



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 1

Date: January 6, 2016

File number: GE-15-2987

GENERAL DIVISION - Employment Insurance Section

Between:

D. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

and

E. Charter Transportation

Added Party

Decision by: Teresa Jaenen, Member, General Division - Employment Insurance Section

Heard In person on December 9, 2015, Saskatoon, Saskatchewan

REASONS AND DECISION

PERSONS IN ATTENDANCE

Ms. D. S., the Appellant (Claimant) along with her representative Ms. Kim Hryciw, Community Unemployed Help Centre attended the hearing.

E. Charter Transportation, the employer **did not** attend the hearing.

INTRODUCTION

[1] On May 3, 2015 the Appellant made an initial claim for employment insurance. On May 27, 2015 the Canada Employment Insurance Commission (Commission) denied the Appellant benefits because it was determined she voluntarily left her employment without just cause. On June 12, 2015 the Appellant made a request for reconsideration. On September 1, 2015 the Commission maintained its original decision and the Appellant appealed to the *Social Security Tribunal of Canada* (Tribunal).

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

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility may be a prevailing issue.
- c) The fact that more than one party will be in attendance.
- d) The information in the file, including the need for additional information.
- e) The fact that the appellant or other parties are represented.
- f) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] The Tribunal must decide whether a disqualification should be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (the Act) because the Appellant voluntarily left her employment without just cause.

THE LAW

[4] Section 29 of the Act for the purposes of section 30 to 33

(a) “employment “ refers to any “employment” of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes:

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs;

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed;

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred;
and

(c) 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 any of the following:

(i) sexual or other harassment;

- (ii) obligation to accompany a spouse or common-law partner or a dependent child to another residence;
- (iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act;
- (iv) working conditions that constitute a danger to health or safety;
- (v) obligation to care for a child or a member of the immediate family;
- (vi) reasonable assurance of another employment in the immediate future;
- (vii) significant modification of terms and conditions respecting wages or salary;
- (viii) excessive overtime work or refusal to pay for overtime work;
- (ix) significant changes in work duties;
- (x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;
- (xi)) practices of an employer that is contrary to law;
- (xii)) discrimination with regard to employment because of membership in an association, organization or union of workers;
- (xiii)) undue pressure by an employer on the claimant to leave their employment; and
- (xiv) any other reasonable circumstances that are prescribed.

[5] Subsection 30(1) of the Act states:

(1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or employment."

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

EVIDENCE

[6] In her application for benefits the Appellant stated she quit her employment due to sexual harassment by three coworkers. She stated the sexual suggestions and derogatory comments were ongoing and occurred from September to May 2015. She stated the final incident during a toolbox meeting when she was looking at a cup in a velvet bag and J. I. a coworker sexually suggested for her "to feel his bag anytime". She states all the drivers were present and went silent. Her supervisor looked down at his papers and the Health and Safety Officer (HSO) told the coworker to behave himself. She stated she was shocked and humiliated and said " I really didn't hear that, did I?" She stated she never said anything to the supervisor or HSO because the one looked down at his papers and the other told the coworker to behave (GD3-8).

[7] In her application for benefits the Appellant stated she spoke to her supervisor, A. L. and explained her reasons for not returning to work because she couldn't tolerate the sexual suggestions or derogatory comments from the named drivers anymore. She stated that her manager S. E. had minimized a concern she had with a male coworker being disrespectful to her. She stated she realized her manager wouldn't be interested in resolving any conflicts or issues with his employees. She stated the employer agreed that there was favoritism with drivers and that the coworker should be made accountable for his remarks towards female drivers (GD3-9).

[8] She stated in her application she emailed S. E. a letter of resignation explaining the reasons she wouldn't be returning. She stated he didn't respond to her concerns which were affirmation he isn't interested in resolving any conflicts or issues with his employer. She stated she had been looking for work prior to quitting. She stated she had been searching on the Internet and have submitted a resume for a job posted in the X area (GD3-9 to GD3-10).

[9] A record of employment indicates the Appellant was employed with E. Charter Transportation from September 3, 2014 to May 2, 2015 when she quit her employment (GD3-18).

