

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 18 June 2013

Case No. 2012-STA-49

In The Matter Of:

Julie Keeler,
Complainant

v.

J.E. Williams Trucking, Inc. & WHW,
Respondents

RECOMMENDED DECISION AND ORDER
DENYING CLAIM

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (“the Act,” “the STAA”), and implementing regulations set forth at 29 C.F.R. Part 1978. The pertinent provisions of the Act prohibit the discharge or discipline of, or discrimination against an employee in retaliation for engaging in certain protected activity.

PROCEDURAL BACKGROUND

Julie Keeler (hereinafter “Complainant”) was employed by J.E. Williams Trucking, Inc. and WHW (hereinafter “Respondent”) from April 2009 until she was terminated on or about July 19, 2011. On September 13, 2011, the Complainant filed a complaint with the Department of Labor’s Office of Occupational Safety and Health Administration (hereinafter “OSHA”), alleging that she had been discriminated against by the Respondent in retaliation for engaging in whistle blowing activities. After conducting an investigation, OSHA issued the findings of the Secretary on August 9, 2012, concluding that there was no reasonable cause to believe that the Respondent violated Section 31105 of the Surface Transportation Assistance Act.

On August 16, 2012, the Complainant filed an appeal of that determination with the Office of Administrative Law Judges (hereinafter “OALJ”). The matter was assigned to me, and I held three days of hearings from January 29 to January 31, 2013, in Billings, Montana. Two additional days of hearings were conducted by telephonic conference on February 8 and 9, 2013. I admitted the following evidence into the record: Complainant’s Exhibits (CX) 1-71 and 73-135, and Respondent’s Exhibits (EX) 1-36; and Administrative Law Judge Exhibits (ALJX) 1-7.

The Complainant filed her post-hearing brief on April 18, 2013, and the Employer filed a post-hearing brief on April 19, 2013. The Complainant filed a response brief on May 3, 2013; the

Respondents did not file a reply.¹ I have based my decision on all of the evidence, the laws and regulations that apply to the issues under adjudication, and the representations of the parties.

EXHIBITS

Complainant's Exhibits:²

- CX1:** Respondent's Statement In Response to Complaint of Complainant
- CX2:** Emails between Complainant, Bobby Williams, and Pam Conrad regarding banking issues
- CX3:** Request for Redetermination regarding Jeremy Keeler claim for unemployment benefits
- CX4:** Emails from November 12, 201 to March 7, 2011 between Complainant and Bobby Williams
- CX5:** Email Dated August 3, 2011 between Complainant and Bobby Williams
- CX11:** Checks Signed By Bobby Williams to Complainant
- CX12:** Bonus/Audit Payment Sheet
- CX13:** Check Stubs for Complainant
- CX16:** Billing statement for Associated Employers Group Benefit Plan and Trust
- CX18:** Copy of 2010 Health Insurance Rates
- CX19:** Letter from Mike Taylor to Bobby Williams dated August 29, 2011
- CX20:** Montana State Fund account activity
- CX21:** Emails between Mike Taylor, Complainant, and Bobby Williams
- CX22:** Emails between Complainant, Dan Cain (Western States Insurance), and Bobby Williams
- CX23:** Emails from Sandy Azua to Bobby Williams; between Tom Lang, Complainant, Bobby Williams, and Dan Locricchio
- CX24:** SYSCO load breakdown presented to Bobby Williams by Complainant, Jim George, and Brian Remus on July 6, 2011
- CX25:** Copy of July 13, 2011 proposed letter to SYSCO
- CX26:** Email dated June 16, 2011 from Complainant to Tom Lang
- CX27:** Email dated July 19, 2011 between Complainant, Mr. Williams, and SYSCO
- CX28:** Emails from Complainant to Bobby Williams dated May 12, 2011, June 10, 2011, and June 13, 2011
- CX29:** Email dated May 17, 2011 to Bobby Williams from Complainant
- CX30:** Email dated May 17, 2011 to the employees from Complainant
- CX31:** Email dated May 23, 2011 from Bobby Williams to Complainant
- CX32:** Full Durable Power of Attorney for Business and Personal Finance for Bobby Williams
- CX33:** Prime Plan Employee Notice dated February 14, 2011

¹ On May 14, 2013, I issued an Order granting the request by Mr. Ron Youde, Esq., to withdraw as counsel for the Respondents, and for an extension of time for the Respondents to retain new counsel and submit a reply brief.

² The Complainant submitted excerpts of Mr. Williams' deposition taken on July 31, 2012 in connection with a claim she has filed in state court. I have admitted the entire transcript of this deposition (CX 135). Rather than list the Complainant's designations separately, I note that they are marked as CX 7-10, 14-15, 17, 34, 36-38, 47-49, 53-54, 71, 83-84, 90, 93, 98-99, 104, 112, 115, 119, 128. Similarly, the Complainant has designated portions of a deposition of Mr. Jeff Carns taken on August 14, 2012, at CX 40, 42-46, 70, and 97.

Additionally, the Complainant has extensively annotated many of her exhibits. I have considered these annotations only as they are reflected in her sworn testimony.

CX35: Emails from Bobby Williams to Complainant
CX39: Emails and letters between Bobby Williams and Complainant
CX41: Copies of payroll checks to Complainant signed by Jeff Carnes
CX 48: One page handwritten note
CX50: FMCSA Safety Ratings
CX51: JEW and WHW FMCSA snapshot showing recent investigation dates
CX52: Federal fines from the FMCSA website
CX55: May 2009 Compliance Review for JEW
CX56: October 2009 Compliance Review for JEW
CX57: September 2010 Compliance Review for JEW
CX58: Emails between Complainant, Bruce Holmes (U.S. D.O.T.), and Lynn Gillette
CX59: September 2011 Compliance Review for JEW
CX60: Emergency Safety Meeting of November 9, 2010
CX61: FMCSA JEW snapshot dated Nov. 2012
CX62: FMCSA WHW snapshot dated Nov. 2012
CX63: Copy of Decision in divorce proceedings dated April 5, 2011.
CX64: Email from Complainant to Bobby Williams dated May 17, 2011
CX65: Letter dated June 10, 2011 from Complainant to Bobby Williams
CX66: Email dated June 13, 2011 to Bobby Williams from Complainant.
CX67: July 15, 2011 Earl Martin Drug Test
CX68: July 15, 2011 Qualcomm report
CX69: Email between Complainant, Jeff Carns, and dispatchers dated July 15, 2011
CX73: US D.O.T Drug & Alcohol FAQ
CX74: Notice of Representation by Albert Calkin, dated November 21, 2011
CX75: MCMIS Compliance Review dated August 22, 2012
CX76: D.O.T. guidance on post employment issues dated May 31, 2011
CX77: Montana Board of Pardons and Parole Final Board Dispositions
CX78: Email from Complainant to Bobby Williams dated May 25, 2011
CX79: Email from Complainant to Bobby Williams dated July 22, 2010
CX80: ATF Report of arrest
CX81: Copy of letter from Bobby Williams to Montana Dept. of Labor dated May 8, 2009
CX82: Copy of letter from HR Director Shane Reinert dated May 21, 2009
CX85: Email to Bobby Williams from Complainant dated March 11, 2011
CX86: Email from Bobby Williams to Complainant dated March 9, 2011
CX87: Copy of Warning letter to Jim Baldwin dated November 22, 2009
CX88: Copy of Jim Baldwin termination letter dated November 10, 2010
CX89: Emails dated March 23, 2010 – November 9, 2010 regarding Jim Baldwin
CX91: Copy of Shop Expenses covering May 2009-2010
CX92: Emails between Bobby Williams and Complainant dated February 22, 2010
CX94: Email from WHW Customer to Complainant and between Bobby Williams and Complainant dated August 24, 2010 and March 7, 2011
CX95: Copy of the FMCSA Rules on Pre-Employment drug testing
CX96: Copy of WHW Compliance Review dated August 10, 2009
CX100: Chain of Command and Job Descriptions
CX101: DOT Notice of Claim on Aug. 11, 2009 issued to WHW
CX102: Copy of Compliance Review for WHW dated October 21, 2009

CX103: Copy of Compliance Review for WHW dated February 1, 2011
CX105: Jim George Affidavit dated October 17, 2012
CX106: Printout of redacted Facebook conversation with between Complainant and Respondent Driver
CX107: Jim Baldwin warning letter dated August 6, 2009
CX108: Emails between Complainant and Randy Kanuit from May 2010 – June 14, 2011
CX109: Letter from Randy Kanuit dated November 14, 2012
CX110: Emails between Jeff Carns and Bobby Williams dated April 2011 and June 17, 2011
CX111: Emails between Bobby Williams, Complainant, and U.S. Bank from Feb. 2010 to May 23, 2011
CX113: Emails between Complainant and PACCAR from Feb. – May 2011
CX114: Emails between Complainant and Kevin Kraft from April – June 2011
CX116: Emails between Pam Conrad and Lucy Schmid dated April 2009
CX117: Copy of time management issues and proposed changes prepared by Complainant
CX118: “Office and Order procedures,” dated February 9, 2011, prepared by Complainant
CX119A: Copy of May 4, 2011 payroll sheet for WHW
CX119B: Copy of May 19, 2011 payroll sheet for J.E.W
CX120: Copy of May 4, 2011 payroll cover sheet for J.E.W
CX121: Email between Complainant and Shane Reinert dated March 22, 2010
CX122: Email between Complainant and Jeff Nilson dated April 26, 2011
CX123: Emails from Complainant to dispatchers
CX124: Email from Complainant to Bobby Williams and Jeff Carns dated May 26, 2011
CX125: Emails between Complainant and Bobby Williams from Sept. 2010 to June 23, 2011
CX126: Email from Complainant to Ben McClintock dated May 4, 2010
CX127: Email between Bobby Williams and dispatchers dated June 1, 2011
CX129: Emails between Complainant and D.O.T. auditors
CX130: Phone and lockbox records
CX131: Complainant timecard for July 1 to July 15, and July 16 to July 31
CX132: Email from Jim George to Complainant dated November 22, 2011
CX133: Certificate issued to Jim George by Al Calkin on October 27, 2011
CX134: Notice of Claim for J.E.W. dated November 3, 2011
CX 135: Transcript of Deposition of Bobby Williams taken on July 31, 2012

Respondents’ Exhibits:

RX1: Complainant’s appeal to OALJ dated August 16, 2012
RX 2: Complainant’s letter to Bobby Williams dated July 7, 2009
RX 3: “Bonus and Audit Payments” received by Complainant
RX 4: Complainant’s email to Bobby Williams dated February 4, 2011
RX 5: Hand drawn diagram of Respondent dispatch and administrative offices
RX 6: Complainant’s email to Bobby Williams dated March 7, 2011
RX 7: Complainant’s email to Bobby Williams dated March 11, 2011
RX 8: List of “Current Job Descriptions” dated March 11, 2011
RX 9: Complainant’s email to Bobby Williams dated May 17, 2011
RX 10: Complainant’s email to Bobby Williams dated June 7, 2011
RX 11: Complainant’s email to Bobby Williams dated June 10, 2011

- RX 12:** Complainant's email to Bobby Williams dated June 13, 2011
- RX 13:** List of "Time Management Issues and Changes Needed"
- RX 14:** Respondents' "Chain of Command"
- RX 15:** Respondents' USPS Payment History
- RX 16:** Lock Doctor receipt dated June 19, 2011
- RX 17:** Complainant's hand-written note regarding final checks to Jeff Carns dated July 25, 2011
- RX 18:** Complainant's text message to Respondents' drivers dated August 2, 2011
- RX 19:** Complainant's whistleblower complaint submitted to OSHA on September 13, 2011
- RX 20:** Letter from Brian Brown to Bobby Williams dated September 13, 2011
- RX 21:** Document titled "Associated Employers Group Benefit Plan and Trust"
- RX 22:** Letter from Mike Taylor to Bobby Williams dated August 29, 2011
- RX 23:** Email from Sandy Azua to Bobby Williams dated July 22, 2011
- RX 24:** Emails between Tom Lang, Complainant, Bobby Williams, and Dan Locricchio dated June 30, 2011
- RX 25:** Letters to Respondents from Information Services Corporation dated August 26, 2011 and September 26, 2011
- RX 26:** Invoice and hand-written notes to Respondents from Randy Kanuit
- RX 27:** Oregon Dept. of Transp. "Notice of Highway Use Tax Assessment – Official Billing" October 27, 2011
- RX 28:** Audit Summary of Respondents by Marlowe Aldrich dated September 9, 2011
- RX 29:** Complainant's "Employee Check History" for JE Williams dated October 27, 2011
- RX 30:** Complainant's "Employee Check History" for WHW dated October 27, 2011
- RX 31:** Screen print of allocation of funds to Complainant
- RX 32:** Screen print of allocation of funds to Complainant
- RX 33:** Screen print of allocation of funds to Complainant
- RX 34:** Screen print of allocation of funds to Complainant's son, Jeremy
- RX 35:** Deposition of Complainant dated January 7, 2013
- RX 36:** Complainant's tax returns

HEARING TESTIMONY³

Gayle Drinkwalter

Gayle Drinkwalter, called as a witness by the Complainant, runs a liquid asphalt and road construction company. The Complainant has worked for him for seven years, including the time she also worked for the Respondent. The Complainant handles safety and DOT audits for his company, and she has discussed and implemented many safety changes, and trained drivers in safety issues and the CSA 2010 program. The Complainant does billing and payrolls, and audits logs according to the CSA, to make sure the files are up to date. (Tr. I 26-30).

Jeremy Stahl

³ The hearing transcript is in five parts. The testimony at the live hearing in Billings, Montana is designated as "I, II, and III." The testimony at the telephone hearing on February 7 and 8, 2013, is designated as "IV and V."

Mr. Stahl, called as a witness by the Complainant, runs Stahl Livestock and Trucking, and employs the Complainant to do accounting and safety. She has handled DOT audits. Mr. Stahl agreed with the Complainant that safety was important to her, and that she is an employee he can depend on. Mr. Stahl has two employees who are drivers; his office is in his home. The Complainant never did any dispatching for him, or office management or employee supervision. (Tr. I 41-47).

Michelle Cockerham

Ms. Cockerham was called as a witness by the Complainant. She is a hairstylist who employs the Complainant as her accountant. She stated that the Complainant is not insubordinate or unprofessional. (Tr. I 53).

Kevin Stubbs

Mr. Stubbs, called as a witness by the Complainant, is a safety investigator for the Montana Department of Transportation. He has performed safety audits at both Respondent and Drinkwalters with the Complainant. He agreed that she was cooperative. Mr. Stubbs was not sure what the Complainant's title was at the Respondent's, but thinks it was "safety." He testified that during the January 2011 audit, the Complainant was very concerned about the violations that had been found. He agreed with the Complainant that when he gave her the proposed conditional rating, she broke down and left the office. He agreed that she was very concerned about the business. Mr. Williams was also present at the opening and closing of the audit. Mr. Stubbs recalled that he met with Mr. Williams during the review, but he did not remember the specifics. He felt that it would have stuck in his memory if Mr. Williams were hostile or confrontational (Tr. I 62-68).

