Citation: ***K. P. v. Canada Employment Insurance Commission*****, 2015 SSTGDEI 217**

Date: December 16, 2015

File number: GE-15-1070

GENERAL DIVISION - Employment Insurance Section

Between:

K. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Katherine Wallocha, Member, General Division - Employment Insurance Section

Heard by Videoconference on December 8, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

K. P., the claimant, did not attend the hearing via videoconference.

INTRODUCTION

[1] The claimant became unemployed on October 24, 2014. She filed for Employment Insurance (EI) benefits on November 15, 2014. An initial claim for EI benefits was established on October 26, 2014. The Canada Employment Insurance Commission (Commission) approved the claim for EI benefits however the employer sought reconsideration of the Commission's decision. Following the reconsideration of the Commission's decision the Commission determined that the claimant had not proven that she had just cause to voluntarily leave her employment in their letter dated March 9, 2015. The claimant appealed to the Social Security Tribunal (SST).

[2] The hearing was held by Videoconference for the following reasons:

a) The complexity of the issue under appeal.
b) The fact that the credibility may be a prevailing issue.
c) The fact that the claimant will be the only party in attendance.
d) The information in the file, including the need for additional information.
e) The availability of videoconference in the area where the claimant resides.

PRELIMINARY MATTER

[3] The claimant attended the videoconference hearing scheduled for August 25, 2015 and informed the Tribunal that she had recently been hospitalized and did not have an opportunity to prepare for the hearing. She requested an adjournment until early December 2015 in order to give herself time to deal with her medical issue which includes attending a six week treatment program and to properly prepare for the hearing. In the interest of natural justice, the hearing was adjourned.

[4] The hearing was rescheduled for December 8, 2015 however, the Notice of Hearing, which was sent by registered mail, was returned to the SST unclaimed on September 20, 2015. The Notice of Hearing was sent to the claimant again via regular mail on October 1, 2015.

[5] The claimant did not attend the hearing scheduled for December 8, 2015. She contacted the SST the same day and the conversation notes in the file indicate that the claimant explained that she got confused and missed her hearing and asked if she could have it rescheduled. The Tribunal attempted to reschedule the hearing for later that day and was prepared to change the hearing type from videoconference to teleconference in order to facilitate a rescheduled hearing. The claimant however, refused stating that if she did attend the telephone hearing it would be to simply ask for an adjournment because she was not prepared to proceed explaining that the six week treatment program that she hoped to get in is supposed to start sometime this month and she wishes to finish it before having her appeal heard. She asked for a new hearing date in March 2016 or later. She was advised to make a request in writing and include her reasons. She indicated that she would email the request.

[6] Subsection 11(1) of the Social Security Tribunal Regulations (SST Regulations) provides that a party may request that a hearing be adjourned or postponed by filing a request, with supporting reasons, with the Tribunal.

[7] The Tribunal waited more than a week for the written request for a subsequent adjournment but nothing was received.

[8] Subsection 11(2) of the SST Regulations states that if the Tribunal grants an adjournment or postponement at the request of a party, the Tribunal must not grant the party a subsequent adjournment or postponement unless the party establishes that it is justified by exceptional circumstances.

[9] Subsection 12(2) of the SST Regulations provides that the Tribunal must proceed in a party's absence if the Tribunal previously granted an adjournment or postponement at the request of the party and the Tribunal is satisfied that the party received notice of the hearing.

[10] While there was some difficulty in getting the first Notice of Hearing to the claimant, the Tribunal is satisfied that the claimant received the Notice of Hearing sent by regular mail

because she contacted the SST, on the day of the hearing, shortly after the scheduled hearing time to explain why she did not attend her hearing. Further, section 19 of the SST Regulations deems a document sent by regular mail is communicated on the 10th day after the day it is sent.