[10] On May 26, 2015 G. L. (co-owner/manager) stated to the Commission that the Appellant had sent a long email with her concerns that she was not being treated fairly and her complaints were not being taken seriously. She stated she and S. E. had a conference call with the Appellant around Christmas time. She stated they discussed the issue regarding the coworker being rude to her and not wanting to sit with her in the dining room. The employer stated that the Appellant is an "in your face" individual so she could see why the coworker may have been uncomfortable and didn't want to sit with her. The employer stated that she wasn't aware of what triggered the Appellant's resignation she just got an email. She stated they were not aware the Appellant had concerns about sexually suggestive and derogatory comments throughout her employment since September. She stated had that the Appellant had said something about the issue but she made no indication they were directed at her. She stated men will be men, they will say things, but those comments are general and the Appellant never put anything in writing. She stated in order to launch a complaint they needed things in writing. She stated they are not on-site so they rely on the ones in charge and she did know that they were currently dealing with a language issue (GD3-19).

[11] On May 26, 2015 S. E. (employer) stated to the Commission that there were often changes to the schedule. He stated the Appellant originally started with 10 on, 5 off and then in January or February the Appellant requested a change to 14 on and 7 off schedule. He stated they were able to accommodate the request but the Appellant would be off 4-5 days in May in order to synchronize everyone's schedule. He stated he would never take days away and would make up the days later on. He stated the Appellant also needed extra days to accommodate her dog's surgery. He stated he was aware the Appellant put on her letter that they changed her shift without proper notice but it was adjusted and the Appellant did not lose any days (GD3-19).

[12] The manager stated that the Appellant's complaints regarding her coworker B. M.. He stated the coworker was already on their radar for being rude so the employer chose not to have him return following an injury. He stated he was not aware at all about the Appellant's concerns

about sexually suggestive or derogatory comments but the Appellant did mention the word harassment on her letter of resignation but there were no details. He stated he followed up by contacting the 3 on-site in-charge but all three said no. He stated he goes to the site once a month and G. L. goes three times a month. Everyone reports to him but he never heard from anyone regarding harassment. He stated he also asked if the Appellant had resigned with any of them, to which the answer was no. One stated that he knew the Appellant was thinking about quitting because she was not happy. He stated the final incident with J. I. is completely new to him and if this did take place one in charge should have followed up with S. E. (GD3-19).

[13] The employer stated that the Appellant had made several complaints and they were dealt with but the Appellant never mentioned anything about the final incident with J. I. on the resignation letter, or to her supervisor on site. He stated the coworker is a character and things he says can be misinterpreted, they can also be problematic. He stated the company has a harassment policy in place and it is posted. It includes the procedures on how to launch a complaint and how to go through with it. He stated the closest to a complaint was one in charge said to the Appellant to write it up so he could forward it to S. E. but the Appellant never submitted anything after (GD3-19).

[14] The employer recalls on January 6, 2015 he called the Appellant to discuss the email she sent regarding her issues with B. M.. He stated he told the Appellant that it sounded to him like B. M. was being honest and didn't want to sit with her. He stated they went over the Appellant's "in your face" approach to people and told the Appellant she had to be careful about complaining too much. He stated he told her if she had major concerns to contact him directly instead of overly complaining too much. He stated he told her he would deal with the coworker. He stated the Appellant never followed up with him but she should have noticed the coworker had already come off the schedule (GD3-20).

[15] The employer stated to the Commission that after he received the letter of resignation he emailed the Appellant that he was surprised with the issues she brought up. He indicated that perhaps the Appellant did not feel she was a good fit. He stated the Appellant had never once approached either employer to discuss the issues that were seriously bothering her. She sent an

email during her day off period and she should have contacted him prior to making up her mind to quit (GD3-20).

[16] On May 26, 2015 the employer sent an email to the Commission that stated the on-site in-charge (William) stated that on the day in question the coworker was talking loudly and disruptively and after he made a comment, the one in charge told him to sit down and be quiet and behave. It is indicated the comment was in reference to the coworker speaking too much and too loudly, not in what he actually said. He stated he didn't really hear what the coworker had said (GD3-22).

[17] Copy of the company sexual harassment policy was submitted (GD3-24).