John Gurr

Mr. Gurr, called by the Complainant, worked for the Respondent for several months, and was fired for a "potential to lose customers." He stated that when he worked for the Respondent, the Complainant was the office supervisor or manager, and handled safety issues when they did not have a safety person. He agreed with the Complainant that she implemented an incentive plan and safety bonus. Mr. Gurr did not have face to face contact with the Complainant at work; his contact was usually through the dispatchers and Mr. Williams.

Mr. Gurr stated that he was asked to change logs and drive for longer than allowed.⁴ He felt that the CSA 2010 changed how drivers drove, and put their jobs on the line. He claimed that Mr. Williams turned the trucks down to 62 miles per hour, and expected the same quality of driving as if they were still driving at 75 miles per hour. He was being asked to make the same distances in the turned down trucks as he did when his truck went 75 miles per hour. But the time frame would not allow this. He claimed that he was asked to run over hours on several occasions. He felt that he was putting his career on the line, and it did not seem to matter to Mr. Williams.

⁴ Mr. Gurr did not indicate who asked him to change logs or drive more hours than allowed.

Mr. Gurr acknowledged that he was fired for the “potential to lose customers,” and that he was late with a load. But he claimed that the reason his loads were late was because the distance was greater than the amount of time he had available to drive. (Tr. I 72 – 76).

Jean Reuter

The Complainant called Ms. Reuter as a witness. However, Ms. Reuter testified that she had a stroke two years ago, and has lost her recollection of past events. (Tr. I 87).

David Hilger

Mr. Hilger was called as a witness by the Complainant. He is a former driver for the Respondent. He recalled that when the Complainant first started, she was the bookkeeper, and then became the general manager, and handled safety issues. Mr. Hilger stated that there were problems the last eight or nine months every pay period with the advances; the payroll was overseen by the Complainant.

Although he was never asked to do so, he had “heard” that it was common practice for drivers to be asked to change logs. Mr. Hilger was fired after his last trip, after a disagreement with Mr. Williams about being “worked back” on a run, rather than driving the truck directly back. According to Mr. Hilger, the letter he received states that he took the top off two trailers at overpasses. (Tr. I 90-98).

Albert Calkin

Albert Calkin, who was called as a witness by the Complainant, worked as a special agent for the FHA from 1987 to 2002, enforcing and dealing with the Federal Motor Carrier Safety and Hazardous materials regulations. He now works as a consultant for Innovative Safety Solutions in Helena, Montana (Tr. I 100-101). Mr. Calkin recalled that at some point during his employment with the FHA, he was involved in a review of JE Williams Trucking. He agreed with the Complainant that the March 1, 1989 review lists him as the principal safety investigator, but he did not recall this particular review (Tr. I 102-103).

Mr. Calkin agreed with the Complainant that he was the instructor for the training where Mr. Jim George received a certificate of training on October 27, 2011. He did not recall any conversation with Mr. George, or sharing any information about Mr. Williams with him (Tr. I 104).

Mr. Calkin represented JE Williams Trucking in connection with a September 2011 audit. The Complainant asked him to review an email from Mr. George to her, discussing what Mr. Calkin allegedly told Mr. George the fine would be in connection with the audit (CX 132).⁵ Mr.

⁵ The email states that Mr. Williams denied ever authorizing drivers to go over their hours, but notes Mr. George’s speculation that his company will face a \$45,000 fine, and drivers identified going over their respective hours limits would be fined \$1,000 each. Mr. George speculated that if Mr. Williams were to ever be found complicit in such activity or in paying the drivers’ fines, the DOT will “fine him six figures” and “will pull his authority.” (Tr. I 106-07).

Calkin stated that if that was what he said, it was taken out of context. He explained that the fines are set out on the internet, in a program called Uniform Fine Assessment, which is typically used by the government for assessing fines for violations discovered on a review. By looking at the review, and running the figures through the program, he could easily come up with an estimate of the penalties before the official notice.

The Complainant attempted to establish that Mr. Calkin had violated the ethics statutes applicable to former federal employees by representing Mr. Williams in connection with audits. However, as I advised the Complainant, she was misinterpreting the statute, and it did not preclude Mr. Calkin from representing Mr. Williams, or constitute a conflict of interest.

Mr. Calkin stated that he has never tried to solicit confidential information, nor has he received unsolicited confidential information from anyone at the U.S. Department of Transportation about Mr. Williams or anyone else. He was not aware of any breaches of confidentiality at the Helena office. Mr. Calkin stated that Bruce Holmes, at that office, is very conscious of confidentiality requirements, and will not release any information. He indicated that there had been an OIG investigation of a complaint alleging that information was given to him from the Montana DOT office, but the investigation was closed, with no violation found.

Mr. Calkin stated that there was an audit of JE Williams Trucking in September 2012 about an alleged violation for a failure to obtain a drug test. Mr. Calkin did a background check, and discovered that the driver had been an employee, and had left temporarily and then returned. While he was gone, he was never taken out of the random drug testing pool. Mr. Calkin pulled the records, and went to the consortium that controlled the random drug testing program, and got the records on who was in the pool and when. He also got information from the bookkeeper on when the driver received his last paycheck before he came back. (Tr. I 123-125)

Mr. Calkin was not sure if the driver quit, or took a leave of absence; he was not receiving a paycheck. By looking at the payroll records, Mr. Calkin was able to determine that the driver had worked in the previous three months.⁶ He stated that it was the responsibility of the drug consortium company to let the Billings Clinic know if a driver needed to be removed from the random drug testing pool, and if the company did not call the clinic, the driver would still be on the random list. It did not make any difference when the driver actually had a drug test, because he was in the random testing program. (Tr. I 134-137). The rules provide that an employer can elect not to administer a pre-employment test if the driver was tested in the last six months, or participated in a random drug testing program for the previous 12 months, and the employer verifies that no previous employer had a record of a violation within the previous six months. There was no requirement to test the driver. There was no evidence that he had worked for anyone else (Tr. I 143-145).

⁶ The Complainant's claim that Mr. Calkin was not aware that Earl Martin was fired and worked for another company between his employment with the Respondent is a misrepresentation of the record. Complainant's Response Brief at 29. There was no evidence that Mr. Martin was fired, or that he worked for another company before he came back to work for the Respondent.

Mr. Calkin brought this to the investigator's attention, and the investigator concluded that a pre-employment drug test was not required. The violation was removed from the compliance review. (Tr. I 123-125).

According to Mr. Calkin, JE Williams as a whole has made great strides in improving its compliance from the previous two years; Mr. Williams has taken a very active role in making attempts to reduce violations. He stated that it is not possible to eliminate violations completely – you can't stop a driver from continuing to drive, but you can use controls, and find violations as they occur and take action against the driver to prevent future violations. Mr. Calkin worked very closely with Mr. Remus, the safety director, in auditing logs. He also worked with Mr. Carns on the drug and alcohol testing program and the driver qualifications side to make sure that everything was being done to fully comply with the regulations. He felt that the company was doing everything they could to make sure that his directions were being followed. This was substantially different than when he first started as a consultant for the company – they were just letting the business run, and letting the drivers do what they wanted. Today, they were controlling the drivers, and taking conscientious efforts to follow the rules, and tell the drivers that they have to as well. (Tr. I 125-127).

Mr. Calkin stated that Mr. Remus was very aware of the numbers of violations discovered at roadside, and they discussed these violations. On the last review by the DOT, the findings were satisfactory, with the company doing things substantially better (Tr. I 127-129).

Mr. Calkin stated that the dispatchers could be a big help to a company in assuring compliance with the regulations, but they are not usually good as safety directors, because they have a mind set of move freight, not comply with regulations. Mr. Calkin helps companies set up safeguards. For JE Williams, he put together an hours of service policy that applied to dispatch, drivers, and anyone in the company, and stated that if an employee encouraged violations to occur, he was subject to penalties. He felt this would not be possible if Mr. Williams did not support it, because they needed full management support to obtain compliance. If there was anything less than full cooperation, he would not have been able to turn the drivers' violation rates around. In the past, the drivers did their own thing. But with the full cooperation of Mr. Williams, dispatch, and everyone else at the company, they have made substantial strides in the past year. They have not eliminated all violations, but have reduced them to a satisfactory level, and are working continuously to get better. (Tr. I 130-133).

Jay Henry

The Complainant called Mr. Henry, who drove for the Employer for three months, and quit for a better-paying job. Mr. Henry drove the night shift running flat ash to the mines. He had no idea if drivers were asked to run over hours, or if the Complainant put a safety plan or incentive plan in place. He stated that the Complainant's title ended up being office manager; he did not think she handled safety issues (Tr. I 153-155).

Torry Bixby

The Complainant called Mr. Bixby, who worked for the Employer for roughly two years, and was fired after an audit showed that his logs had three days that did not match the load times (Tr. I 160). He thought he was really fired because he and Mr. Williams did not always see eye to eye (Tr. I 161).

Mr. Bixby recalled that the Complainant and Jeff Carns put on an emergency safety meeting on safety, keeping trucks in safe order, doing logbooks correctly, and getting paperwork turned in on time (Tr. 163). He did not recall if the Complainant implemented a safety bonus, but she implemented a drivers pay scale and performance bonus (Tr. I 164-165).

Mr. Bixby stated that drivers were asked to drive over their hours by the dispatchers. His dispatcher was Jeff Nilson, who he felt was unknowledgeable, and did not know how to deal with drivers and help them get loads delivered in a timely fashion without breaking the logbook laws. (Tr. I 164-165). Mr. Bixby acknowledged that a driver had the right to say no to a load, but he stated that sometimes they were told that they had to take the load because it needed to get there, and if the driver refused, he was afraid he would not have a job (Tr. I 166). This happened to him every once in a while (Tr. I 166). He felt that Jeff Nilson blamed him for mistakes, sometimes fairly, others not; he was afraid to report it to anyone. He tried to talk to the Complainant and Bobby Williams, but was afraid he would lose his job if he said anything (Tr. I 167-168).

According to Mr. Bixby, the dispatchers told them to do what they had to do to get the job done. Specifically, the dispatchers told them to redo the logbooks to make it look like they had the time to get the product to the location. Mr. Bixby did what he had to do, including changing his logbook, although most of the time, if he was late, he called the office and made arrangements with the dispatchers.

Mr. Bixby discussed an incident where he dragged a tire on a trailer, which made Mr. Williams pretty upset, because he had to pay for the tire. Mr. Williams told him not to let it happen again, and reprimanded him. Mr. Bixby did not think Mr. Williams was being unfair (Tr. I 169-170). He acknowledged that he has had mistakes in his logs that were identified by the DOT. But he had never been written up for it, and did not have anything in his record about bad logs. He felt it was kind of unfair that the Complainant and Mr. Williams dismissed him for the logbook violations. He stated that they told him it had happened before, but no one had ever told him about it (Tr. I 171). He had been told that month that he had no logbook violations. But then he got back after the audit, and was told that he had three days that were not right (Tr. I 176).

Jeremy Brownheim

Mr. Brownheim, who was called as a witness by the Complainant, worked as a truck driver for the Respondent for three years before he quit. He stated that the Complainant was known as the general manager (Tr. I 191). He heard from numerous drivers different reasons why she was fired; Mr. Williams never told him why the Complainant was fired (Tr. I 191).

Mr. Brownheim claimed that he was asked to drive over hours, not by Mr. Williams, but by the dispatchers. He was never asked to change his logs. According to Mr. Brownheim, there were quite a few drivers who falsified logs, but it was the drivers' fault if he falsified the logs (Tr. I 210). He drove mainly produce loads, and it was hard to do some of these loads within the hours given.

Mr. Brownheim stated that the Complainant took care of safety issues when drivers made complaints; she did not take any of his complaints to Mr. Williams. It was part of her job to take logbook violation complaints to Mr. Williams (Tr. I 196, 198).

He felt that the dispatch office was chaos, with lots of indecision, and procedures changing constantly (Tr. I 194-195). When drivers called in, they talked to several dispatchers, which was why many loads were late or not picked up; there was no consistency or structure (Tr. I 200, 204). According to Mr. Brownheim, when he first started driving, the office was a little bit more organized, but after about 8 months, it started to deteriorate, and totally took a dive when the Complainant started. It was like a revolving door: every day he came in the office, there was someone different, including in the shop. Karl Shammel was the head mechanic when he started, and he left. There was turnover in the shop and dispatch. Lucy and Jean in the office left. It seemed as if the moment the Complainant started, she was cleaning house every month. The dispatch section took a nosedive in terms of organization; Mr. George did not seem as if he knew very much (Tr. I 223-226).

Jim Baldwin

The Complainant called Mr. Baldwin, who worked for the Respondent for roughly twenty-three years, first as a driver, then in the office, and then as assistant dispatcher (Tr. I 228). Mr. Baldwin took care of claims, and wrote the company's first orientation handbook (Tr. I 229). Mr. Baldwin was fired after an incident involving a load of berries to be delivered for Safeway, which was picked up two days late and delivered one day late. Although Mr. Baldwin tried to arrange timely delivery, there was no way to do it except by running illegal, so they delivered a day late. Safeway wanted the company to pay a \$1500 fine, but Mr. Baldwin negotiated it down to \$750. (Tr. I 230-231).

In response to questions about the Complainant's role, Mr. Baldwin stated that at the end, the Complainant was the general manager or office manager; everyone signed off on the chain of command, which the Complainant wrote (Tr. I 233-234). He recalled that the chain of command came into place because no one other than the Complainant and Mr. Williams knew what her role was for the first 45 to 60 days that she worked there. Everyone had been told that she was the bookkeeper, but because of some things that went on, he and others asked what employees' specific roles were (Tr. I 237).

According to Mr. Baldwin, when the Complainant came on board, she talked about implementing changes; people who were there for a long time felt like they were being harassed (Tr. I 265). He stated that the person who was supposed to be the bookkeeper, with her own office, was coming out and explaining what was wrong with dispatch, or talking about drivers who had come to her, and going out to the shop and telling the head mechanic what he had to do.

It did not make sense that someone was telling them how to do their job when she had her own job to do. Mr. Baldwin stated that no one liked the Complainant; there was a lot of conflict and power struggles (Tr. I 265-266). No one knew what was going on, which led to the request for a chain of command. He was told to sign it (Tr. I 267)

Mr. Baldwin recalled a meeting in the office to discuss how to run legal and still deliver on time. The Complainant suggested team driving, which Mr. Baldwin called faulty thinking. Although a team can run legal, this doubles the labor cost; it can be done, but the company would not stay in business. Mr. Baldwin laughed at the suggestion, and felt that it showed a certain level of ignorance on the Complainant's part. He felt that she did fine as far as accounting and book work, but over the road trucking is not like a bus line to the mall. (Tr. I 269-271).

In response to the Complainant's questions, Mr. Baldwin did not recall an incident in November 2009 where a driver blamed him for running over hours. He stated that such accusations are made by the drivers against dispatch on a regular basis; it has happened to him. But he did not tell any drivers to drive over hours (Tr. I 247). Mr. Baldwin stated that no one had the authority to tell drivers to drive over hours if they needed to do so. He has heard drivers talking about Mr. Williams asking them to do so, but not that Mr. Williams asked them to change their logs (Tr. I 248).