[11] The claimant indicated that she would be requesting a subsequent adjournment but, according the conversation notes in the file, she is using the same reasons as her initial adjournment request. She did not attend the six week treatment program she indicated she needed the initial adjournment for and therefore the Tribunal is satisfied that the claimant had plenty of time to prepare for her hearing. While the Tribunal recognizes that the claimant wishes for her hearing to be held after she has completed this program, she has not provided evidence that this program is required, she has not explained why she needs the treatment and why, without the program she was unable to participate in the hearing. Further, she has not explained why the treatment is necessary in order for her to prepare for and participate in the hearing or when the treatment program will take place and therefore, the Tribunal does not consider this to be exceptional circumstances and suspects that the claimant in engaged in procedural avoidance.

[12] Furthermore, paragraph 3(1)(a) of the SST Regulations states that the Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[13] For these reasons, the Tribunal denies a subsequent adjournment because the claimant did not provide reasons in writing and the reasons she did provide in the conversation notes are not considered exceptional circumstances. Additionally, as the Tribunal is satisfied that she received notice of the hearing, the Tribunal must proceed in the claimant's absence.

ISSUE

[14] The issue under appeal is whether the claimant had just cause for voluntarily leaving her employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act).

THE LAW

[15] Section 30 of the EI Act states, in part, that a claimant is disqualified from receiving benefits if the claimant voluntarily left any employment without just cause.

[16] Paragraph 29(c)(i) of the EI Act provides that just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including sexual or other harassment.

EVIDENCE

[17] The claimant applied for regular EI benefits stating that she quit her employment because of personal conflict. She explained that she had the personal conflict with the dispatch manager and a dispatcher stating that the dispatch manager discriminated and judged her by gender. She added that the dispatcher also judged her unfairly and tempers were not handled in a professional manner (Pages GD3-3 to GD3-8).

[18] The claimant explained the final event stating that she had already received a final written warning; was under a lot of stress and napped at a delivery point before departing to make it back safely. The next day the dispatcher called a meeting and the claimant stated that "I suspected I was going to be fired or written up yet again, so I decided to save the trouble and tensity [sic] and move on. It was later confirmed by [the dispatcher] of my termination by text message" (Page GD3-9).

[19] The claimant stated that she spoke with the people involved but her issues persisted; the dispatchers did not take blame for anything and used her as a scapegoat in order to not lose their bonuses. She further stated that the owner knew that she found it hard to fit in with everyone. The claimant did not consult any outside agencies because "I don't want to fight for a job I'm not happy or feeling stable and trusted or taken for granted and bullied around" (Pages GD3-9 and GD3-10).

[20] The claimant stated that she had looked for another job before leaving and had lined up a position from before starting this job (Page GD3-10).

[21] The employer submitted a Record of Employment (ROE) indicating that the claimant started working as a truck driver on June 12, 2014 and she quit her employment on October 24, 2014 accumulating 867 hours of insurable employment (Page GD3-18).

[22] The claimant explained that the dispatch manager was continuously hitting on her and when she advised her employer of the harassment, it stopped. She stated that once the dispatch manager realized he was not going to get anywhere with her, he started to treat her badly. She explained that he would give her difficult runs that she should not have been going on or he would comment that truck driving is a job cut out for men but not to worry because he would teach her how to drive. She stated that she had 10 years' experience and believes that the dispatch manager was angry with her because she would not date him (Page GD3-19).

[23] The claimant stated that the dispatcher would send all the drivers to sites that did not need to be filled with fuel. She explained that before doing a fuel run, measurements have to be taken on how much fuel will be required and once you start pumping fuel you cannot stop until the fuel truck is fully empty. The claimant stated that the dispatcher had sent her out five times with a truck that was overfull. She was therefore unable to empty the fuel and would not be able to do the job and she believes that it was done to make her look bad. The claimant added that the dispatcher did this to other drivers (Page GD3-19).