[18] On December 4, 2014 the Appellant provided her employer with a formal written complaint against one of her coworkers (B. M.) detailing the dining room incident where he was rude and disrespectful. The letter states she discussed the situation with her supervisor and believes the situation will escalate and she is feeling threatened by his demeanor towards her. He advised her to write a formal complaint because the employer would want to know (GD3-25).

[19] Copies of emails were submitted between the employer and on-site in-charge personal. They indicated the Appellant made several complaints relating to working conditions but states she never made any harassment complaints in writing or verbal. It states the Appellant bring complaints about other drivers and was told to put them in writing but she never did. It states the Appellant was informed that these types of matters would be brought up to management when they were in writing. To which it states the Appellant agreed and reported something would be forthcoming in writing but that's as far as it went (GD3-26 to GD3-28).

[20] A letter of resignation dated May 4, 2015 by the Appellant states she left for (1) Sexual/derogatory comments from male drivers to her on the job site; (2) Obvious favoritism being displayed to certain drivers; and (3) Her schedule being changes several times without proper notice and no explanations. She further states she has personally experienced and witnessed drivers being allowed to target drivers whether it was sexual or derogatory comments. She stated in regards to her complaint of December 4, 2015 she was never contacted until January 4, 2015 after the Christmas shutdown. She felt at that time the employer minimized her

concerns written in the complaint. She stated after that outcome of the conversation, obviously not being heard by the employer and the employer wouldn't be resolving the issue; she of course would have difficulty being able to bring forward any future on-the-job concerns. She states she feels she has no alternative but to leave a job she loves (GD3-30 to GD3-31).

[21] On May 5, 2015 the employer emailed the Appellant in answer to her resignation stating it was unfortunate she has decided to leave. The employer states it may just not be a good fit. He states it is unfortunate her feelings on how the situation with her coworker was handled or that it was not taken seriously but the coworker no longer is employed there. He states regarding the schedule that the schedule was explained and flexibility is required and that he felt he was extremely flexible with the Appellant's request (GD3-32).

[22] On May 8, 2015 the Appellant responded to the employers email stating she didn't agree with his statement it wasn't a good fit. She stated she is not the kind of person to make stuff up for her own convenience. She states she is not the only female driver who was being targeted with sexual comments and advances by certain male employees of the company. She stated she believes her 2 weeks on and 1 week off schedule was adjusted to suit the needs of chosen drivers (GD3-33 to GD3-34).

[23] On May 27, 2015 the Appellant stated to the Commission that she had never seen the Sexual Harassment Policy, it was not posted and she was never provided with the policy, or did she know she would have to submit in writing to the employer her complaint. She stated it was true that everyone in the room heard J. I. make the comment. She stated she made a compliant about the incident to another driver but nothing was done. She reiterated that in regard to her complaint about B. M., she never heard from the employer for a month after. She reiterated that was the reason she didn't bring up the incident with was J. I. because she didn't believe the employer would address it (GD3-35).

[24] The Appellant stated to the Commission the incident happened on either April 23 or 24th and she went to speak to A. L. on the last day of her rotation, it took her a couple of days to think about it and then she resigned on May 4, 2015. She stated in her conversation with A. L. she told him she didn't think she was coming back. She stated the incident at the tool box meeting and the comments made and how Ron was not a good supervisor because he just looked down at his

papers. She stated A. L. stated he was sorry and he would have handled it differently but he never suggested she write a complaint. He agreed J. I. was inappropriate to female drivers. She stated she was not going to write it up because she didn't believe the employer would follow up based on her past experiences (GD3-35).

[25] The Appellant stated to the Commission she looked for one job while she was on rotation but she didn't have time prior to leaving. She stated she just hoped things would go away or they would change and then the incident with J. I. was what broke the camel's back (GD3-35).

[26] The Appellant stated to the Commission another reason for her leaving was the change to her schedule. She stated at first she didn't say anything but in April she decided to speak up. She stated she addressed the issue that changing the schedule caused her to lose her day off she needed for personal reasons but agreed she didn't speak the employer about her dissatisfaction that her schedule was consistently cut back when compared to other drivers which she believed was unfair (GD-36).

[27] On May 25, 2015 the Commission notified the Appellant they could not pay her benefits because she voluntarily left her employment (GD3-37 to GD3-38).