Mr. Baldwin recalled an incident when a driver had a load that could have been delivered legally, but the driver messed around. Mr. Williams told him he needed to get the load done, and figure out how to get it there.⁷ This was the only first hand instance he knew of in all of the years he worked with Mr. Williams. He thought that Mr. Williams may have sent a Sysco truck out; in the end, the driver did not have to go past his legal hours. (Tr. I 275).

Mr. Baldwin did not think his termination was fair. He stated that in the beginning, it was just him and Mr. Williams, but after the first couple of years, Mr. Williams took the lead. The company was expanding, and Mr. Baldwin was doing more of the day to day work; he had free rein (Tr. I 242, 260-262). He had negotiated with customers before, and if he made a mistake, Mr. Williams would tell him. In the months preceding his firing, he had received warnings and reprimands, and he was in the process of cleaning his desk out. He felt that this incident was a reason to let him go. He was called into the office; the Complainant did all the talking, and Mr. Williams agreed that this was what he wanted (Tr. I 262-264). He felt that the Complainant was the primary motivator for his termination (Tr. I 276).

Robert Ostermiller

Mr. Ostermiller was hired by the Complainant as the safety director, and worked from July 2010 to February 2011 (Tr. I 278). Mr. Ostermiller had previously worked with the Complainant's husband, and was out of a job; he is a drafter and a mechanic (Tr. I 292-293).⁸ Mr. Ostermiller was trained in his position by the Complainant. When he started, the company's

⁷ Mr. Baldwin acknowledged that one could infer that the run had to be made illegally.

⁸ Mr. Ostermiller stated that he was in over his head; he was not professionally trained for the job, and did not have an insurance claims background (Tr. I 293).

safety numbers were high; he agreed that it was important to the Complainant to bring them down, and make the drivers aware of violations. There were two audits while he worked at the company, and an emergency safety meeting to discuss hours of service (Tr. I 279).

Mr. Ostermiller agreed with the Complainant that she pulled drivers in for hours of service violations and logbook changes, and took her concerns to Mr. Williams. He stated that drivers told them they were told to drive over hours. The Complainant told him to bring drivers in who had excessive hours on their logs, and instruct them on hours of service and how to do their logs. He claimed that some drivers were told to finish their load even though it was illegal, and were intimidated by management (dispatchers and Mr. Williams); some did not understand the laws (Tr. I 281).

According to Mr. Ostermiller, when the Complainant took the drivers' concerns about being told to drive over hours to Mr. Williams, he said that this was real-world trucking, and that was the way it was. Mr. Ostermiller claimed that some drivers were fired, and others quit when they were told to drive over hours. He did not think safety was important to Mr. Williams (Tr. I 282-285).

Mr. Ostermiller stated that he was fairly new to the trucking industry, but it was "blatantly obvious" to him that they needed to follow the DOT rules. It seemed to him that Mr. Williams decided that it needed to be his way. According to Mr. Ostermiller, there was disagreement between the Complainant and Mr. Williams about how some safety issues should be handled (Tr. I 286).

Mr. Ostermiller could not recall the names of any drivers who were told to drive over hours; although he stated that he witnessed Mr. Williams intimidating drivers, he could not recall any of their names (Tr. I 287, 295). He recalled one instance involving a driver hired in late summer 2010, who drove a load from Idaho and Colorado, and ran out of hours before he got to Texas. The driver told Mr. Williams he was out of hours, and Mr. Williams told him to get the truck there no matter what, he did not care if the driver was out of hours. The driver told Mr. Williams he could not do that, because it was against DOT rules. Mr. Ostermiller could not recall Mr. Williams' response (Tr. I 287-288).⁹

Nor could Mr. Ostermiller remember the names of any drivers fired for refusing to drive over hours. He stated that a driver hired in the fall, and told to make a run, quit; he was not fired over hours of service, but for running a tire with a sidewall showing cord. Although there were "so many" who were fired or who quit over hours, Mr. Ostermiller could not remember any names (Tr. I 289-290).¹⁰

Ludwig Flansburg

Ludwig Flansburg was hired as a driver for the Respondent in 2007, and was injured in 2008. He went back in 2009, and was then dismissed (Tr. II 312).

⁹ It was not clear if Mr. Ostermiller personally heard this exchange.

¹⁰ Mr. Ostermiller stated that a driver named Stafford was let go because he was not able to keep up with his loads, and he told "him" he did not want to go over his hours of service (Tr. I 290).

According to Mr. Flansburg, the dispatchers told him to driver over hours. He recalled an overnight load from California to Denver, which had to be there the next day. There were two trucks, driven by himself and Ron Wheating. Mr. Flansburg stated that Jeff Nilson, the dispatcher, called Mr. Wheating every two hours all night long to make sure they were on time. He told him it was a new customer, and the load absolutely positively had to be there. They took that to mean that if they did not get the load there on time, their jobs were in jeopardy. The run was 1600 miles in 30 hours, and according to Mr. Flansburg there was no way they could do it. When he and Mr. Wheating got to Denver, they shut down for two days to let their logbooks catch up. He stated that this was the only run he had to make illegally (Tr. II 313-315).

Jeremy Keeler

The Complainant called Jeremy Keeler, her son, whom she hired to work as the finance manager (Tr. II 332). His job involved entering the billing for WHW Trucking; Joey Henry entered the billing for JE Williams (Tr. II 335-336).

Mr. Keeler claimed that drivers came into the office nonstop, saying that they were never going to get Mr. Williams to run legal (Tr. II 332). According to Mr. Keeler, there was always pressure for the drivers to run over hours; when they bucked the system, their jobs were hung over their heads. Mr. Keeler claimed that there was “absolute chaos” daily, with everything in a constant state of drama and uproar. There was constant tension with drivers complaining that they were pressed or forced to do something they were not comfortable with, or swearing, cursing, browbeating, and yelling by Mr. Williams (Tr. II 333). Mr. Keeler claimed that the Complainant constantly went to Mr. Williams when the drivers told her they were out of hours, and could not make the run; Mr. Williams would “puff up,” and say it was his company, he would do whatever he wanted, “F” the DOT, remember who owns the company (Tr. II 345). Mr. Keeler claimed that he overheard Mr. Williams multiple times say, “F” the DOT (Tr. II 406, 419).

On the day he was fired, he had just completed the payroll, and the Complainant had been called back from Drinkwalters. She and Mr. Williams went into Mr. Carns’ office, where they talked for 10 or 15 minutes; there were raised voices. The Complainant came back, asked him for the keys, and said that Mr. Williams was letting them go. According to Mr. Keeler, the Complainant told him that Mr. Williams said he could not work with her anymore, and to take her son with her (Tr. II 404). He gave her the keys, and they took their things to the car. Mr. Keeler claimed that they were “stalked” by Travis Williams, who stood with his arms crossed (Tr. 346). He stated that they had no indication they were going to be let go (Tr. II 347).

Mr. Keeler did not see the load sheets; he did not know where loads were going, or what the drivers’ logs said. He only knew that drivers came in and told the Complainant they could not do a load because they were out of hours (Tr. II 407). Nor was he there for the Earl Martin incident (Tr. II 418).

According to Mr. Keeler, the Complainant prepared a polite and professional letter telling Sysco that they could not do their loads in a legal manner, but Mr. Williams refused to sign it;

Mr. Keeler claimed that if it was anything involving legality, Mr. Williams was against it. He claimed that there was a critical moment where it was very clear that Mr. Williams did not care about running legal, and the Complainant was the primary hurdle; she was the only one who stood up to him the whole time they worked there (Tr. II 408, 421).

Charles Pratt

The Complainant called Mr. Pratt, who is a safety investigator for the Montana Department of Transportation, Motor Carrier Safety program. He has worked on audits at the Respondent, but he did not recall anything about the 2010 audit (Tr. II 378-379).

Daniel Cain

The Complainant called Mr. Cain, who works for Payne West Insurance. He met the Complainant when he went to JE Williams with another agent to provide a quote on workman's compensation insurance (Tr. II 450). The Complainant and Mr. Williams signed agent of record letters, and Mr. Cain thought there would be some recoil from the company's current agent, Mike Taylor. Mr. Cain thought he would be angry, and fight for the account.¹¹ The Complainant told him that Mr. Taylor made a "big stink," and claimed that Mr. Cain undercut him and took the policies away unfairly; he got the signature from Mr. Williams to take the policies back.

Mr. Cain met with the Complainant and Mr. Williams, and told Mr. Williams that the two quotes were almost identical, except for the liability coverage, which was higher with Mr. Cain's quote. Mr. Cain did not get the account. He stated that Mr. Williams thanked him for coming in, and for the work he did, but did not seem to want to move his policies.

Mr. Cain recalled that the Complainant seemed upset, and did not want to work with Mr. Taylor, and told him she was not getting the service she wanted from him; she was more interested in what he was offering (Tr. II 451-460).

Jim George¹²

The Complainant called Mr. George, who worked as head dispatcher and load planner for the Respondent from April 19 to August 19, 2011 (Tr. II 477).¹³ He was hired by the Complainant, who was training him in how to operate the Keystone software system (Tr. II 478).

Mr. George stated that he heard a lot of derogatory comments after the Complainant was fired from Jeff, Red, and Mr. Williams, that she stole a bunch of money from the company and

¹¹ Mr. Cain stated that he never worked with Mike Taylor, but this was his "understanding." (Tr. II 454).

¹² The Complainant submitted an affidavit purportedly signed by Mr. George, apparently prepared in connection with a state proceeding. The affidavit tracks the testimony of the Complainant, less so Mr. George (CX 105). Mr. George did not adopt this affidavit or otherwise confirm the accuracy of its contents, and I rely on his testimony at the hearing.

¹³ Contrary to the Complainant's claim, Mr. George did not testify in great detail about his extensive years of experience in trucking, dispatch, and business (Complainant's Brief at 25).

Mr. Williams caught her, and that was why she was fired. Mr. George claimed that he overheard Red tell that to several drivers on the phone (Tr. II 479).

According to Mr. George, JE Williams was not run in a structured, organized manner (Tr. II 480). Mr. George worked with the Complainant to schedule trucks and make sure they got there on time, with the load they were supposed to have. As the Complainant trained him in how dispatch worked with the software, they were trying to get the most effective use of the trucks, by getting scheduled runs and back hauls, rather than running helter skelter (Tr. II 481-481). Mr. George stated that they would get agreement from Mr. Williams, and a few weeks later, he would change his mind, and undermine everything they were trying to do (Tr. II 486).

Mr. George stated that the Complainant was trying to get Mr. Williams to use the Keystone system, but he would not. He claimed that Mr. Williams changed the board, and runs; they were trying to run the company two different ways. It was fine as long as Mr. Williams was out of the picture and just supervising, which was why they moved him into his own office. When Mr. Williams got involved, everything was disrupted, and they had to try and straighten things out (Tr. II 487).

According to Mr. George, there were lots of driver complaints. At the end of the day, the dispatch board was set up for runs, although sometimes it was not complete. Mr. Williams came in and moved things around. He and the Complainant tried to reconstruct it, and put the runs into the computer system. They were concerned that there were a lot of runs that no one was ever billed for (Tr. II 488-489).

Mr. George stated that Amerifresh called Mr. Williams and offered runs, and for a while he worked with the Amerifresh agent. He claimed that if they told Amerifresh that they would not take a load, the agent would call Mr. Williams and they would then take the load. Mr. George felt that this disrupted their procedure. He stated that Sysco also called Mr. Williams a lot to arrange loads, and that Mr. Williams took them regardless of what Mr. George and the Complainant were trying to do (Tr. II 491-493). He did not know how the Amerifresh loads were resolved; he stated that sometimes Mr. Williams stepped in and rerouted trucks to pick up the loads (Tr. II 530).

Mr. George testified that Sysco sent them incomplete data, with partial loads; he had to call and get pickup locations. Many times, they sent trucks to the wrong place. They had to spend a lot of extra time figuring out what the Sysco orders meant (Tr. II 493-494). They tried to convince Tom Lang at Sysco that they needed more data, on where and how much to pick up, and where to take it. Mr. Williams' attitude was that they should do whatever it took to do the Sysco loads, and do them right. He and the Complainant researched the numbers on lost opportunities and revenues, and determined that Sysco was not a good account (Tr. II 497).

Mr. George described the Sysco account as a "nightmare." He and the Complainant prepared a spreadsheet of hours spent and cost factors, with an analysis of the cost effectiveness (Tr. II 498-499, CX 24). They took it to Mr. Williams, to show him that they were not making any money on the Sysco account, and they were increasing the risks for the drivers to run out of hours (Tr. II 499). According to Mr. George, Mr. Williams was rather incredulous, and put the

spreadsheet on a pile on his desk and ignored it (Tr. II 500). He told them that he would think about it and get back to them (Tr. II 522).

The Complainant then prepared a letter to Mr. Lang to address the Sysco issues (CX 25). Although he did not recall taking the letter to Mr. Williams, Mr. George stated that Mr. Williams hit the ceiling when he found out they were pushing Sysco that far. Mr. George claimed that Mr. Williams thought the letter was a threat to end the relationship with Sysco if it was not satisfactorily profitable and legal, and this was not acceptable to him (Tr. II 503). Mr. George felt that Mr. Williams did not want to threaten an account that was their bread and butter, but he could have reworded the letter, or negotiated with Sysco (Tr. II 524). He learned later that they were not getting rid of Sysco as a customer (Tr. II 524).

Mr. George discussed a call from a driver named James Hayes, which he heard over the speakerphone. Mr. Hayes had been working 24 or 28, or maybe 30 hours, to load a truck, and was being asked to drive from Denver to Salinas nonstop. Mr. George stated that Mr. Hayes was begging, and said he could not keep his eyes open, and would have a wreck if he kept going. Mr. George did not recall what they told him to do. Although he did not recall the “event of that happening,” Mr. George claimed that Mr. Hayes was asked not to stop by Mr. Williams. He recalled going to Mr. Williams, and telling him this had to stop, and someone would be killed if they continued to operate that way. He did not recall if it was at this time or some other point that he heard Mr. Williams say “F” the DOT, we will run the way we need to run (Tr. II 505).

Mr. George also recalled a driver who took a drug test after he was rehired, and he and Mr. Remus were both concerned that Mr. Williams would send him on a run before the results were back. He and Mr. Remus talked about how they could stop it. Mr. Williams sent the driver on the run (Tr. II 506).