[24] The claimant stated that there was a lot of disorganized dispatching with disorganized runs and not dispatching on time causing drivers to be late for jobs. She further stated that when anything went wrong it seemed like the dispatchers would not take any blame for their mistakes but would try to make it look like it was her fault and the owner would only listen to the dispatchers. She added that she liked the work and the owner but could not handle the constant disorganization which was constantly coming down on the drivers (Page GD3-19).

[25] The claimant stated that she would sign off on the issues but it got to the point where she had stopped signing off on them because they were not her mistakes. She advised her boss that she would no longer sign off on mistakes that were not hers. She further advised the owner about the dispatcher's behaviour towards her but no action was taken. The claimant stated that this was a small family run business, no union and nowhere to be transferred but she did look for work (Page GD3-19).

[26] The claimant explained that her first write up was within the first 1.5 months after she started for the company and it was in regards to a spill. She stated that she did a fuel delivery and the truck she was using had a faulty hose. Another driver had notes on how to pump the

faulty hose but forgot to give them to her so she did not know that you had to pump the hose a certain way to prevent leaking. She did end up spilling less than 30 litres and poured sand on it and dealt with it properly but was still written up (Page GD3-19).

[27] The claimant explained the final event stating that the drivers set their own hours and as long as they request the times they want before midnight, everything is okay. The dispatcher wanted the claimant to work on Monday and was being really bossy about it. The claimant stated that the dispatcher refused to give her a dispatch sheet but demanded that she come in to work. The claimant stated that she would not work without a dispatch sheet (Page GD3-20).

[28] The claimant added that the week prior she had lost two family members and had to go deal with her losses. She stated that she received a text from the dispatcher telling her she was supposed to be at work. The claimant replied explaining why she was away but the dispatcher did not believe her and texted "LOL" (laughing out loud) about the claimant's situation; this upset her. The claimant stated that when she did go in to work, the dispatcher confronted her with paperwork that she signed but did not read it and felt enough was enough with this situation (Page GD3-20).

[29] The claimant continued stating that a meeting had been scheduled with the owner but the claimant did not want to go and cry in front of the boss or to discuss the circumstances as to why she was not at work the previous week and she advised the dispatcher why she would not be attending the meeting. She stated that she did not want to discuss her situation with the owner and the dispatcher when there really was not any work for her to do and she did not want to deal with the stress of the job while going through the grieving process. The claimant further explained that the dispatcher texted her back stating "you are going to be terminated so as of now you are terminated LOL" (Page GD3-20).

[30] The claimant stated she did not file a complaint about the sexual harassment because it is a small company and it would be their word against hers. She added that she does not have the time, does not care about it anymore and is over it; she just wants to get another job and move forward (Page GD3-20).

[31] The employer was contacted by the Commission and the owner stated that the claimant did not provide any reasons for quitting her job but he thought it was because she had a major accident on the job where she lost approximately 1100 litres of fuel at a job site and they have not seen her since that night. The owner stated that there was a possibility that the hose came off while the claimant was unfueling the truck but he stated that their trucks do not have faulty hoses as he does not run the company like that. The employer explained that it is the driver's responsibility to do a dip test before unfueling and if the truck is overfull they are not to unfuel (Page GD3-21).

[32] The owner stated that they have attempted to contact the claimant but she will not return their calls to discuss the matter. He was required to send out an evacuation crew to clean up the site. He further stated that he was not aware if there were any issues with the claimant and the dispatchers adding that he does know the dispatchers had a difficult time getting the claimant to come in to work. He stated that they would try to get her to come in for 7:00 a.m. but she often would not come in until 1:00 or 2:00 p.m. The owner added that the drivers set their own hours but most of the drivers come in at 7:00 or 8:00am. The owner stated that the claimant was first given a verbal warning and then a written warning (Page GD3-21).

[33] The owner stated that the claimant was advised upon hire that no passengers were allowed on trips as their insurance did not cover passengers. He further stated that drivers are supposed to give a set starting time each day and the company needs consistency in order to tell their customers when a load will arrive each day with most drivers starting at 7:00 or 8:00am. He stated that all instructions regarding work are sent to all drivers by text or email (Page GD3-22).

