners as a starting point and they reserved the right to make the final decision. as to who and when they would select an owner/operator.

[162] Ms. Lawrence's practice was to compile a list of drivers who were interested in becoming an owner/operator when an opportunity came up, she would give the list to the drivers who would make the selection. In the case of the drivers selected in March and August 1996, Bing Gibson made the decision.

[163] Ms. Lawrence agreed that the Brokers Requirements did not specify that a driver's incident record is to be considered. But she did say that an owner/operator has to be operationally sound. They have to be reliable, know the company's policies and procedures and follow them. A driver who does not have a good record would not be accepted as an owner/operator because they had not proved themselves as a company driver.

[164] Bing Gibson gave evidence as to how he made the decisions. For him a driver gets to be an owner if they have a good personality. They have to be on time every time. They must be able to finance the truck and handle the payments. They should be mechanically inclined and be able to repair their trucks. This is an important factor for operating costs which impacts on whether or not an owner/operator will be successful.

[165] As to the four owner/operators, Chad Horan has been with Gibson since November 10, 1994. Bing Gibson knew his grandfather and his father and he knew Chad personally. He is the nephew of Leonard Gibson, one of the Gibson owners. According to Bing Gibson, he grew up around Gibson and was an automatic choice.

[166] Warren Snell was originally hired by Gibson in September 1988. Bing Gibson said that he was brought on as an owner/operator because he liked the area that Mr. Snell came from, Mona. Mr. Snell is also a heavy equipment operator and understands heavy equipment. He has not caused the company any problems. He had the backing of his father and his house was paid for. He was on time every time which is very important to Gibson.

[167] Scott Armstrong started as a driver with Gibson on April 29, 1994. Bing Gibson knew and had done business with his father. He had known Scott Armstrong's family for 15 years before he came to work for Gibson. They were farmers, good people and there was no reason why, said Bing Gibson, he would not choose him as an owner/operator.

[168] Ken Johnson started at Gibson in 1992. Bing Gibson's comments about Mr. Johnson were that he often saw him cleaning and polishing his truck when he was at home. He spent a lot of time making sure it was immaculate. Bing Gibson was impressed with that. Mr. Johnson was always on time. He had financial backing.

a) Analysis and Conclusion

[169] The Commission argued that, having regard to the Broker Requirements, Ms. Laronde was as qualified as any of the four chosen to be owner/operator, the only distinguishing factor being that she is female and the others are male.

[170] The Commission argued that the logical inference is that Ms. Laronde did not get to be an owner/operator was because of her gender. In support of this argument, the Commission referred to two cases, *Basi v. CNR* (1988), 9 C.H.R.R. D/5029, and *Stakes v. Rex Pak Limited*, (1982) 3 C.H.R.R. D/1001.

[171] The principle derived from these cases is that, if the complainant had the qualifications for the position and somebody else, no better qualified, but lacking the distinguishing characteristics of the complainant, was hired, there is an obligation on the employer to provide a credible explanation as to why the complainant was not hired.

[172] The facts are that none of Ms. Laronde, Mr. Horan, Mr. Armstrong or Mr. Johnson met all of the Broker Requirements. As of March 1996, Ms. Laronde, Mr. Horan and Mr. Armstrong had not been full time employees for two years. According to Ms. Laronde, Mr. Horan and Mr. Johnson were not running to the U.S. at that time. The qualifications of Mr. Snell were not challenged.

[173] Assuming that the Broker Requirements were more than just guidelines, the question is whether or not Gibson exercised its discretion in a discriminatory manner in choosing these three individuals and not Ms. Laronde when none of them met all of the criteria in the Broker Requirements.

[174] Bing Gibson's evidence was that Chad Horan was a nephew of the owner. He was family. He grew up around Gibson. He was an automatic choice. Bing Gibson knew Scott Armstrong's family. He had business with his father and grandfather. They were good people. Ken Johnson took exceptional care of his truck and that impressed Bing Gibson. He was always on time. He had financial backing.

[175] These explanations may not be the basis upon which others would decide. But for Bing Gibson, from a business point of view, these considerations were important. In my opinion, there is nothing in this evidence that can be construed as a pretext for not selecting Ms. Laronde because of her sex. Thus, I have concluded that Gibson did not discriminate against Ms. Laronde and did not contravene s.14 of the Act.