According to Mr. George, they constantly received calls from drivers asking if they were shut down yet. When the Complainant confronted Mr. Williams, Mr. George “guessed” that his response was, you’re making a mountain out of a molehill (Tr. II 507)

After the Complainant left, no one else knew how to use the Keystone system. Mr. George was expected to keep up, but it was difficult; he had no one to ask questions (Tr. II 508). He feels that he was fired because he could not do the job honestly, the way Mr. Williams wanted it done; he could not figure out what the job was, because it was completely inconsistent. Mr. George tried to get Mr. Williams to train him, but Mr. Williams would sit down for ten minutes, and then get a phone call and leave. Mr. Williams did not give him the time or direction to figure out how to make the transition from doing it the way he and the Complainant did to the way Mr. Williams was trying to do it. He stated that Mr. Williams was the only dispatcher, and was doing the load planning, which was the job he was hired to do (Tr. II 509-513). Mr. George also asked Mr. Carns for training, but he was busy (Tr. II 517). Mr. George stated that Mr. Williams would make changes on the board at night, and not put them into the Keystone system; when he got to work, he could not figure out what happened (Tr. II 531).

Mr. George stated that in previous jobs, he worked with fixed routes; in the grocery business, he had unscheduled back hauls. The biggest difference in this job was that they did not

have fixed routes. It was a very different process, with a lot more back hauls and intermediate hauls. He could not make sense of it; there were no regular routes, and everything was new every day (Tr. II 518). According to Mr. George, there was no accounting for whether a run was viable financially; they just put a truck where they could get a buck. As an example, he stated that Mr. Williams sent a truck to Las Vegas and made \$500 on the load, but it kept him from picking up a produce load on time. He acknowledged that it was possible to lose money on some loads in order to keep a customer happy (Tr. II 519).

Mr. George stated that he went into Mr. Williams' office to talk about a call he had received because a driver was late picking up a load, which would make the delivery of a load to Billings late. Mr. George had asked Mr. Carns if they could pick up the load until 10:00, and Mr. Carns said that was fine, that it should only take about 45 minutes to load. Mr. George then called the people in Portland, who told him that it would take four hours to load, and it would not be loaded in time; the company closed at 1:00. The load of doors had to be in Billings on a job site (Tr. II 514). According to Mr. George, they were late picking up the load because the driver would not cut his overnight stay short; he wanted his full ten hours off (Tr. II 514). Mr. Williams was upset that Mr. George let him have his full ten hours off, instead of cutting it to eight and being on time for the pickup.

Mr. Williams told him that he was not making it, he would never make it, he did not understand what he was doing, and he did not have any future there. Mr. George asked him if that was it, and Mr. Williams said that was it. Mr. George walked out the door, and told Red he was quitting; he felt that Mr. Williams took that to mean he was quitting without his knowledge (Tr. II 515).

Joey Henry

The Complainant called Joey Henry as a witness.¹⁴ She was hired on May 24, 2010 to do billing and partial payroll, and then clerical work (Tr. II 572). She stated that the mood in the office leading up to the Complainant's termination was chaotic, divisive, and unprofessional. Ms. Henry stated that the Complainant was constantly running around like a chicken with her head cut off; there was a lot of chaos, excitement, and fever. It was an absolutely crazy and extremely unprofessional environment (Tr. II 574). She claimed that the Complainant was "black and white;" she could be extremely nice the majority of the time, and then snap and be angry with her. She was always angry with Mr. Williams. Ms. Henry made sure to leave the office by four, because she could not handle the environment.

One day, the Complainant chased her into the parking lot; Ms. Henry almost ran her over, because she did not realize she was there. The Complainant hit her window, and said that she almost had Mr. Williams out of the office, but she needed her help. Ms. Henry told her that she did not know what she meant, but did not think that was the problem, and she was going home. It was as if the Complainant wanted Mr. Williams out of the center and day to day practice of his

¹⁴ Curiously, the Complainant argues that Ms. Henry was brought in as a "surprise" witness in an attempt to destroy her character. Complainant's Response Brief at 8. It was the Complainant who called Ms. Henry as a witness, not the Respondent.

own business, because the Complainant felt he was destroying his own business, or that he was counterproductive to what she was trying to accomplish (Tr. II 576).¹⁵

According to Ms. Henry, the chaos in the dispatch section came from the Complainant. She stated that she had worked in the trucking industry for twenty years, and never saw anyone behave the way the Complainant did. The Complainant told her that she was angry with Mr. Williams because he was not doing things the way she wanted. She had ideas, and he was too dumb or too greedy to follow them (Tr. II 599). She stated that the Complainant created lots of mountains out of molehills, running around constantly creating issues where there were none. She felt that the Complainant was hindering the business. She recalled one incident where the Complainant thought that some truck buyers were Russian mafia, and created chaos in the office, telling people they were going to be killed (Tr. II 618-620).

Ms. Henry complained about Mr. Ostermiller; she thought he was kind of crazy (Tr. II 608).

Ms. Henry stated that she could hear arguments between the Complainant and Mr. Williams behind closed doors, but she did not know what they were about. She felt that the Complainant was passive aggressive, as illustrated by her moving Mr. Williams' desk. Mr. Williams used to sit in the dispatch area. For a long time, the Complainant talked about how she needed to get him out of there, because he was distracting. Ms. Henry thought that Mr. Williams told her he would not move, because that was where he wanted to be. One day, Mr. Williams came in and the Complainant had moved everything into the safety office (Tr. II 583). She could not believe it; Mr. Williams was almost dumbfounded. He did not get angry, he was just taken aback. This happened about a month before the Complainant was fired (Tr. II 584).

Ms. Henry felt that it seemed like the Complainant had an agenda, which she never really understood. She felt that the Complainant just wanted to be in control; toward the end, she was frantic. Ms. Henry described an incident when the Complainant was angry with Mr. Williams about the mail box keys, and was running through the office yelling obscenities, and telling everyone they were not going to be paid (Tr. II 577). Ms. Henry could hear the Complainant in the dispatch section telling the men they were not going to get paid, and stating "F" this and "F" that. She stormed out, and when Jeremy asked her what he was supposed to do, she said she was "F"ing leaving, and she did not care what the hell he did (Tr. II 579).

Ms. Henry did not believe that Mr. Williams was breaking the rules, or that anyone needed to stand up to him after the Complainant was gone. She did not recall "numerous conversations" about running illegal (Tr. II 603).

Ms. Henry was aware that the Complainant was trying to get rid of the account with State Fund, and the agent, Mike Taylor, and hire a person who came to the office to talk with her in private. The Complainant went behind Mr. Williams' back, and had the salesman come when he

¹⁵ Ms. Henry stated that when she called Mr. Williams about this incident, she asked him when the Complainant's name was going on the side of the building, and his was being taken down, because she was trying to get him out of the business (Tr. II 587).

was not in the office. The Complainant told her that Mr. Williams did not get rid of State Fund. (Tr. II 591, 595).

Ms. Henry stated that Jeremy was angry about the mail box situation, and said that he was going to beat Mr. Williams up, and “kick his ass.” He argued with the Complainant, who convinced him to calm down (Tr. II 580). Ms. Henry described Jeremy as the Complainant’s right hand, who did only what the Complainant told him to do. She stated that he did not respect Mr. Williams at all (Tr. II 592).

Mr. Carns had been given the mail box keys, and told that he needed to start getting the mail. Ms. Henry watched the Complainant go in and ask him for the keys, and he had no choice but to give them to her, even though the Complainant knew that Mr. Williams wanted Mr. Carns to get the mail (Tr. II 588).

Ms. Henry recalled a conversation with Mr. Williams before the Complainant was fired. After the confrontation in the parking lot, she went to his office and told him she could not work in that environment anymore, and that she had never seen anyone behave like the Complainant at work. She stated that either the Complainant went, or she would quit. Mr. Williams asked her if she knew anyone who could replace the Complainant. Ms. Henry found an extremely good candidate, Shelly Gehringer, who met with Mr. Williams (Tr. II 581). Ms. Henry worked with Ms. Gehringer at DTS, where Ms. Gehringer worked for 20 years as an accounting manager (Tr. II 582). Mr. Williams told her that he was going to fire the Complainant, and Ms. Henry asked him when, because she could not continue to work there. But she wanted to get through payroll; the Complainant was terminated thereafter (Tr. II 581).

According to Ms. Henry, after the Complainant and Jeremy left, it was quiet. There was a lot of work to be done, and it was a few days before Ms. Gehringer could start. She stated that everyone could relax, because it was not so chaotic or crazy (Tr. II 585). Ms. Henry took on the billing for WHW, and for the company as a whole. She stated that the environment was much more professional, and not like a circus (Tr. II 586). When she left the company, she stated that it was a good environment, with team work (Tr. II 593).

Ms. Henry stated that the Complainant always seemed angry (Tr. II 577). She and the Complainant went outside to smoke, and the Complainant would rant and rave about Mr. Williams and his business, stating that he did not care about anything, he was just money hungry. The Complainant used the “F” word with his name (Tr. II 578).

Ms. Henry stated that she made sure not to be in the office on the day that the Complainant was fired; the Complainant seemed very unstable (Tr. II 589).

Jeff Carns

The Complainant called Jeff Carns, who started working at the Respondent in November 2000 as a local pickup and delivery driver. He left on December 20, 2012, on good terms; he now works at Warren Transport. While he worked with the Respondent, Mr. Carns did some

assistant dispatching, and then worked in human resources (Tr. II 622). Mr. Carns was taught dispatching by Jim Baldwin, J.E. Williams, Bobby Williams, and others (Tr. III 644).

Mr. Carns stated that the Complainant was hired to do accounting and books in the back of the office. He stated that she called herself the general manager (Tr. III 664). She became involved in dispatch when she started trying to integrate the trucking software, and learning how to do the order entry on the Keystone system (Tr. II 623). To his knowledge, the Complainant had no dispatch experience. He thought that some of the recommendations she made were not fit for trucking dispatch (Tr. II 624).

According to Mr. Carns, the information for keeping track of loads and trucks was still handwritten. Although they did data entry and ordering, they still had a manual way of looking at dispatch. He did not think that the Complainant knew a lot about dispatching trucks or load planning (Tr. II 625-626). Mr. Carns stated that Mr. Williams was a good source for dispatching and load planning knowledge; he could go to him with questions about loads and mechanical issues. He was always available (Tr. II 626-627).

Mr. Carns stated that the last few months before the Complainant was fired were tense; he was always walking on eggshells, waiting for something to happen. The tension came mainly from the Complainant. Mr. Carns tried not to be involved, and just do his job (Tr. II 628).

According to Mr. Carns, Jeremy spent time playing on his phone, and if Mr. Carns had questions, he always had to wait. Jeremy would tell him that he had to ask the Complainant when she returned, even if it had to do with his job. Other people also had issues with Jeremy. Mr. Carns stated that when he was working in dispatch, Jeremy would pace back and forth, and make comments about kicking someone's ass (Tr. II 629-630, 634, III 647).

Mr. Carns stated that Mr. Williams asked him to start getting the mail again. He changed the keys, and gave Mr. Carns copies. One morning the Complainant came in; Mr. Carns went outside with her, where she was smoking. She told him that the mailbox keys had been changed; she was mad, and used profanity (Tr. II 630-632). He recalled her screaming and using the "F" word (Tr. III 680).

Mr. Carns was aware that Mr. Williams' desk was moved to an office. This was not his decision, but he did not think it was okay; it was done without Mr. Williams' knowledge (Tr. II 637).

According to Mr. Carns, the Complainant created animosity and chaos by digging into peoples' backgrounds, and running around trying to freak everybody out. It seemed to him that the Complainant could take a situation and blow it out of proportion, to where you could be scared of a box of tissues (Tr. III 653). It did not seem professional to him to have everybody on their toes, causing hate and discontent on small issues (Tr. III 658). He never knew when the Complainant would flip on people in the office. It got to the point where he did not want to come to work. He was not eating, because he hated going to the office. Mr. Carns worked with the Respondent for 10 years, and everything was fine. The Complainant had issues with trucks and drivers, but small issues that five years earlier they could handle in minutes, she made into a

blown up, drawn out affair, and they had to have an office meeting on it. Small issues became large issues. It got to the point where Mr. Carns did not want to be there. (Tr. III 659-670). There were days he could not drag himself to work, because he did not want to see the Complainant, and deal with issues that were utterly blown out of proportion (Tr. III 667).

Mr. Carns stated that the company never had issues with high audit numbers when Jean Reuter was in the safety department. The next person in the safety department was not a good safety manager (Tr. III 662).

Mr. Carns recalled that when Earl Martin was sent out on a run, the Complainant was running through the office, upset and slamming doors (Tr. III 671). He did not recall that “several people” were upset that Mr. Martin was being sent out, including Brian Remus. He recalled the Complainant and Mr. Williams standing in front of the board, but he did not remember the conversation (Tr. III 671). Mr. Carns identified CX 72, the past employees’ file, which indicated that Mr. Martin was on leave when his wife was having medical issues (Tr. III 672).¹⁶ He stated that Mr. Martin worked for the company for years off and on. He was still on their consortium, and under their realm of drug testing (Tr. III 670).¹⁷

Mr. Carns was aware that the Complainant was going to be fired a short time before it happened; he was not in the office on the day she was fired (Tr. III 669). He did not know the specific reason she was fired, but felt that it was due to a multitude of things, including unprofessionalism and employee upheaval (Tr. III 667).

After the Complainant and Jeremy were gone, Mr. Carns felt at ease, as if he could continue to do his job and move forward (Tr. II 632).

Julie Keeler

The Complainant worked for JE Williams and WHW Trucking from April 2009 to July 19, 2011. She was hired for bookkeeping and consultation (Tr. III 682). According to the Complainant, she has had her own bookkeeping, accounting, and consulting business since 1989. When she went to work for the Respondent, she was already working with Drinkwalters Trucking, where she handles accounting and safety. She stated that her trucking experience goes back to 1989, with VHR Transport; several of her clients are in trucking. The Complainant has also sold accounting software for specific industries, including trucking, through Creative Computing Inc. (Tr. III 683). The Complainant stated that she set up accounting software for VHR, and entered in drivers and set up dispatch, and trained the company on the new system (Tr. III 684).

The Complainant attended Billings Business College; she is a registered tax preparer. She has a degree in criminal justice, and does professional mediation (Tr. III 688).

¹⁶ This exhibit was not admitted, because its provenance was suspect. (Tr. III 961).

¹⁷ The Complainant’s claim that Mr. Carns told her that he had not done an employment verification on Mr. Martin since he was fired in March 2011, and that he did not know what else to do because Mr. Williams was sending Mr. Martin out that same evening, is inconsistent with Mr. Carns’ actual testimony. See Complainant’s Brief at 28.

The Complainant answered an ad in the paper for a bookkeeper and office person, and met with Mr. Williams, who expressed concern about several things, including cash flow. She offered to perform an assessment of his company, and Mr. Williams agreed. The Complainant spent six or seven hours meeting with the employees and learning what they did. She went to Mr. Williams the next day and gave him the information from the assessment. Mr. Williams was impressed, and told her he did not know she would be so “right on” about his employees. The Complainant was hired as a bookkeeper (Tr. III 685-687). It was her understanding that she would be doing bookkeeping and consulting, finding out where all of the money was going (Tr. III 688). When Mr. Williams told her that he was going to get rid of another employee, she told him about her son Jeremy, and he agreed to hire him (Tr. III 689).