[34] The employer submitted a written notice dated and signed by the claimant on September 4, 2014. The claimant was written up for failing to follow company policy regarding proper conduct on the job. The incident was described as big spill, not proper clean up or notifying agent or dispatch and this is going to reflect in bonus with possible cost of clean-up. The claimant wrote on the notice that the "fitting at the tank needs replacing, attempted proper clean up and notification on time of wake" (Page GD3-24).

[35] The employer submitted a written notice signed by the claimant and dated September 16, 2014 stating that this notice serves as a second warning for failing to comply with Federal or

Provincial Safety Regulations. The incident that caused this warning was failure to follow instructions, failure to test required fuel in the ground before opening; spill 50 to 80 litres. A copy of unloading procedures was given to refresh and a note stating “if you require additional training please ask” (Page GD3-25).

[36] The employer submitted a written notice signed by the claimant and dated October 2, 2014 advising that this was her third warning for failing to comply with Federal and Provincial Regulations and failing to follow company policy regarding the safe operation of a commercial motor vehicle. The incident was explained as failure to do pre and post trip inspections daily resulting in being shut down at the scale for a flat tire off the rim and failure to make deliveries in a timely fashion (Page GD3-26).

[37] The employer submitted a warning notice signed by the claimant and dated October 17, 2014 advising that this was her final warning for failing to comply with Federal or Provincial Regulations by not following directions that were dispatched, not advising that she was going to be starting late, arbitrarily delivering fuel where she wanted, not communicating actions at the time, holding on to paperwork for a week, calling the customers, arguing that it is “no big deal” and misleading staff and management to avoid the consequences of her actions. This notice further stated that the claimant was required to comply with all Federal or Provincial Regulations and/or company policy and any further violations will result in termination of employment (Page GD3-27).

[38] The claimant was contacted by the Commission and she stated that she is not aware of an accident where 1100 litres of fuel had spilled. She explained that she is aware of a 30 litres spill, she put sand on it as per company safety procedures, pulled her truck away and remained on site and took a nap before going back. She did discuss this spill with her employer stating that she had contacted her employer after she quit explaining this is how he obtained her new address to send her the ROE. She added that she called the employer as well to see if she was going to receive another pay cheque and she was advised that they used her last pay cheque to clean up the spill (Page GD3-28).

[39] The claimant stated that her employer might not remember that the truck had a faulty hose because the incident happened approximately three months ago. The claimant explained

another incident where the seal on the hose was not right and the customer had to have the seal replaced but the customer was not happy and informed the employer about it the next day (Page GD3-28).

[40] The claimant explained that the dispatch work sheets would be sent out the night before with the work expected to be done by midnight the following night. She stated that she would sometimes leave to do the jobs anywhere from 3:00 to 5:00am and some days it would take her 12 to 14 hours to complete her shift. The time she chose when to do her jobs would be up to her (Page GD3-28).

[41] The Commission sent a letter to the employer dated January 6, 2015 informing that the claimant had been approved for EI benefits (Page GD3-29).

[42] The employer submitted a Request for Reconsideration stating that the claimant was given several chances to correct her performance and chose to ignore all warnings. The claimant left the job and never did return therefore, termination letter was never delivered (Page GD3-30).

[43] The employer submitted a notice of termination dated October 25, 2014 stating:

1. Failure to communicate with dispatch; the claimant was contacted three times on October 24, 2014 by dispatch because they wanted to find out why it took 4.5 hours to get to the first stop as the truck was preloaded the day before and they wanted to change her load but she failed to answer or call back.
2. Failure to communicate with dispatch or management to advise that she had a significant spill on October 24, 2014.
3. The claimant's actions required immediate attention. Due to the litre volume lost the claimant was required to report this matter to not only management but also Environment Canada.
4. It was brought to the employer's attention that the claimant was seen on many occasions with an unauthorized passenger; the insurance policy does not cover unauthorized passengers.
5. Due to the severity of this incident it is company policy and a requirement that drivers who have had repeated issues undergo mandatory drug screening.