[28] On June 12, 2015 the Appellant made a request for reconsideration with copies of her sexual harassment case filed with the Saskatchewan Human Rights and supporting documentation from the Service Canada website (GDE3-39 to GD3-50).

[29] On August 19, 2015 the Appellant stated to the Commission she didn't feel she could approach the employer regarding the "toolbox" incident with J. I.. She felt she would be reprimanded by the employer because she had previously filed a complaint and nothing was done. She stated the reason that person is no longer working is because he was off on an injury, not because of any discipline. She stated that almost daily she felt suicidal and depressed and she could no longer endure this type of harassment any longer. She stated she has been under a doctor's care and attending counselling sessions (GD3-53).

[30] On September 1, 2015 the Appellant stated to the Commission that the employer only recently created the harassment policy. She reiterated the details regarding her complaint that she had filed against her coworker. She stated she remained working and just stayed away from the

coworker, and then the coworker was gone due to an injury. She reiterated the incident with J. I. and because other people heard it they should have reported it to the employer. She didn't want to be a complainer. She stated that when she went to A. L., he should have encouraged her to report it as well. She only reported the harassment in her resignation letter of May 5, 2015 (GD3-34).

[31] On September 1, 2015 the Commission notified the Appellant the original decision on voluntarily leaving was maintained and was informed of the process to appeal to the Tribunal (GD3-68 to GD3-69).

[32] In the Notice of Appeal the Appellant stated she felt there was no alternative but to leave due to ongoing sexual harassment. She submitted copies of her complaint made to the Saskatchewan Human Rights sexual harassment complaint. (GD2-1 to GD2-11).

[33] On November 12, 2015 the Appellant's representative submitted CUB 61124 and CUB 66923 in support of the appeal (GD7-1 to GD7-4).

EVIDENCE AT THE HEARING

[34] The Appellant reiterated the details as they pertained to the incidents of the sexual harassment by both her coworkers in her written submissions in (GD3-41 to GD3-43).

[35] The Appellant stated that her employer never addressed the issue of sexual harassment as stated in her letter of resignation, but only the other two issues.

[36] The Appellant stated she was in turmoil when she sent in her resignation and she wanted to hear back from S. E. and that he would have some resolution to the issue and she could remain working. She stated his short email back and stating she was not a good fit was devastating to her.

[37] The Appellant stated that she never went through an orientation with her employer or was she made aware of the sexual harassment policy. She believes it originated after she left.

SUBMISSIONS

[38] The Appellant's representative submitted that:

- a) The interview (GD3-35) shows a clear indication the Service Canada (SC) agent continually accepts the statements of the employer over the Appellant;
- b) 6.5.2 of the Digest of Benefits (GD3-48) speaks very clearly to the rights of a claimant who feel they are being harassed or abused;
- c) For the SC agent to presume to state what the Appellant should or should not have done under the circumstances shows a complete lack of empathy as well as understanding of the legislation in place. As stated in the docket, the Appellant was not aware of the resolve around her previous situation and so did not feel her concerns would be addressed therefore under the circumstances it was completely reasonable for the Appellant to chose to leave her employment;
- d) In the Commission's report of (GD4-3 and GD4-4) the Commission states "The employer confirmed the claimant never brought any issues of harassment to their attention, and did she discuss the situation with the Health and Safety or the on-site in charge people". It again states "It appears the claimant was no longer happy in her work environment, and although shows good cause for leaving, personality conflicts in the workplace do not constitute just cause for leaving. Consequently, the claimant failed to prove she left her employment with just cause within the meaning of the Act";
- e) These statement clearly indicate the Commission is paying more credibility to the employer and in fact, in the last paragraph refers to "personality conflicts" and does not address the issue of harassment or sexual harassment, which is the reason the Appellant ultimately chose to leave her employment; and
- f) Section 29(c) clearly states a claimant will have just cause for voluntarily leaving an employment or taking leave from employment if the claimant had no reasonable alternative to leaving or taking leave having regard to all the circumstances including (i) sexual or other harassment, which is the situation in the case.