III. REMEDY

A. WAGE LOSS

[176] When there is a finding of discrimination, it is incumbent on the Tribunal in providing a remedy to make whole the victim of the discriminatory practice, taking into account principles of

foreseeability, remoteness and mitigation. *Canada v. Morgan*, [1989] 2 F.C. 401 (C.A.) and *Canada v. McAlpine*, [1989] 3 F.C. 530 (C.A.)

[177] The Commission's position on wage loss is if Gibson had not discriminated against Ms. Laronde, there would have been no final warning and no basis for terminating her employment on October 2, 1996. The Commission urged that she be compensated for lost wages and the compensation period should be 29 months, the period that Ms. Laronde worked at Gibson.

[178] The respondent Gibson, relying on the principles of reasonable notice derived from wrongful dismissal jurisprudence, suggested that two and one half months would be appropriate.

[179] In *Morgan*, the Court of Appeal pointed out that principles of wrongful dismissal should not be imported into human rights cases when determining compensation. This is because the liability of the employer for wrongful dismissal arises out of the failure to give proper notice, not because of discriminatory treatment. The source of the liability is different and so should the consequences.

[180] As to the submission of the Commission, it fails to take into account relevant intervening facts. The evidence is that Ms. Laronde successfully completed her probationary year and presumably was incident free. As Gibson's counsel pointed out, this was also true for the period from June 1995 to May 1996. But from May 1996 to September 1996, that there was a noticeable spike in the number of disciplinary offenses. Ms. Laronde was building a disciplinary record that was putting her job in jeopardy.

[181] As of October 2, 1996, Ms. Laronde had three majors, two hours of service violations and a failure to inspect the load. According to the company's Rules she was open to termination. But the evidence is that Gibson did not apply the Rules strictly, especially for termination. Another factor to consider is that the two hours of service violations would have fallen off Ms. Laronde's disciplinary record in a few weeks. The evidence also suggests that over hours violations were not considered as serious as other operational violations.

[182] Taking all these factors into account, it is my opinion that the appropriate period for calculating the wage loss is nine months. Ms. Laronde should be fully compensated for nine months from the date of her dismissal. From this should be deducted the income she earned from alternate sources.

[183] Ms. Laronde will be entitled to a lump sum payment on account of lost wages. This may well result in negative income tax consequences for her. It would unfairly penalize her if she were to suffer a more onerous income tax burden by receiving a lump sum payment now, than she would have incurred had the monies been paid to her as salary on an on-going basis between October 1996 and the date of payment. Accordingly, Gibson shall pay Ms. Laronde an additional amount sufficient to cover any additional income tax liability that she may incur as a consequence of receiving payment in this fashion.

B. SPECIAL COMPENSATION

[184] Section 53 (3) of the Act, as it stood in October 1996, provided for awards of special compensation for reckless or willful conduct, or for injuries to feelings or self-respect, to a maximum of \$5,000. There are no assertions that Gibson's conduct was reckless or willful.

[185] The evidence is that being terminated by Gibson put Ms. Laronde in a very difficult position. She had no job, was a single parent with three children to support. Her mother, who was unable to live on her own, also lived with and was supported by Ms. Laronde. The stress, that she suffered because of job loss, was compounded by the financial pressures she now faced.

[186] Ms. Laronde testified that she immediately began looking for work as a driver. She was not able to find full time work that paid her similar wage rates to Gibson. The full time work that she did obtain was not for the long term.

[187] In all of the circumstances, I award Ms. Laronde \$5,000 for special compensation.

C. INTEREST

[188] Interest shall be payable on the monies awarded for lost wages in accordance with Rule 9 (12) of the Tribunal's Interim Rules of Procedure. Interest should run from October 2, 1996 to the date of payment, and be calculated as the wages would have become payable to Ms. Laronde.

D. OUT OF POCKET EXPENSES

[189] Ms. Laronde should be reimbursed for the out of pocket expenses incurred as a result of the discriminatory practice including expenses incurred for the hearing of her complaint.

[190] If the parties are unable to agree within 30 days of the date of this decision as to the quantification or implementation of any of the remedies awarded hereunder, I retain jurisdiction to deal with these matters.

J. Grant Sinclair

OTTAWA, Ontario

November 7, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL
PARTIES OF RECORD**

TRIBUNAL FILE: T712/1702

STYLE OF CAUSE: Michele Laronde v. Warren Gibson Limited

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APPEARANCES:

Michele Laronde On her own behalf

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John Saunders For the Respondent