According to the Complainant, within weeks of her starting working, Rowell Tofte, who took care of the drivers’ files and logs, and did some accounts receivables calls, handed her a notice of an audit by DOT in the next five days. When the Complainant asked him if he had the logs ready, Mr. Tofte said that he had not had the chance to do it. The Complainant got files and stacks of logs, and told Mr. Williams that they were a mess, and they had an audit in five days. She got several people to help her (Tr. III 690-691).

The audit took place in May 2009. The auditors took notes on the logs, and said that the numbers had to go down. No one had told Mr. Williams how high their safety stat numbers were; he took it as a very big deal. They were trying to get things straightened out, because they had notice of another audit in August 2009, of JE Williams. The Complainant thought that Mr. Tofte had left by the time of the second audit (Tr. III 692-693).

The Complainant assembled the reports, and everything the auditors needed. According to the Complainant, the auditors made it very clear they needed a chain of command, and that the drivers needed to know who was looking at the logs, who was responsible for the hours of service, and who to go to if they needed help. She took the recommendations and numbers to Mr. Williams, who seemed to be concerned, and wanted it fixed. The Complainant stated that she got everything in safety in line, made sure the drivers records were okay, and showed Mr. Reinert how to do the drivers’ qualification file. At this time, no one had been hired to replace Mr. Tofte in safety (Tr. III 693).

The Complainant stated that between the two audits, she went to Mr. Williams and told him that this was more than she bargained for, but she could do it. She had been involved in CSA 2010 test training, a program run by the government, and had started training the drivers at Drinkwalters (Tr. III 694-695). Mr. Williams told her that he could not afford fines, and they needed to do something. The Complainant felt she could get the numbers down, and Mr. Williams seemed very supportive. They had to make the drivers aware of log issues, penalties, and the point structure (Tr. III 696).

The Complainant organized a safety meeting, and presented a video about the importance of getting fewer violations. The first one she held was in September (Tr. III 697). The Complainant stated that she told Mr. Williams about any violations that she came across. She reviewed the office, the shop, and then dispatch; up to dispatch, everything seemed fine (Tr. III 699). About October 2010, the Complainant was getting to the dispatch area for her assessment

and evaluation. They had just had a very serious audit, and they were on a “Section 222,” which meant that if they had any violations over ten percent on an audit in the next six years, they would receive the maximum penalties. She had held an immediate emergency safety meeting (Tr. III 716-717).

After Mr. Tofte left, the Complainant recommended her son Cory Keeler for the safety position, and he was hired toward the end of 2010 (Tr. III 718-719). She acknowledged that he had no trucking experience (Tr. III 881). He worked there for six or seven months. After Cory failed to report a serious insurance claim, Mr. Williams told her that he had to go (Tr. III 719).¹⁸ After that, there were a few part time people who kept up on the logs; she was overseeing safety (Tr. III 720). Then she hired Bob Ostermiller just before the 2010 audit (Tr. III 720-721).¹⁹

According to the Complainant, the focus of the safety meetings was to let the drivers know how serious the situation was, to reinforce the chain of command, and that the drivers could not change their logs. She stated that the drivers decided to take everything to her, and she was getting phone calls and people coming to her office (Tr. III 722). The drivers shared their concerns about the loads and dispatchers, and Mr. Williams telling them that they had to take a load. The Complainant stated that drivers would ask her what they should do if Mr. Williams told them to take a load, and they were over hours. She claimed that she spoke with four or five drivers in the office a week, and received 10 to 15 calls a week (Tr. III 723).

The Complainant told the drivers that if Mr. Williams or the dispatcher told them they had to get a load, and they did not have the hours, they would be the ones with points. The company would also have points. She claimed that drivers told her they could not say no, because they needed the job. She told Mr. Williams and Mr. Reinert that there were issues, and the drivers were very scared (Tr. III 724). According to the Complainant, Mr. Reinert was very supportive. She felt that Mr. Williams was taking it seriously until she had the chance to observe the dispatch area toward the end of 2010 (Tr. III 725).

According to the Complainant, she took any calls she got from drivers about safety issues, such as being out of hours, or being told to over drive or change logs, directly to Mr. Williams, either by talking with him, or by email. She stated that he was very open, and said that he did not ask drivers to do this, and dispatchers should not do this, and for other issues he stated that it was the driver’s fault. He was supportive of some drivers, but very negative on others, stating that the driver screwed the logs up, could not add or take direction (Tr. III 731-732, 792).²⁰

One example of a driver who Mr. Williams blamed was Frank Hicks. Mr. Hicks claimed that Mr. Baldwin told him to make a specific run at a specific time, with no exceptions. Mr. Hicks had no hours, and he told that to Mr. Baldwin. Mr. Baldwin was not willing to rearrange

¹⁸ The Complainant claimed that Cory was busy doing logs (Tr. III 719).

¹⁹ The Complainant also tried to get Mr. Williams to interview her sister in law, Sherry McKenzie, for the safety director position (Tr. III 860, RX 10).

²⁰ Although the Complainant stated that there were numerous such emails in the exhibits, she later acknowledged that there were no emails talking about specific drivers calling in to report that they were out of hours. She claimed that it was so fast paced, she walked in and told Mr. Williams about the calls, and only reduced them to writing in summary form (Tr. III 793, 795).

the load, and told him to do the job (Tr. III 733). The Complainant stated that Mr. Hicks came to the office and told Mr. Reinert that he did not do the run. Mr. Reinert wanted to write a warning letter to Mr. Baldwin, and he asked Mr. Baldwin to come in the office with Mr. Hicks. According to the Complainant, Mr. Baldwin threw up his hands, and said that he did not do anything the boss did not want him to do. Mr. Reinert then brought Mr. Williams in, who said that he did not tell Mr. Baldwin to order the run (Tr. III 734). Mr. Baldwin signed off on a write up (Tr. III 735).

The Complainant stated that a driver named Ed Aragon turned the company in to the DOT, and there was an audit (Tr. III 735). He sent his complaints to her by email (CX 58). She forwarded them to Mr. Williams, who told her that it was all the driver's fault, because he did not know how to get his load, and did not know what he was doing (Tr. III 738).

The Complainant stated that there were "quite a few" other drivers with safety issues, but she could not recall their names (Tr. III 739).

The Complainant stated that Mr. Williams had bought the Keystone system, but had not implemented it. He agreed to its entry into dispatch and Qualcomm (Tr. III 725). She stated that the three main dispatchers, Mr. Nilson, Mr. Carns, and Mr. Baldwin, were all on board, and wanted to learn the system; she was training them (Tr. III 726). In the first few months of 2011, Mr. Williams seemed very comfortable with the training on the new system. (Tr. III 727).

The Complainant identified a letter from her to Mr. Williams a few months after she started, relating to a bonus for her work performed during the previous months (Tr. III 867-868, RX 2). She claimed that she and Mr. Williams discussed a bonus plan going forward, at a restaurant (Tr. III 868). The Complainant was to receive a bonus of \$20,000, which was all paid by August 2009.

The Complainant claimed that she was also to be paid \$5,000 for each audit, for a total of \$35,000, to be taken out in installments. There was a payment to her of \$4,500 on January 6, 2010, reported as a "loan" for a Tahoe; a payment of \$2,000 on September 15, 2010; a payment two days later of \$5,500 to Jeremy Keeler; a payment to the Complainant two weeks later of \$5,000, and a payment to the Complainant five days later of \$5,000. There were no other payments until June 2011, when there were two \$3,000 payments in a week. According to the Complainant, she was still owed \$7,000 in bonuses (Tr. III 868-876; RX 3).

The Claimant stated that Mr. Williams worked as a dispatcher, and sat in the dispatch area. She claimed that his roles were different after Mr. Baldwin left. Before Mr. Baldwin left, he took calls, got loads, and took care of WHW; he had oversight of dispatch (Tr. III 729).

Mr. Williams told the Complainant that he was hiring Mr. Remus, and she asked him numerous times to move his desk from the dispatch area so that Mr. Remus could sit there (Tr. III 828, RX 12). She claimed that Mr. Williams told her that Mr. Remus could work in the dispatch area, and that he thought it was a good idea for him to be with the dispatchers (Tr. III 829-830). According to the Complainant, she and Mr. Williams talked about this on the day Mr. Remus started; she acknowledged that Mr. Williams did not say "quite like that" that she could

move his desk into the safety office. She claimed that Mr. Williams said it would be a good idea to have Mr. Remus in with the dispatchers (Tr. III 866). She had some of the drivers help her move the desk (Tr. III 828).

The Complainant thought that Mr. Williams might have emailed her to tell her not to pick up the mail, and that he would get it. But she claimed that this was not on the date that she went to get the mail and discovered that the locks were changed, because she did not know he had changed the locks (Tr. III 831). When she found that the locks had been changed, she returned to the office and told Jeremy. She was very upset about the lack of trust, and acknowledged that she talked to dispatchers and perhaps Ms. Henry about it (Tr. III 832-833). She claimed that Mr. Williams had decided to get the mail three or four other times; before the locks were changed, Mr. Williams, Mr. Carns, and she had the key (Tr. III 834).

The Complainant stated that she knew that Mr. Williams wanted to cut corners, but she was frustrated that he was willing to make staff cuts without knowing what people did. She claimed that people in the office were paranoid about losing their jobs, and she went to bat for Jeremy as well as Ms. Henry. She claimed that she went into Mr. Williams' office and offered to take a pay cut, which she did (Tr. III 836-838).

The Complainant stated that Mr. Williams was a hindrance to office productivity, especially toward the end, and that she literally had to babysit him (Tr. III 837). He would say one thing, and do another (Tr. III 839). She stated that he was a boss who was constantly changing his mind, and changing things that worked; he had a need for chaos (Tr. III 840). She identified an email she sent to Mr. Williams, telling him that he had to stop undermining her decisions, and making decisions without checking with her (Tr. III 841, RX 6).

The Complainant also acknowledged her email to Mr. Williams telling him that he could not keep changing his mind on who was doing what, and creating total havoc in the office, in response to Mr. Williams' instruction to put Mr. Carns on the accounts receivable. The Complainant told Mr. Williams that Mr. Carns was just learning his job, and he could not take on accounts receivable; she told him to come back to her with a REAL plan (Tr. III 842-843, 891, RX 4). The Complainant sent Mr. Williams an email suggesting that he take a vacation (Tr. III 844, CX 28). She sent him an email on June 10, 2011, telling him not to take orders, schedule loads, make changes, or take calls (Tr. III 863, RX 11). She claimed that Mr. Williams agreed. She also told him not to come in on Saturday and Sunday (Tr. III 863-864, RX 11)

The Complainant stated that she did dispatching for her demonstration company, but she has never been a dispatcher (Tr. III 852). She acknowledged that Mr. Williams asked her to step out of dispatch in March, but she did not (Tr. III 853). The Complainant claimed that she wanted to run drivers with more miles within the laws, but this was not happening. They had new dispatchers, and they had a hard time getting schedules together (Tr. III 854). She claimed that their top customers had many late loads (Tr. III 858). The Complainant wanted loads to be spread out, and have Mr. Williams get customers (Tr. III 856). She identified an email asking Mr. Williams to diversify into longer haul loads; she felt that it was very hard to do loads to make sense to a dispatcher (Tr. III 859, RX 9).

According to the Complainant, the Sysco loads were an issue, because there were “crazy” missed orders. She stated that it came to a head because she was also trying to implement the Keystone system, when Mr. Lang sent notice on a Wednesday of two loads that needed to be picked up on Thursday (Tr. III 849). She sent Mr. Lang an email on June 16, telling him that they required two days advance notice of a load, and to stop the chaos on the orders (Tr. III 847, CX 26). She claimed that this was not a substantial change to the way business was done with Sysco, but involved getting information for a load. She did acknowledge that getting two days advance notice was a significant change, but claimed that Mr. Williams had authorized her to make substantial changes to the way services were performed for Sysco (Tr. III 850-851).

The Complainant identified a letter to Tom Lang at Sysco that she tried to get Mr. Williams to sign on July 13, after she and Mr. George had presented him with a spreadsheet on the Sysco loads (Tr. III 845-846, CX 25). She stated that Mr. Williams was livid, slammed the letter on the desk, and told her that she was not sending it, and she should remember who owned the company (Tr. III 846).

The Complainant stated that a few weeks before she was fired, she was training Mr. George in the dispatch area, and the phone was on speaker. A driver named James Hays called, and said that he was running on empty, just about to drop, and could not do his run. He told them that he was called during the night, after an extremely long run; he had picked up a load in California, and was supposed to go to Texas (Tr. III 751). According to the Complainant, Mr. Hays said that he got a call from Mr. Williams, who told him that he had to pick up a load in California and get it to Denver. The Complainant asked Mr. Hays how long he had been driving; he said 20 or 21 hours, and he could not make it, they would need to reset the appointment (Tr. III 752).

The Complainant got off the speakerphone, and told Mr. Hays to park the truck, and call when he woke up; they would reschedule the appointment. The Complainant was appalled, and went into Mr. Williams’ office, where she told him Mr. Hays had just called, and asked him what he was doing. The Complainant stated that Mr. Williams was at his desk writing, and he looked up and said, what’s the big deal, he made it. She could not believe it (Tr. III 752).

According to the Complainant, she and Mr. George went into Mr. Carns’ office and sat for five minutes without talking. They discussed what might have happened. She did not talk with Mr. Williams about it further. Mr. Hays called in about 11 hours later, and finished his run after getting some sleep (Tr. III 752-753). The delivery appointment was rescheduled, and Mr. Hays received no discipline (Tr. III 819).

The Complainant stated that in March 2011, she was in dispatch training Mr. George when Mr. Williams took a phone call from Earl Martin. She heard him say, can’t you stay a little longer and finish the load? The Complainant walked back to Mr. Williams’ desk; he cupped the phone and said that Mr. Martin was going to leave the truck and load, because his wife had a heart attack in Spokane. The Complainant told Mr. Williams that he had to let Mr. Martin go to Spokane (Tr. III 740). Mr. Williams told Mr. Martin to do whatever he had to do, and they would come and get the load taken care of. Mr. Martin said that he was flying to Spokane; according to the Complainant, Mr. Williams “went off” on him. The Complainant asked Mr.

Williams what would happen if Mr. Martin's wife did not make it by the time he finished the load. Mr. Martin left, and the Complainant deducted the retrieval cost for the truck from his pay (Tr. III 741).

In the first part of July, they were looking for drivers, and Mr. Carns was contacting previous drivers. Mr. Carns contacted Mr. Martin, and told the Complainant on July 14 that he would come back. They set up a hotel room for him to perform a drug test, and get him ready to send out (Tr. III 742). Mr. Martin was scheduled to come in on Friday July 15; he had a drug test that morning, and they were checking the truck out. The Complainant received an email from Mr. Carns that Mr. Martin would be ready either that day or the following day. The Complainant asked Mr. Carns why Mr. Martin was going out, because they would not have the drug test results back until Monday. The Complainant emailed Mr. Remus and told him that Mr. Williams was sending Mr. Martin out even though the drug test would not be back. According to the Complainant, Mr. Remus came "flying" through the door, and asked her if she knew how serious this was. (Tr. III 743).