[39] The Appellant submitted that:

- a) The sexual harassment with J. I. started in September 2014. He was another bus driver and she didn't report the harassment because she thought she could deal with it on her own and she just wanted him to stop doing it;
- b) In February another driver D. O. was hired and he started harassing her as well. She stated that he was obnoxious and when she would get upset with him humiliating, embarrassing and poking fun at her, he would just say he was joking;
- c) D. O. would say things like she was pretty and looked like a marshmallow;
- d) After the toolbox incident with J. I. she tried to ignore the incident and not react but she couldn't. She went back to her room and cried. She felt so violated and unsafe;
- e) She felt the only thing she could do was to try and deal with the harassment herself after her complaint she made about B. M. fell on deaf ears. She didn't believe anyone would take her seriously about the sexual harassment;
- f) She wasn't aware there was a harassment policy or that there was a process in place to which she could have accessed;
- g) Both G. L. and S. E. (employers) minimized the complaint she had made against B. M. and they basically didn't believe her that B. M. was being rude;
- h) She did look for other work on April 30, 2015 while she was on her days off and prior to quitting but she wasn't the successful candidate;
- i) Prior to her quitting she seen her doctor and explained the situation and he didn't take her serious. He advised her that lots of middle age men think they should have affairs so she should tell them that she's been thinking about it too but prefers younger men, and do they know any, this should make them stop;
- j) One never knows how they will react in situations and in this case she felt alone and had nowhere to turn;

- k) She believed it would be a he said, she said and who would believe her. She stayed as long as she could because she liked her job;
- l) The statements that were made that she is a ‘in your face’ kind of person is not true, she would consider herself friendly and who tried to get along with everyone; and
- m) On the final day of the toolbox meeting and after J. I. made the sexual remarks and was only told to behave himself, she just knew there was nothing anymore she could do. She fell into a deep depression and she knew she just couldn’t go back.

[40] The Respondent submitted that:

- a) The Commission looked at the work situation the Claimant states she was in, in that she felt she was being harassed by make co-workers. The Claimant made her first complaint in December 2014 after a coworker did not want to sit at the same dining room table as her and she considered it rude. However animosity between coworkers does not amount to just cause;
- b) The Claimant then declares harassment in April 2015 but makes no attempt to communicate this to the employer by filing a formal complaint about the incident and given that she did not mention any on-going work related concerns before quitting this did not give the employer a chance to address them in attempt to have the harassment situation resolved;
- c) There is no indication that the work environment was so intolerable or that the Claimant’s interaction with her coworker warranted her departure;
- d) The Claimant had not proven just cause because she failed to exhaust all reasonable alternatives prior to leaving;
- e) A reasonable alternative would have been to report her concerns to her employer rather than just assumed the employer was not going to respond to her situation, and this cannot be said to be just cause;

- f) The Claimant had made previous complaints in writing in December 2014 (as per the policy) so was aware of this process but chose not to make a formal complaint and chose to quit;
- g) The Claimant's situation was not so intolerable and she could not have continued working until she found alternate employment, especially because she continued to working for another 10 days and then quit during her days off by email; and
- h) The Claimant was no longer happy in her work environment and although she shows good cause for leaving, personality conflicts in the workplace do not constitute just cause for leaving one's employment.

ANALYSIS

[41] Subsection 29(c) of the Act states that just cause for voluntary leaving an employment or taking a leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regards to all the circumstances including the following (i) sexual or other harassment.

[42] In *Rena-Astronomo* (A-141-97), which confirmed the principle established in *Tanguay* (A-1458-84) according to which the onus is on the claimant who voluntarily left an employment to prove that there was no other reasonable alternative for leaving the employment at that time, MacDonald J.A. of the Federal Court of Appeal (the Court) stated: "The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to leaving his or her employment."

[43] In this case there is no dispute the Appellant voluntarily left her employment, thus the Appellant must prove that she had no reasonable alternative to do so.

[44] The Tribunal must determine is whether on the balance of probabilities, the Appellant had no reasonable alternative to leaving her employment, having regard to all the circumstances, including sexual harassment.

[45] The Appellant presents the argument that she quit her job because of the harassment of both derogatory and sexual nature which began working in September and remained on going.

She argues she had no reasonable alternative but to leave. She stated in December she made a formal complaint against her coworker B. M. and the employer did nothing to resolve the situation. She believed the owners discounted her allegations. She further argues that when the toolbox incident occurred when J. I. made further sexual based comments and her supervisor only told J. I. to behave and Health and Safety officer only dropped his head solidified her belief that no one would listen or believe her.