[44] A hand written note on the notice of termination states that the claimant came in after the office was closed on October 27, 2014 and left her paperwork, cards, keys etc. and never returned so this notice was never given to her (Page GD3-32).

[45] The employer was contacted by the Commission and the owner stated that he disagreed with the Commission's decision because he felt that the claimant should not be entitled to EI benefits when she had voluntarily abandoned her job. The owner stated that they had prepared the load for the claimant to drive that day but the claimant failed to show up for work. He further stated that the claimant did bring up her concerns about the dispatch manager but she also said she had it worked out; there was no mention of harassment and he does not really have any more details since the claimant told him it was worked out. The owner said there was no mention about the dispatcher (Page GD3-39).

[46] The claimant was contacted by the Commission and she stated that on her last day of work on October 24, 2014, she dropped the truck off and went home for the day. She stated that she went in on Sunday to see if the schedule for next week was up and she noticed that she was not scheduled for any shifts. The dispatcher then asked her to come in on Monday but she did not want to show up because she knew she was going to be dismissed because the dispatcher sent her a text telling her that she was fired. When asked to explain why the dispatcher would text her telling her she was fired but then ask her to come in for a meeting, the claimant stated that maybe the text came in afterwards but it is not important as she was fired. She explained that the employer was trying to get rid of her and she had been given warnings about many mistakes that were not her own doing. The claimant stated that there is a sheet that she would complete to write down the time she wants to start work. The dispatcher would not give her that sheet and so she was not willing to go in to work if she was not scheduled (Page GD3-42).

[47] The claimant explained that she would sign off on the written warnings because she did not think much of it and she wanted to keep her job. She stated that she thought the warnings would eventually go away. The claimant stated that she did not quit her job, she was dismissed. She was asked to contact her service provider and see if she can submit the text message that stated she was fired (Page GD3-42).

[48] The claimant stated that her service provider was unwilling to provide the text message unless there is a police warrant. She stated that she has no other evidence that she was dismissed other than the ROE. She was informed that the ROE showed that she quit her job and she asked for a fax number so she can submit a copy of the ROE as there must be a mistake (Page GD3-43).

[49] The claimant was contacted by the Commission and stated that she is unable to locate her ROE. She was informed that the employer considered her to have abandoned her job and therefore it does not matter what the ROE states. The claimant stated that it was unfair that the Commission is taking the employer's side. She stated that the meeting she was called in to was not about a shift so she did not feel she needed to be there and she did not show up because the dispatcher had told her that she was fired. The claimant stated that the dispatcher asked her to come in for a drug test. The Commission informed the claimant that the original decision will be changed as she had voluntarily quit her employment without just cause (Page GD3-44).

SUBMISSIONS

[50] The claimant submitted that:

a) She did not return to work with just cause. It was confirmed by text by her dispatcher that she was no longer an employee and there was no load sheet the night before to advise her where she had to go for work (Page GD2-3).

b) She experienced conflict with both dispatchers throughout the entire employment and she was written up and mistakenly signed. She felt very misplaced and bullied from both dispatchers to the point she signed write ups against her performance just to either stop the argument or take blame to save the hassle (Page GD2-3).