The Complainant stated that she spoke to Mr. Williams, who was standing at the chalk board, and asked him if he was sending Mr. Martin out; Mr. Williams said that he was. She "got in his face," and told him that they couldn't take a chance, because they were on a Section 222, and drug violations were big on the list. She told him that he could not put their lives on the line with the DOT.²¹ According to the Complainant, Mr. Williams pointed a finger at her, and said "F" the DOT. She returned to her office in total disbelief. The Complainant stated that it was just a week after James Hays had called about being told to drive over hours, and that the incidents in the last week were so blatantly against the DOT laws. She claimed that she was scared, and other people were too. (Tr. III 744).

The Complainant stated that she was not aware that Mr. Martin could still have been in the random drug testing pool. She claimed that if an employee is in the random pool, he has to have been on leave, and not working for someone else in between. She did not know if Mr. Martin was fired or quit; what she overheard on the phone sounded like termination, and what she saw in the file sounded like quit. But either way, she stated that Mr. Martin did not fall within the drug test. She claimed that from the morning of July 15 to the time Mr. Carns sent the email at 4:45 sending Mr. Martin out, he did not have time to check for previous employment for Mr. Martin. She claimed that she knew the last time they had talked to Mr. Martin was the phone call with Mr. Williams (Tr. III 810-812).

The Complainant acknowledged that it was Mr. Carns' job to confirm Mr. Martin's status. She did not ask him to call the clinic, or why they were sending a driver out who just had a drug test. Mr. Carns did not say anything to her (Tr. III 810).

According to the Complainant, the last week she worked, there were drivers saying that they could not take a load, that they were not going over their hours, and flatly refusing loads. These were conversations she overheard on the speakerphone. (Tr. III 754). She claimed that Rod Ball forwarded a Qualcomm message to her and safety, that said "Rod, you have to get

²¹ Yet the Complainant put the Respondents' life "on the line" the following Monday when she called the DOT to report this very incident.

going,” and asked what he should do. The Complainant asked the dispatcher if he sent the message, and when he said no, she went into Mr. Williams’ office and asked him. Mr. Williams acknowledged that he sent the message, and asked what was the big deal. When the Complainant told him the driver was out of hours, she claimed that he said “So?” According to the Complainant, there was a control issue the last few weeks, a demeanor of I’m going to do whatever I want whether you like it or not. She felt like she had hit a brick wall (Tr. III 755).

The Complainant thought that she had made relationships with some of the auditors, and she would call someone and get help (Tr. III 744). At about nine or ten Monday morning, she called Carol Manderra, a safety officer with the U.S. DOT in Helena, and told Ms. Manderra that she had to help her, because if the DOT did a pop audit, they would have problems. She stated that she needed someone to show Mr. Williams how serious it was. Ms. Manderra sent her to Ann Svenson, who asked for particulars on the driver. The Complainant told her that she had a drug test that was dated two days earlier, and a Qualcomm that showed he went out the same day (Tr. III 745, 785). The Complainant stated that Ms. Svenson asked her to fax her records. The Complainant also spoke to Ms. Svenson about James Hays, and Ms. Svenson asked her to fax the logs (Tr. III 746).

The Complainant stated that she knew Mr. Martin had left the company, and according to the terminated employee file, his last application was in December 2010. She knew that if there had been a drug test done, other than a random test, that was the last time. She acknowledged that Mr. Martin could still have been on the drug consortium, but claimed that it did not even cross her mind that Mr. Martin could still be on the consortium. (Tr. III 747).

The Complainant faxed the information to Ms. Svenson on Monday. She came to work on Tuesday, which was the payroll day, and had Ms. Henry and Mr. Keeler do the final entries for the advances and fuel. It was the middle of oil season, and she was running around like a crazy woman. She went over to Drinkwalters, and about 4:00, got a call from Mr. Williams, who asked her to come back to the office (Tr. III 747). She returned, and Mr. Williams asked her to go into the human resources office; Mr. Travis Williams was there. According to the Complainant, Mr. Williams told her he had had it up to here with the legal sh...t, and he could not work with her anymore.²² He told her to take Jeremy with her. There was no blowup. Mr. Travis Williams followed her out to the other office; she asked Jeremy to give her his keys, and told him that Mr. Williams wanted them to leave, and to get his things together (Tr. III 748).

The Complainant gave the keys to Mr. Williams, and got her things. She walked to the dispatch area, and told Mr. George and Mr. Remus that she had been fired, and that it had been a pleasure working with them. She and Jeremy left (Tr. III 749). The Complainant stated that she had no idea that her job was in jeopardy (Tr. III 851).

The Complainant stated that Mr. Travis Williams drove for the company at one time, but had no position at the company. He had no reason to be at the office, and she did not know what

²² In her deposition taken on January 7, 2013, the Complainant stated that Mr. Williams took her in the office and said “I can’t work with you any more. Take him with you,” pointing to Jeremy. She stated that he said nothing to her other than that he could not work with her anymore. RX 35 at 57. Nor did Jeremy Keeler testify that Mr. Williams told the Complainant that he had had it up to here with the “legal sh..t.”

he was doing there. She stated that he stood at the dispatch door with his arms crossed, glaring, and followed them to their cars, where he did a “boo hoo” thing with his hands (Tr. III 750-751).

The Complainant claimed that she had no other recourse than to call the DOT. She believes that someone at the DOT told Mr. Williams about her call, based on the timing of the events – she made the call on Monday, and she was fired on Tuesday. She also reviewed emails from Bruce Holmes, the administrator at DOT in Helena, telling them that Ed Aragon had made a complaint, and that there would be an investigation. She concluded that because the DOT disclosed Mr. Aragon’s complaint, they must have disclosed hers as well (Tr. III 757, 786). The Complainant acknowledged that when Mr. Aragon told Mr. Williams that he was going to complain to the DOT, he was already terminated (Tr. III 787; 823). Nor was she aware of whether Mr. Aragon waived his right to confidentiality (Tr. III 822).

The Complainant also thinks that Ms. Henry told Mr. Williams about her call to the DOT, because they smoked outside together. She did not have a specific recollection of the two of them smoking together that day; she did not know if Ms. Henry actually overheard her talking to the DOT, but she was the only person who could have been in earshot (Tr. III 785-786). The Complainant claimed that she knew Ms. Henry was there (Tr. III 786).

The Complainant stated that either Mr. Williams knew about her complaint, or he was sick and tired of her being in his face (Tr. III 787)

The Complainant claimed that after she was fired, six to eight drivers called her over the course of two weeks and said that Mr. Williams was telling people she had been fired because she was a thief, and was caught embezzling from the company (Tr. III 758, 760). She sent Mr. Williams an email, and he responded that he had said nothing to anyone, but she knew how rumors got started. The Complainant called Mr. Carns and asked him if he was aware that drivers thought that she was fired because she was a thief, and Mr. Carns told her he had not heard Mr. Williams say anything (Tr. III 759). He told her that he would call a Mr. Linger and tell him to stop, and he would talk with Mr. Williams (Tr. III 760).

According to the Complainant, during the course of a deposition with Mr. Youde, she commented that the chairs were hard, especially after moving all weekend. Mr. Youde asked her if she had moved, and she told him that she had moved Jeremy out (Tr. III 768). The next morning at a mediation session, Mr. Williams gave her a dirty look, and ten or fifteen minutes later, she got a call from the alarm company that her front door had been kicked in (Tr. III 769). She filed a police report claiming that Travis Williams broke into her home (Tr. III 768). She referred to Mr. Travis Williams as Mr. Bobby Williams’ “go-to” guy for intimidation, and claimed that he had an “aura” of a tough guy, and that many drivers referred to him as a “thug.” (Tr. III 769-774). She acknowledged that she was also aware of claims by Mr. Carns and Ms. Henry that her son Jeremy had made physical threats against Mr. Bobby Williams (Tr. III 769).

The Complainant sent a message to Mr. Carns less than a week after she was fired, setting out errors in the final paychecks for herself and Jeremy, and things that needed to be corrected. The total shortage for the Complainant was \$1,395.70, and for Jeremy \$831.97.

There was no mention of the bonuses for the audits (Tr. III 876-877, RX 17). The Complainant also sent a check for money Jeremy owed to Mr. Williams for tires (Tr. III 878).

Brian Brown

The Respondent called Mr. Brown, who provided commercial banking services for JE Williams and WHW Trucking for about five years, through October 2011 (Tr. III 700-701). Mr. Brown stated that he had no problems working with the Complainant at first; she was getting to know the processes and procedures associated with her new job and position. He talked with her on the phone several times over a period of time, mainly about the deposit accounts (Tr. III 701-702).

According to Mr. Brown, the Complainant had some misunderstanding about how some banking products worked, such as lines of credit, commercial lines of credit, and advance pay down features. The Complainant was in charge of getting the bank financial information, and there were some inconsistencies in the reports from the Complainant. There were sometimes questions about debt payments that did not match up with what was on their system (Tr. III 702). The updates provided by the Complainant did not match up with their information; the data they received was inconsistent from month to month (Tr. III 703).

Mr. Brown stated that it was not his job to train or coach the Complainant. But at some point, he had concerns, and he questioned things. He tried to explain to the Complainant what the inconsistencies were. Sometimes he would get reasonable answers, and sometimes the answers would not be sufficient. Mr. Brown believed that the Complainant was trying to catch on to what he was trying to help her with, but he did not know that the full concepts fully resonated. He stated that she was responsive and tried to be helpful, but sometimes her information was not accurate (Tr. III 705).

Mr. Brown spoke often with Mr. Williams, and tried to relate his concerns with the information they were getting from the Complainant (Tr. III 708). Mr. Williams told him that he would talk with the Complainant and try to get things fixed. After the Complainant was fired, Mr. Williams asked him for a letter relaying his concerns (Tr. III 709).

Randy Kanuit

The Respondent called Mr. Kanuit, a certified accountant who has prepared tax returns and other financial statements for the Respondent since the 2009 tax year (Tr. IV 9). Mr. Kanuit stated that the work on the 2009 tax year was done in May and June 2010. According to Mr. Kanuit, this was the most messed up and hardest set of books to balance that he had ever seen in his 38 years of experience (Tr. IV 10). He noted that Van Pittack did the work for the 2008 tax year, and seemed to have responded to all of his questions. The Complainant told him that there was someone before her who made a lot of incorrect entries. Mr. Kanuit could not say whose fault the problems with the 2009 tax year were (Tr. 10).

When Mr. Kanuit completed the 2009 tax year, it was balanced. His expectation was that his work would go way down, and when he got the 2010 trial balances, the accounts would be in

balance and he would have a normal tax year. Mr. Kanuit wanted to do some interim work for nine months into 2010, and he asked the Complainant for a lot of information, including summaries of ledgers. He asked her for liability accounts, which are a major part of his work, and bank loans for operating. He stated that things seemed to be different; the responses seemed to be slowing up, the liability accounts were not balanced, and payments were not coded properly to interest, principal, and late charges (Tr. IV 12).

According to Mr. Kanuit, if he took a snapshot of the loan balances, they were not in balance. This would definitely influence the financial statements, and would make them misleading. If the liabilities were over or understated, this would over or understate equity; it also would have a direct bearing on interest expense. This is material in the trucking industry, where companies are dependent on borrowing money for operations. For the year 2010, he did what he had always done. He asked the Complainant how she was balancing the loans. While he believed that for the 2009 year, she tried to respond to his questions, for the 2010 year, things seemed a little bit different (Tr. IV 13).

In 2011, Mr. Kanuit noticed that there were a lot of late payments; if nothing else, this told him that there were payments being held (Tr. IV 20). He stated that even if the Complainant were holding a check for a loan, it was to be entered in the books. When he had amortization schedules to look at, the entered balances in the books did not equate with the number of payments and actual loan balances, because the loan interest either was not recorded or was recorded inaccurately. He acknowledged that if payments had not gotten to the bank yet, the payments would not balance with the bank's information. But he was using the amortization schedules, and the loans did not balance (Tr. IV 26).

Mr. Kanuit stated that he asked the Complainant for the amortization schedules, and she told him that she did not have any. This really took Mr. Kanuit back, because they had established amortization schedules with all of the loans. He stated that if one ran out because the loan kept going, the bank gladly gives them out. Mr. Kanuit asked the Complainant how she balanced the loans, and whether she used the notices from the bank, which told her the interest and loan amount. The Complainant told him that she did, which really disappointed Mr. Kanuit, because it was "something far less than the truth." He stated that if this were true, the loans would be balanced. Mr. Kanuit stated that this was during the summer of 2011, and things were happening fast (Tr. IV 14).

Mr. Kanuit vividly recalled being in the office and talking with Mr. Williams about internal controls, segregation of duties, and the fact that a company needed a good accounting system and employees who adhered to it (Tr. IV 14). Mr. Williams told him that the Complainant would not even let him get the mail. This disappointed Mr. Kanuit, and he told Mr. Williams that he had to stop that immediately, and he could not conduct business like that. Mr. Kanuit stated that at least starting with 2010, he saw some losses. In his experience, trucking companies should be making money, and he was concerned that the Respondent was not. He could not put his finger on it. It was very apparent to him that the Complainant's claim that she balanced the loans using the bank notices was not true (Tr. IV 15, 25). He told Mr. Williams that it was not right for someone to insist that he not pick up the mail (Tr. IV 17).

Mr. Kanuit stated that after looking at obvious differences in liabilities and accounts, and incorrect balances, he was really starting to wonder if the Complainant was competent to perform bookkeeping duties (Tr. IV 16). It was obvious that she was not using amortization schedules, because she told him that she did not have any. When she told him that she balanced the accounts using the statements from the bank, he knew that was not true (Tr. IV 17). He eventually got the amortization schedules for the 2010 tax year after speaking with Mr. Williams, who called all of the banks and got them for him (Tr. IV 27).

Mr. Kanuit currently works with Ms. Gehringer. He stated that when he gets the books and loan balances, all he has to do is take copies of the amortization schedules and check the number of payments and make sure they are in balance (Tr. IV 18).

Rochelle Gehringer

The Respondent called Ms. Gehringer as a witness. Ms. Gehringer has an associate's degree in accounting and business marketing management (Tr. IV 30). She has been employed in the trucking industry for 20 years, since six months after she received her degree. She started as a data entry clerk at Motorway Freight Lines, and was then promoted to accounts payable manager. After nine months, Ms. Gehringer went to work for Diversified Transfer and Storage (DTS), where she worked for 18 years. She started as a billing clerk in accounts payable and receivable, and processed the payroll. When she left, she was the billing manager and payroll manager (Tr. IV 30-31).

Ms. Gehringer is currently employed by JE Williams Trucking; she also helps with JE Williams Inc., and has done bookkeeping for WHW, which was sold in December (Tr. IV 32). Ms. Gehringer stated that a few days before July 4, 2011, she got a message on her work phone from Ms. Henry, who wanted to talk with her, but Ms. Gehringer was out of town over the holiday (Tr. IV 32). Ms. Henry wanted her to meet with Mr. Williams, but she told Ms. Henry that she was going out of town, and she would call her when she got back. Ms. Henry worked with Ms. Gehringer at DTS for five years. When Ms. Gehringer called Ms. Henry, Ms. Henry told her that they were going to be looking for someone in accounting and payroll as soon as possible, and asked her if she was interested (Tr. IV 32-33).