[46] In this case the Respondent argues the Commission looked at the work situation the Claimant states she was in, in that she felt she was being harassed by make co-workers. The Claimant made her first complaint in December 2014 after a coworker did not want to sit at the same dining room table as her and she considered it rude. However animosity between coworkers does not amount to just cause.

[47] The Respondent further argues that the Claimant then declares harassment in April 2015 but makes no attempt to communicate this to the employer by filing a formal complaint about the incident and given that she did not mention any on-going work related concerns before quitting this did not give the employer a chance to address them in attempt to have the harassment situation resolved.

[48] The Tribunal finds from the evidence the employer and the on-site in-charge did include the supervisor and HSO, who both were at the toolbox meeting and did witness some type of poor behavior of the coworker the Appellant alleges made sexual remarks. The Tribunal finds in the Appellant's evidence on the file and from her oral testimony that she did speak to a coworker, Willy who did agree that J. I.'s behavior was not acceptable.

[49] The Tribunal finds the email (GD3-22) also demonstrates that there were issues within the workplace and that that unacceptable behavior by J. I. did occur. The Tribunal finds that the additional information provided with company email (GD3-23) from the Appellant's supervisor that the Appellant exhausts him and her complaining demonstrates there would be valid reasons why the Appellant would be hesitate to bring up sexual harassment.

[50] The Tribunal finds the email (GD3-26) sent to the on-site in-charge employees from the employer acknowledges the Appellant made many complaints and that his only knowledge was

of the complaint against B. M., which he doesn't consider to be harassment but rudeness. The responses only states that they never received any thing regarding harassment verbally or in writing from the Appellant but there were complaints made about other drivers and told the Appellant to put them in writing but she never did. William indicated he told the Appellant he would follow up with the complaints if there were in writing (GD3-37 to GD3-28).

[51] The Tribunal finds the Appellant did make her employer aware of the issue when submitted her letter of resignation indicating her number one reason for leaving was due to the sexual and derogatory comments made by male drivers. The Tribunal finds from the employers evidence on the file in his email to the Appellant he did not address the issue of the sexual harassment but did address the additional two reasons. The Tribunal finds the employer omission to acknowledge the Appellant's allegations of sexual harassment demonstrates the employer may not have felt this to be serious complaint. The Tribunal finds that the Appellant did make the employer aware and he was given the opportunity to question the Appellant for further details and determine if there was a solution before he accepted her resignation.

[52] The Tribunal finds there is evidence to support the employer's as well as the on-site in-charge employees had very different views of what depicts harassment from that of the Appellant.

[53] The Tribunal finds the evidence on the file and from the Appellant's oral evidence that she did not make a complaint in writing, therefore there was no opportunity for the employer to address the issue prior to her handing in her resignation. However there is ample evidence to support that there were issues within the workplace that would demonstrate intolerable working conditions.

[54] The Tribunal finds there is no dispute the coworker who the Appellant made a formal complaint about was a problem. The employer stated in his evidence that the Appellant's complaint about B. M. were legitimate. B. M. was leaving them because employer chose to not let him return to work following an injury. B. M. was already on employer's radar since they received complaints from various people regarding his rudeness. They dealt with B. M..

[55] The Appellant presents the argument that she never received a copy of the sexual harassment policy or had been informed that one existed. She argues there was not one posted at the work site.

[56] The Tribunal finds the employer provided evidence that the company has a harassment policy in place and it is posted. It includes the procedures on how to launch a complaint and how to go through with it. The employer provided a copy of the sexual harassment policy; however they did not provide any documentation to support that the Appellant would have actually received it, or that she would have been made aware of the policy at the time of hire. The Tribunal finds there is not date on the document to prove its existence prior to the Appellant's leaving, or any signed documents by the Appellant that she was provided with the document at hire or at any time through her employment.

[57] The Tribunal finds based on the evidence before it finds the Appellant's argument that she was not aware of such a policy to be credible and unfortunately the Tribunal was not able to request such details from the employer to arrive at a different conclusion.

[58] The Respondent presents the argument that there is no indication that the work environment was so intolerable or that the Claimant's interaction with her coworker warranted her departure.