[51] The Commission submitted that:

a) The claimant argued that she was dismissed via text message by her dispatcher. The Commission contends that the claimant has provided no text showing that she was dismissed. The claimant has contradicted her statements that she was dismissed as in her application she has clearly stated that she quit. If the claimant was dismissed, on the

application for benefits the claimant could have selected the option that she was dismissed. Even in the initial discussion with the Commission the claimant stated that she quit and did not want to go to the meeting that the employer asked her to come to. Throughout the discussions that the claimant has had with the Commission, she has stated that she did not want to go to the meeting on the Monday because she thought she was going to be dismissed. It appears to the Commission that if the claimant was dismissed with a text message from the employer, it is more credible that it was after the claimant did not show up for the meeting and essentially abandoned her position. However, it was the claimant who initiated the separation from her employment by abandoning her job (Page GD4-4).

b) The claimant argued that there was no load sheet that was printed to advise her she had to go to work. The Commission finds it irrelevant that there was no load sheet for the claimant as the claimant could have shown up for the meeting and not abandoned her job when she did. Again, the Commission contends that there is no proof that the employer dismissed the claimant when all her statements show that she abandoned her position (Page GD4-5).

c) The claimant stated she had conflict with both dispatchers throughout her entire employment. The employer stated that the claimant said that she worked out her concerns with the dispatch manager and the employer was not aware of any problems with the dispatcher. The Commission submits that the only complaint that the claimant has made about the dispatcher was that she would send the claimant and other drivers to sites that did not need to be filled with fuel. The Commission fails to see how this is harassment when it just seems that it is part of the job and other drivers are being sent to the sites same as the claimant. The Commission further contends that this does not appear to be the reason for abandoning her job (Page GD4-5).

d) The claimant did not have just cause for leaving her employment on October 24, 2014 because she failed to exhaust all reasonable alternatives prior to leaving. Considering all of the evidence, a reasonable alternative to leaving would have been to secure other employment and/or discuss the situation with her employer in order to resolve her

concerns. Consequently, the claimant failed to prove that she left her employment with just cause within the meaning of the EI Act.

ANALYSIS

[52] The question of just cause for voluntarily leaving employment requires an examination of whether having regard to all the circumstances, on a balance of probabilities, the claimant had no reasonable alternative to leaving the employment (*MacNeil v. Canada (Employment Insurance Commission)*, 2009 FCA 306); (*Canada (Attorney General) v. Imran*, 2008 FCA 17).

[53] In *Tanguay v. Canada (Canada Employment and Immigration Commission)*, A-1458-84 the FCA drew a distinction between a "good cause" and "just cause" for voluntary leaving.

[54] According to the FCA decision *Canada (Attorney General) v. Laughland*, 2003 FCA 129, the issue is not whether it was reasonable for the claimant to leave his employment, but whether the claimant's only reasonable alternative, having regard to all the circumstances, was to leave the employment. Reasonableness may be "good cause", but it is not necessarily "just cause".

[55] When citing harassment as the reason for voluntarily leaving employment, the claimant must show that the harassment complained of rendered the workplace genuinely intolerable. Even where the harassment has been proven, there may be an obligation to make all reasonable efforts to rectify the situation before quitting.

[56] The claimant bears the burden of establishing just cause (*Canada (Attorney General) v. Patel*, 2010 FCA 95).

[57] In this case, the claimant initially applied for EI benefits stating that she quit her employment because of personal conflict with the dispatch manager and a dispatcher. She further stated that she had already received a final written warning and when she was called in to a meeting, she suspected that she was going to be fired or written up yet again so she decided to save the trouble and move on. She stated that it was later confirmed by the dispatcher via text message that she was terminated from her employment.

[58] The claimant is now arguing that she did not quit her job but was terminated because she received the text from the dispatcher telling her so. While it is possible that the claimant was going to be terminated from her employment; the claimant did not attend the meeting to find out. The ROE states the claimant quit her employment, the employer stated that the claimant abandoned her employment and the claimant applied for EI benefits stating that she quit her employment therefore the Tribunal is satisfied that the claimant voluntarily left her employment in an effort to avoid to termination. She knew she had been given a final warning and she suspected she was being called in to a meeting to be terminated; she chose not to attend that meeting and did not return to work thus abandoning her job.