The week after the holiday, Ms. Gehringer met Ms. Henry and Mr. Williams for coffee at City Brew. Ms. Henry told her that they still had someone working, but they needed someone to start as soon as possible to replace that person (Tr. IV 33). Ms. Henry told her that the job was doing accounting and payroll, basically what she did at DTS. Ms. Gehringer had been at DTS for a long time, and she was not really happy. She was not actively looking for another job, but she was open to one. When Ms. Henry left DTS, Ms. Gehringer told her to remember her if she heard of anything (Tr. IV 34).

At the meeting, Mr. Williams asked her about her experience, and told her that she would be replacing someone. He offered her the position. Ms. Gehringer told him that she wanted to think about it; she had been at DTS a long time, and she had a lot of vacation time. She called Mr. Williams a few days later and asked to meet with him to talk about compensation and hours (Tr. IV 35). Ms. Gehringer thought about it over the weekend, and met with Mr. Williams at the

Muzzle Loader the next week, probably on Monday. They talked about pay, hours, benefits, and whether she would be full or part time. She had a daughter in school, and wanted to know if Mr. Williams would work around her schedule. It sounded good to Ms. Gehringer, and she accepted the position. Mr. Williams asked if she could start right away, and she told him that she wanted to give two weeks notice, but that she would be available on weekends or lunch hours until she left DTS (Tr. IV 36).

Ms. Gehringer stated that Mr. Williams understood. She thought that he hoped she could start right away, but he seemed to be okay with waiting. The first time she went to the office was a few days after she told Mr. Williams that she would take the job. She went in after work, maybe 6:30 or 7:00, to see the building, and where she was going to work. Mr. Henry, Mr. Williams, and Mr. Baldwin were there; the Complainant was not. Ms. Gehringer thought that the Complainant was still working there; she was told that the Complainant would be terminated after payroll (Tr. IV 37). Ms. Henry wanted to make sure that the driver payroll was done, because no one else knew how to do it (Tr. IV 38).

Ms. Gehringer gave notice to DTS on July 15, with her last day July 29. She worked through the weekend of July 31, getting everything taken care of (Tr. IV 38). She also did work for Mr. Williams in July. Either Mr. Williams or Mr. Carns called her, and told her that they had let the Complainant and Jeremy go, and their final checks needed to be processed. They had her come in and figure out how to process their checks. She also came in a few times to cut a few accounts payable checks on some bills that needed to be paid. Her first full day was on August 1 (Tr. IV 39).

Bobby Williams

Mr. Williams testified that he “absolutely” did not fire the Complainant because she reported violations to the DOT, or because he suspected she did so. He stated that he did not even learn this until much later, from his attorney (Tr. III 894, 896). According to Mr. Williams, the DOT did an audit a few months later, which they told him was based on a complaint (Tr. III 895). Mr. Williams felt that the Complainant could have had an indication that her job was in jeopardy, because of all the tension in the last few weeks (Tr. III 896).

Mr. Williams stated that he did not tell the Complainant that he had had it up to here with this “legal shit.” (Tr. III 950). He fired her because she was incompetent, and she ruined his business. He is convinced that if she were still there, there would be no JE Williams Trucking. She ran it into the ground. She ran off all of his long term employees, and basically trashed a 40 year old business in a years time (Tr. III 950). When he told the Complainant that he could not work with her, it was not because she was in his face about running legal. He had already hired someone to replace her (Tr. V 177).

According to Mr. Williams, the issue with the mail was the “final straw.” He had met with his accountant, Randy Kanuit, a few weeks earlier, and Mr. Kanuit talked about safeguards, and told him it was not wise for one person to have so much control. Mr. Kanuit told him that things were not quite adding up, and that he should be monitoring his own mail; if there was anything going on, this was one area where he could pick up on any wrongdoing. Mr. Kanuit

suggested that Mr. Williams start getting his mail and doing the bank deposits. Mr. Williams sent the Complainant an email telling her that from then on, he would get the mail. But she told him he did not need to be doing that; she was argumentative (Tr. III 896-898).

Mr. Williams went to the post office and changed the locks, and got two sets of keys. He had to leave for a meeting, so he gave Mr. Carns the keys so he could get the mail. But while he was gone, the Complainant went to get the mail, saw that the locks were changed, and “freaked out.” Mr. Williams got several calls from Mr. Carns about the chaos the Complainant and Jeremy were causing in the office. Mr. Carns told him that the Complainant showed up, and then left, and Jeremy was marching through the office saying that heads would roll when the Complainant got back, and that he was going to kick Mr. Williams’ ass (Tr. III 897). Mr. Williams learned that the Complainant took the keys from Mr. Carns, and did exactly what he had told her not to do (Tr. III 898).

Mr. Williams stated that he had basically lost trust and faith in the Complainant (Tr. III 898). According to Mr. Williams, she ran off all of his long term people, his banker had questions, and his accountant and insurance agent had questions; things were coming to a head (Tr. III 899). Mr. Williams stated that in 2011, when they retained their insurance agent, Mike Taylor, as their workers comp agent, Mr. Taylor had a confrontation with the Complainant after he told her that he was staying on board. She blew up at him, and cussed him out (Tr. III 899-900). When Mr. Williams was sitting in his banker’s office going over general business, Mr. Brown stated that it seemed funny that since the Complainant took over, the business financial picture went downhill (Tr. III 900).

Mr. Williams stated that the Complainant could not see past the picture in front of her. He claimed that she ran off his 25 year shop foreman, Karl Shammel, and caused him to be hospitalized with a nervous breakdown. When Mr. Shammel left, the other two people in the shop left too. Mr. Williams stated that Mr. Shammel was the best mechanic in Billings, if not the region (Tr. III 901, IV 98). Mr. Williams liked his replacement, Jesse, but he was not Mr. Shammel’s quality. He likes Ms. Henry, but she was not Ms. Schmidt, her predecessor, whose work was perfect, and who never made a mistake (Tr. IV 98).

Mr. Williams stated that these changes brought the level of the business down a notch or two – it meant that trucks were not maintained quite as well as they used to be, and it was reflected in the 2010 CSA scores. It also resulted in driver complaints, and in friction among the employees and drivers, and in the office (Tr. IV 98).

Mr. Williams did not believe that Mr. Shammel left because he did not want to be on a budget, as suggested by the Complainant; he thinks that it was because of the Complainant’s constant battering of him (Tr. 100). First it was the budget, then overtime, and then she did a chart showing how Mr. Shammel was maintaining the trucks, and how she would cut this and that, and how he did not need to do certain things. It was the same with Ms. Schmidt and Mr. Baldwin, who finally had enough and threw up their hands (Tr. IV 100).

Mr. Williams stated that if you cut one thing, it will affect something else down the road. The cuts the Complainant imposed meant that on the road repairs would skyrocket, leading to on

time delivery and driver issues. He thought that some things were best left to the people who knew what they were doing, and that was Mr. Shammel. Mr. Williams was concerned over the huge shop costs. But he thought that the Complainant did not have a way with people that led them to perform positively (Tr. IV 101).

Mr. Williams stated that the Complainant would get someone in her bullseye, and try to get them out one by one, and replace them with someone she could control more easily. He felt that this was part of her grand scheme. But there are many ways to handle people without driving them to the ground, and making them run off to a different job. (Tr. IV 100). Replacements are not as likely to be there long term; indeed, neither Mr. Henry nor Jesse are still working there (Tr. IV 99). This was one piece of the puzzle that led to the Complainant's termination (Tr. IV 99).

Mr. Williams claimed that the Claimant also ran off Lucy Schmidt, who worked there for twenty years. Ms. Schmidt's work was perfect, and everyone loved her. (Tr. III 901- 903). Mr. Williams stated that when you run off a veteran who does the job quite well and replace them with a person with no experience, the business suffers (Tr. III 902).

Mr. Williams stated that Jim Baldwin was one of the best dispatchers in Billings. He was reluctant to let him go; dispatching is a hard job, and he can't just get someone of that quality. It was the toughest position to fill (Tr. III 903).

According to Mr. Williams, the Complainant insisted that they get rid of Van Pittack, who was their accountant for twenty years; she thought he was overcharging them. Mr. Williams then learned that the Complainant used to work for Mr. Pittack, and he fired her; she did not tell Mr. Williams about this (Tr. III 904).

Mr. Williams stated that the Complainant was very convincing in her logic and how she laid things out, and he tried to give her the benefit of the doubt. He blamed his stupidity for letting things happen (Tr. III 904).

Mr. Williams stated that in the beginning, the Complainant did not have a title; she was the office bookkeeper. Somehow, toward the end, she either gave herself the title of general manager, or talked him into it. He acknowledged that he signed the "chain of command" that the Complainant drew up. He was hesitant, but he did not make any changes. He thought that this was put in place because the Complainant had things in such an uproar that no one knew what they were supposed to be doing. Some of the employees were asking for clarification on what everyone was supposed to be doing (Tr. IV 59-62).

Mr. Williams stated that they had a local man, Tommy, who wanted to try dispatch. But it was more than he anticipated. Shortly before things blew up, Mr. Williams came to work one day and saw Tommy in the wash bay in tears because the Complainant cussed him up one side and down the other, and ranted and raved with the entire office; Tommy broke (Tr. III 905).

Mr. Williams noted that the Complainant hired Ms. Henry, which was a good thing. She also hired her son Jeremy. Mr. Williams felt that he should have gone with his gut feeling – the

majority of the time he walked into the office, Jeremy was on the phone, not working. He could never get an answer from Jeremy (Tr. III 906). He would ask Jeremy why the billing was not sent out, and Jeremy would tell him that the Complainant had him doing other things. As soon as Mr. Williams left, Jeremy would be on the phone to the Complainant to tell her that Mr. Williams talked to him, and Mr. Williams would get a long email from the Complainant asking why he talked to Jeremy, and if he had a problem with him (Tr. III 907).

The Complainant also hired her son Cory for the safety position thinking that she could train him, but it did not work out.²³ Cory did not report a fairly serious accident, and Mr. Williams told the Complainant that Cory had to go (Tr. III 907).

According to Mr. Williams, the Complainant hired one inexperienced person after another in the safety position. She hired Bob Ostermiller, who had never been around trucks, and knew nothing; she thought she could train him. Mr. Williams stated that Mr. Ostermiller was so abrasive and right wing, he had to go. Finally, Mr. Williams was sick of the inexperienced safety people the Complainant hired, and he hired Brian Remus, who had a lot of experience in the business, and was working for another trucking company in town (Tr. III 908, 942). Mr. Williams stated that the Complainant “freaked out” at the salary he offered Mr. Remus; she did not look past the initial up front cost. Mr. Williams was willing to pay more money for Mr. Remus. But two weeks later, the Complainant was saying how great Mr. Remus was (Tr. III 909, 942).

Mr. Williams acknowledged that the Complainant took care of safety when they did not have a safety director. She brought safety violations directly to him, as well as issues with logs, and did some educating of the employees on the upcoming CSA 2010 laws (Tr. IV 78, 80). He stated that some of their safety numbers dropped by June 2011, and others went up. This was the result of educating drivers, and making them aware of CSA 2010, and the points that were caused by violations (Tr. IV 86-87). Mr. Williams stated that they continually monitor to make sure the drivers do not have any violations, such as over hours or missed calculations on logbooks, or forgetting to do daily inspections. He described it as a never ending education and monitoring process. He was not sure if the Complainant was doing the monitoring; they had no qualified safety person until Mr. Remus. He did acknowledge that the Complainant did some work to get the numbers down and educate the drivers (Tr. IV 87-88).

The Complainant hired Amy, Jeremy’s girlfriend, to do data entry and update the shop invoices. According to Mr. Williams, every time he came in, she was not working. He thought it was a waste of money to pay her \$500 a week, and he told the Complainant to let her go. Instead, the Complainant set her up to work from her house (Tr. 909). Mr. Williams thought it was bad enough that Amy did not work when she was in the office, and he wondered who would monitor her at home. (Tr. III 910). Mr. Williams stated that Jessie Bradley, the shop foreman, complained that the Complainant was tying up his work because she was on the computer. Mr. Bradley needed the computer to enter invoices and look up maintenance files, but he could not

²³ The Complainant’s claim that her son Cory was hired to scan drivers logs and do filing, along with Mr. Williams’ daughter Lauren, is a misleading gloss on the testimony, which clearly reflects that the Complainant hired her son Cory to handle safety issues, and that Mr. Williams’ daughter Lauren was hired to come in in after school to enter logs on the computer.

do this if Amy was using the computer. He finally fired Amy; it was a disaster, and he does not know if they ever got their files updated (Tr. III 911).

Mr. Williams stated that the Complainant hired Jim George, who was in over his head, and could not understand dispatching and load planning. Mr. George could not see the big picture. He and the Complainant were so focused on getting everything into the Keystone system, they were missing the entire dispatch scenario (Tr. III 912). As an example, Mr. Williams pointed to the load planning for Sysco. These were standard runs, and they have a general idea of what Sysco uses. Their job is to get the right trucks into the right areas on the right days. But Mr. George and the Complainant insisted on having all of the pickup information at the time the order was made. It does not work like that (Tr. III 913).

Mr. Williams explained that when Sysco got an order for produce, they determined by volume, weight, or pallet count how many trucks they would need for the order. They contacted their buyers in California, who started buying the produce from shippers. This process takes a couple of days. As a dispatcher, Mr. Williams does not need to know where all of the pickups are going to be. He only needs to know three things: how many trucks are needed, on what day, and in what area, as soon as he can, so that he can place his trucks in that area on that day. But the Complainant and Mr. George could never make that match.

Mr. Williams described it as a giant chess game, where he has to work well in advance. For example, he might need seven trucks in northern California on Thursday, but he only has four. He would overload in Los Angeles a day or two before, and haul a load from Los Angeles to northern California, so that on Thursday, he would have a truck there. Mr. George and the Complainant never got that (Tr. III 914).

Mr. Williams stated that he had never seen so many bounced and empty miles in his life. Deadhead miles mean zero income. Sysco was a long term customer. His company has a block of business with Sysco, seven trucks from California to Denver. Every year, they bid on the Sysco lanes in areas where they want to run (Tr. III 915). Sysco relied on their commitment to deliver seven trucks a week, and they had no one else to call. But when the Complainant sent the email in July, the very busiest month for produce, she was telling Sysco to change their ways or JE Williams would not give them any trucks. Mr. Williams stated that of course they would “freak out.” (Tr. III 916; CX 23).

According to Mr. Williams, Sysco was definitely their number one customer; the Sysco Denver route accounts for over a million dollars a year. An ultimatum would not work; they had a binding contract (Tr. III 916-917). If they lost the Sysco account, they would lose about 30 percent of their business, and millions of dollars in revenue. They would also lose the inbound runs that matched up with outbound runs. The Complainant did not understand this (Tr. III 926).