[59] The Tribunal finds there is evidence to support the work environment was intolerable and evidence to support that the Appellant had spoken to A. L., who agreed with the Appellant, however he didn't offer her any solution either. Further the emails between the employer and on-site in-charge employees allude to the Appellant's complaints and however state she never specifically brought up harassment, there were complaints about other drivers.

[60] The Tribunal finds that the Appellant's representative's submission that 6.5.2 of the Digest of Benefits should have been seriously considered and the Tribunal agrees. It clearly speaks to the rights of claimant's who feel they are being harassed or abused and addresses the following: "A victim of harassment may react in a number of different ways that may seem illogical or unreasonable to anyone who unfamiliar with the psychological profile of the victim and the serious trauma harassment can cause. Some victims even quit their jobs spontaneously to

escape a situation that has become intolerable or to ensure there is no further harassment. The fact that a person did not take any recourse or did not wait the outcome of any remedy before voluntarily leaving their employment must not be considered against the claimant when the situations indicates intolerable harassment that could not have been resolved immediately or within a few days of the incident.

[61] The Tribunal finds from the employer's evidence on the file support the Appellant's allegations that she had no reasonable alternative. The Tribunal finds the interview (GD3-19 to GD3-19) between the Commission and the employer demonstrates the employer did not believe the formal written complaint was taken seriously. The Tribunal finds the statements made by G. L. that the Appellant was an "in your face" person and that was why the employee might not have wanted to sit with her. Further when the employer is asked by the Commission if the employer was aware the Appellant had concerns about sexually suggestive and derogatory comments, she answers no they were not aware but the Appellant had said something about the issue, but made no indication they were directed at her. She states men are men and will say these things and those comments are general and because the

[62] The Respondent presents the argument that the situation was not so intolerable and she could not have continued working until she found alternate employment, especially because she continued to working for another 10 days and then quit during her days off by email.

[63] The Appellant presents the argument that on the final day of the toolbox meeting and after J. I. made the sexual remarks and was only told to behave himself, she just knew there was nothing anymore she could do. She fell into a deep depression and she knew she just couldn't go back.

[64] In this case the Tribunal finds the Appellant did do what a reasonable person in her situation would do and has proved based on the balance of probabilities that she had just cause for leaving her employment. And that there was no reasonable alternative available to her.

[65] The Tribunal find the evidence on the file that the employer and the on-site in-charge employees had not in the past supported the Appellant's allegations of the intolerable working conditions but rather her employer stating men area men and will say things along with the

evidence of the tool box meeting where the alleged coworker's comments were dismissed as bad behavior left the Appellant with the belief her complaint would be undermined or not believed

[66] The Tribunal finds the Appellant's oral testimony to be credible of her account of the events and they are consistent with the facts in the file. The employer did not participate in the hearing and the Tribunal relied on the evidence on the file. The Tribunal finds that the facts demonstrate the employer was not aware of the sexual harassment however the Tribunal finds the evidence provided in the employer's statements that they were aware there were issues at the workplace that included harassment of some nature.

[67] The Tribunal finds the Appellant's oral evidence that she didn't want to quit her job and she tried to handle the situation with the coworker by telling him to stop and she kept hoping the situation would resolve itself. She testified she had seen her doctor prior and discussed the work situation, however he didn't take her seriously and this only made her question how her complaint would be handled by the employer.

[68] Therefore the Tribunal finds there is evidence of harassment and believes the Appellant's testimony that the harassment was sexual in nature, there is evidence to support the Appellant's belief her employer would not take her seriously. Therefore the Tribunal finds the Appellant had just cause to voluntarily leave her employment because there was no reasonable alternative available to her.

[69] The Appellant's representative presents the argument that CUB 61124 and CUB 66923 support the appeal.

[70] The Tribunal agrees that both CUB's submitted support the appeal.

[71] The Tribunal relies on *Landry A-1210-92* where the Court concluded that it is not sufficient for the claimant to prove she was reasonable in leaving her employment, but rather the claimant must prove that after considering all of the circumstances she had no reasonable alternative but to leave her employment.

CONCLUSION

[72] The appeal is allowed.

Teresa Jaenen
Member, General Division - Employment Insurance Section