[59] The claimant stated that she did not return to work with just cause. She explained that she experienced conflict with both dispatchers throughout her entire employment and she felt very misplaced and bullied from both dispatchers to the point that she signed the written warnings just to stop the argument. The Tribunal accepts the employer's statements that the claimant did not bring her concerns to his attention other than the issue of the dispatch manager however, when she did discuss it with the employer, she told him that it was already worked out. The Tribunal further accepts the claimant's statement that the harassment from the dispatch manager stopped once she advised her employer.

[60] The Tribunal sought guidance in CUB 66480 where Justice Goulard stated:

> "To paraphrase the words of Justice Martin in CUB 18973, the employment insurance system was put in place for the benefit of those who, without any fault of their own, find themselves without employment and unable to find work. It is not a fund to be paid to individuals who have taken themselves out of the labour market for a period of time because they have become disenchanted with their working conditions and wish to look for change. A person who chooses to leave her employment for such a reason must do so at her own expense, not at the expense of other employees and employers who contribute to the employment insurance system. As was stated by the Umpire in CUB 24198:
>
> > "Jurisprudence has clearly established that unsatisfactory working conditions, no matter what they are, do not generally constitute a valid motive for quitting ones employment unless they are so intolerable that the employee has no other choice but to separate from that employment. It is preferable that one should remain employed in even difficult circumstances than not to be employed at all."

[61] Further, in the FCA decision *Canada (Attorney General) v. White*, 2011 FCA 190, Justice Layden-Stevenson states:

> "The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job."

[62] The Tribunal finds that the claimant did not have just cause to voluntarily leave her employment. It is the claimant's responsibility to protect her employment by attempting to resolve workplace conflicts or to attempt to find other employment before making the decision to quit. The claimant did not get along with her co-workers but admits that the harassment ended when she spoke to her employer. She further stated that she had issues with the dispatcher but did not bring this to the employer's attention in an attempt to resolve the situation. Furthermore, while the claimant stated that she only had one spill, the written warnings which she signed, would indicate that there were three spills and some were of significant amounts. The claimant has stated that she was not at fault and the dispatchers refused to take blame for their mistakes however, the employer advised that it was the claimant's responsibility to do a dip test before she began unfueling the truck and failing to do this dip test would result in an oil spill. The Tribunal is not satisfied that the claimant signed the written warnings just to stop the argument or to accept blame for something she did not do. Although the dispatchers might have sent her out on runs with too much fuel, the claimant admitted that the dispatchers had done that to all the drivers therefore, it cannot be said that the claimant was singled out and bullied. For these reasons, the Tribunal is not satisfied that the claimant's employment was so intolerable that she was left with no choice but to quit when she did. The Tribunal is convinced that the claimant had received three written warnings and a final warning and she suspected she was going to be terminated so she chose to voluntarily leave her employment.

[63] The legal test that must be applied is whether the claimant had no reasonable alternative but to quit her job when she did. The Tribunal finds that the claimant did have reasonable alternatives to leaving her employment. Considering all the circumstances, the claimant could have attended the meeting to see if the employer was in fact going to terminate her employment. The employer stated that they gave the claimant several chances to correct her performance and

he further stated that they had a truck prepared with a load for the claimant that day but she did not show up therefore, there was a possibility that the employer was prepared to continue to work with her. The claimant had the reasonable alternative of contacting an outside agency if she felt that the fuel trucks were not properly maintained or had faulty hoses and she had the responsibility of seeking alternate employment prior to leaving the employment she had.

[64] The claimant argued that there was no load sheet for her so she did not feel she needed to go to work because she was not scheduled. The Tribunal finds this argument to be irrelevant. The claimant was called in to a meeting with her employer, she was expected to attend and the fact that she was not scheduled to work does not provide her with reasons to ignore a meeting with her employer.

[65] Given the foregoing, the Tribunal finds that the claimant has not proven just cause to have voluntarily left her employment pursuant to sections 29 and 30 of the EI Act.

CONCLUSION

[66] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section