Mr. Williams stated that there is extremely thin profit in trucking, one to two percent, and lots of uncontrollable costs. A company has to be very efficient (Tr. III 927). Mr. Williams stated that to overcome deadhead miles with Sysco and produce loads, he plans well in advance. For every seven trucks going into Denver in a week, they need seven loads going out on the same day; there is a lot to it. The Complainant and Mr. George complained that he used tablets

and sheets, and not the Keystone system. But he has done dispatching a long time. He did not make mistakes, and did not have to deadhead. Keystone was just a computer system, and it was only as good as the information put in. It did not dispatch loads; it kept track of loads (Tr. III 918-919). While Mr. Williams wanted to become more automated, it takes time to come up to speed, and he was so overwhelmed with putting out day to day fires, he did not have time to devote to it, and it really was not his job.

After the Complainant sent the email, he got a call from Dan Locricchio, the boss, asking who the “f” the Complainant was. Mr. Locricchio told him about the email, and chewed him out. Mr. Williams had to assure Mr. Locricchio that he would take care of it. He stated that if he did not have a personal, longstanding business relationship with the people at Sysco, they would have lost the business (Tr. III 917, 926). Their account with Sysco was definitely at risk; Mr. Locricchio told him that the higher-ups wanted them gone. But because Mr. Locricchio knew him, and knew that they were good at one time, he had tried to save them (Tr. III 926).

Mr. Williams stated that the email the Complainant sent told Sysco that they were cutting them off, and were not going to give them any more trucks in July, the busiest month of the year, unless they did what the Complainant wanted. That was how Mr. Williams took it, and how Sysco took it. If it were any month but July, they would have been scrapped (Tr. V 157).

When the Complainant then brought him the letter she composed to Sysco telling them that they could not do their loads legally under the stringent DOT regulations, Mr. Williams was upset (Tr. V 151-152). He thought the letter was “totally whacked;” he did not change it, because he did not agree with it to begin with. Mr. Williams stated that the Sysco loads were being run legally (Tr. V 152). Mr. Williams did not allow the Complainant to send the letter, because if he did they would not have the account now. He claimed that she did not know how to handle people, accounts, and customers. Mr. Williams noted that they work with Sysco today, and they run legal and haul loads just fine. Another factor may have been that at the time the Complainant gave him this letter, he had already hired her replacement (Tr. V 180).

Mr. Williams did not view this letter as reflecting the Complainant’s concern about running loads legally. It was one of her issues to get loads delivered legally, as it was his. They butted heads over the Sysco loads, but not because the Complainant thought they were being run illegally. Mr. Williams was as concerned about safety, and getting loads delivered on time and not running over hours as the Complainant, although he thought that he was more concerned than the Complainant about getting loads delivered on time. Mr. Williams acknowledged that during the last two weeks, the Complainant might have voiced concerns about the Sysco loads being run illegally. He recalled conversations with the Complainant about hours and drivers, but did not know if they argued about this during the first two weeks of July (Tr. V 177).

Mr. Williams asked the Complainant to step out of dispatch, because she made a mess of it. (Tr. III 920). According to Mr. Williams, the Complainant and Mr. George would forget loads. Sysco would call on a Sunday and ask where the truck was, and when it would arrive. But they would not have the load, and the produce would still be sitting in California. The Sysco trucks do not wait for a load of produce; Sysco would have to go to competitors to buy it at an

increased price. If a truck was two days late, and the Sysco trucks were already gone, the produce would go on a shelf, and then to the dumpster (Tr. III 920-021).

Mr. Williams stated that more than once the Complainant asked him to step out of dispatch. He was not sure what she wanted him to do, other than to get out. At one point, she actually told him not even to come to work anymore, to just stay home. He would not even consider that (Tr. III 922).

Mr. Williams testified that he came to work one morning, and when he walked in the door, saw that his desk in the dispatch area had been moved to the other side of the office without his permission (Tr. III 928). He was “pretty hot” about it. There was a reason he was in dispatch, so he could monitor the pulse of the operation, and hear what was being said. The Complainant asked for permission to move his desk several times, but he did not give it (Tr. III 928). Mr. Williams was in dispatch for a reason – he knows just by the words being said what is going on; he can keep his finger on the pulse of the operation. He preferred being in dispatch (Tr. V 143). But this was only an issue until he got competent dispatchers. He has not moved back to the dispatch area (Tr. V 143-144).

Mr. Williams did not have the same recollection of the incident with Mr. Hays as the Complainant. He recalled that she came to him and told him that someone was over their hours and the load was going to be late, and asking him what they should do. He told her to call the customer and tell them it was not going to be there. Mr. Williams said that that was it; he did not say, let’s run him over hours (Tr. V 144).

Mr. Williams discussed his account with Amerifresh, for whom they hauled produce from California to Winnipeg. The Complainant had a confrontation with Sandy Azusa with Amerifresh, and sent her a letter (RX 23).²⁴ Ms. Azusa called Mr. Williams to complain, and to ask who the Complainant was. She told Mr. Williams that she had talked with the Complainant, and the Complainant told her not to call Mr. Williams (Tr. III 930-932).

Mr. Williams thought that the Complainant had a control issue, and that she thought he was meddling in dispatch, and that he did not know what he was doing. Mr. Williams had 25 years of experience in dispatching; he started at age 24, and had dispatched by himself for 10 years (Tr. III 931). Mr. Williams thought that he and Mr. Baldwin were the best. At the time that the Complainant wanted him out of the dispatch area, there was nobody there with anywhere near his level of experience (Tr. III 932). Mr. Williams noted that the Complainant sent the drivers Qualcomm messages telling them to come to her and not to him; he did not approve of this. He felt that this could have harmed his business, and the rapport he had with the drivers (Tr. III 933).

²⁴ The letter stated that “a woman named Julie called my office and asked that I do not call Bobby anymore and just talk to her in the future.” Ms. Azua then attempted to comply, but she could never reach the Complainant, “nor did she ever return my calls.” She then called Mr. Williams and told him about the Complainant’s instructions; the Complainant then called her and again told her not to call Mr. Williams, but to call the Complainant or Jim in dispatch. Ms. Azua “found this disturbing” and called Mr. Williams to alert him, and to find out if this was the new customer policy. Mr. Williams told her that he would get back to her about it, and that she should call him when asking for a truck.

Mr. Williams thought that the Complainant and Mr. Cain had meetings without him, and he did not trust her (Tr. IV 93).

Mr. Williams acknowledged that he gave the Complainant a full power of attorney; he thought she was concerned that if he were in an airplane crash, there would be no one to look after his daughters. It has been revoked in writing (Tr. IV 94-95).

According to Mr. Williams, they did not have a safety person between Jean Reuter and Brian Remus. The lack of a safety person can cause them to lose control of the drivers' logs, which might not get examined as closely. Violations and points start to creep up. The safety person is the one who checks the logs and monitors, and scans them for any mistakes or potential violations (Tr. III 934). They have to monitor the logs to make sure the drivers are aware. His company sends out warning letters, and congratulations letters; they have a penalty system for log points, and safety rating and overall safety (Tr. III 935).

Mr. Williams stated that Earl Martin, who he hired, was a long time employee. They were friends, and Mr. Martin always did a good job. When his wife got sick, Mr. Martin wanted to take a leave of absence, and this was fine with Mr. Williams, because he knew that Mr. Martin would come back. Mr. Martin did not give him the impression that he was quitting; he just needed to take some time off. He noted that the Complainant was not a part of that conversation (Tr. III 938). Mr. Martin came back to work shortly, after his wife was better. A drug test was not required, but was done as a precaution (Tr. III 939). Mr. Martin was never taken out of the random testing pool (Tr. V 161). The normal procedure would be for human resources (Mr. Carns) to determine if Mr. Martin needed a drug test (Tr. V 165). Mr. Williams did not recall that anyone was concerned that Mr. Martin was being sent out, or talking to the Complainant about it at the board (Tr. V 163-164). There was no citation after the September 2011 audit (Tr. V 163).

Mr. Williams stated that he does not put his drivers' lives at risk; he tells them that there is no load worth wrecking a truck. He has to abide by the DOT rules, even if he does not like them. He did not think that he would ever say, "F" the DOT. This would make him look like an idiot, who did not care. He does care; he has been in the trucking business for 40 years. It is his livelihood as well as that of his employees (Tr. III 939-941).

Mr. Williams recalled all of the problems that the Complainant and Mr. George had with the Sysco Denver loads (Tr. V 144). He remembered them bringing a spreadsheet to show him, reflecting several loads that took more than 60 hours (Tr. V 145, CX 24). Mr. Williams stated that a driver can work 70 hours in 10 days without having to take a restart. If any competent dispatcher looked at the printout, he would laugh, because the Complainant did not know what she was talking about. He wondered where she came up with the hours, and how she knew how long it would take to load a load. Mr. Williams wondered why she could not get a trip started, and switch out with another driver, the way they have always done. He thought that the spreadsheet was "totally bogus," and a joke, as soon as he saw it. He noted that they are still doing loads, running absolutely legal, and delivering loads on time (Tr. V 146).

Mr. Williams noted that these loads were produce, and it is the nature of produce loads that they take a lot of time to load and unload (Tr. V 147). He did not recall that he expressed any concern that drivers were calling in on these loads, saying that it was taking too long to load, and they were not able to make their hours. His concern was that they could not get the job done (Tr. V 147).

According to Mr. Williams, the Complainant had things totally messed up. Their customer service had gone from a hundred percent to zero. He noted that there were many ways to skin the cat – they could switch out drivers, and do all kinds of things that any competent dispatcher would know how to do. But the Complainant and Mr. George were never going to get that. He also thought that the Complainant was trying to scrap Sysco; the spreadsheet did not include Safeway, Food Service of America, FreshPoint, or any of their other customers, it was only Sysco (Tr. V 148). Other customers all do the same loads, pick up at the same sheds, and haul the same products. But the Complainant had a bullseye on Sysco, and she said that the spreadsheet was why they needed to scrap Sysco and move all of the trucks to hauling bananas for Safeway (Tr. V 149).

The Complainant and Mr. George wanted to give all of the trucks to Safeway, and haul bananas from Oxnard to Seattle. They had laid it out on the spreadsheet how they would make money if they got rid of Sysco Denver and hauled bananas. But while that looked good on paper, it was not really the way it worked. With Safeway, they could have the business today, but maybe not a month later. They hauled bananas for Safeway at one time; they were doing two loads a week, and Safeway wanted seven. But Mr. Williams was not willing to put all of his eggs in one basket. It was a good thing, because a few months later, Safeway put the routes up for bid, and someone underbid them. If he had followed the Complainant's suggestion, they would not have Sysco or Safeway (Tr. III 923).

Mr. Williams stated that the Complainant and Mr. George were never going to figure out how to handle the Sysco and Safeway accounts. He tried to work with Mr. George, to show him how to work well in advance. He told Mr. George that it was like a chess game. But Mr. George just could not get it (Tr. III 924). After he told Mr. George that he was going 20 miles an hour in a 100 mile an hour zone, Mr. George told him that he couldn't do it any differently. Mr. Williams did not know that Mr. George had left until he came out of his office and asked where he was, and was told that he had quit. This meant that Mr. Williams was back to dispatching (Tr. III 925).

Mr. Williams stated that in the beginning, the Complainant made some changes, some of which were good, and some of which were not. Mr. Williams felt that the whole "dispatch scenario" was not working, and was never going to work the way the Complainant viewed it (Tr. III 944). He stated that she saved money in the shop by trimming overtime and cutting some of the budget, but this meant that the on the road repairs went up (Tr. III 945). He thought that the Complainant's work was fine to start with, but she wanted control; he thought that the Complainant thought it was her company, and he was just a figurehead (Tr. III 942, 951).

Mr. Williams stated that he had the locks on the mailbox changed a few days, perhaps a week, before the Complainant was fired (Tr. IV 102). The mail and deposits were always his

job; then the Complainant wanted to do it, and after a while, he wanted to do it again. It was his mail, and his deposits. He identified an email the Complainant sent to him in December 2010 after he told her he was going to get the mail and bank deposits, asking if she did something to make him uncomfortable. He told her that he felt he was losing control (Tr. V 123, CX 125).

In February 2011, after Mr. Williams advised her that he was putting Mr. Carns on the JE Williams accounts receivable, the Complainant wrote a “book” in response, and asked for the mail and deposits back (Tr. V 125-127, CX 39). Mr. Carns had been there for years, and had done every position in the office; he had time to do accounts receivable.

Mr. Williams changed the mailbox locks partly because of his conversation with his accountant, and his own intuition that he had lost trust in the Complainant. He wanted his mail and deposits back, and to be in control of his own money (Tr. V 124, 179).

Mr. Williams acknowledged that the Complainant stopped large amounts of overtime and huge shop expenses. But he was constantly having to make adjustments to fix the things she had screwed up (Tr. V 124, 130). Mr. Williams had his doubts about the Complainant implementing and training on the Keystone system, because she was not a dispatcher, and she did not know how to dispatch. He did not want her in the dispatch area.

Mr. Williams stated that although he does not use Keystone, it is a fine system, and is still used one hundred percent by his dispatchers (Tr. V 133). He disagreed with the Complainant that if the dispatch board was changed and not communicated, a load could be missed. Mr. Williams explained that the board has nothing to do with loads, and changing it does not create missed loads. It simply tracks the truck number, trailer number, driver, and where he is; it has nothing to do with tracking loads (Tr. V 134). He acknowledged that if the board were changed, and was different than what was in the computer, it could create a question that one would need to look into to verify (Tr. V 135).

According to Mr. Williams, shortly before he fired the Complainant, Ms. Henry called him and told him that the Complainant had chased her into the parking lot, and beat on her car window. She told Mr. Williams that she could not work with the Complainant anymore (Tr. III 935). Ms. Henry gave him an ultimatum – either the Complainant went or she did. Mr. Williams liked Ms. Henry, and did not want to see her go. About that time, he had had it with the Complainant. He told Ms. Henry to hang in, and he would fix the problem. He asked Ms. Henry if she knew of anyone who could replace the Complainant, and Ms. Henry knew a woman, Shelley Gehringer, who had worked at another trucking company for 20 years. Mr. Williams interviewed Ms. Gehringer a few weeks before he fired the Complainant, and hired her (Tr. III 936-937). He waited for her to start, because she needed to give her employer two weeks notice. In addition, payroll was coming up, and he needed to cover it; he could not terminate someone who knew how to do the payroll. He waited until that was done, and then brought Ms. Gehringer on (Tr. III 937).

On the day that he fired the Complainant, she was at Drinkwalters late in the afternoon. He called her and asked her to come back; Jeremy was still at the office. He took her into Mr. Carns’ office, and told her that he could no longer work with her, and he was letting her and

Jeremy go. The Complainant immediately handed over her shop keys, and went into the office next door. Mr. Williams stated that there was no yelling (Tr. III 946). The Complainant told Jeremy that they had been fired, and to gather up his things so they could leave. There were no outbursts, although Jeremy slammed the door (Tr. III 947). The Complainant said goodbye to the people in the office (Tr. III 948).

Mr. Williams stated that Travis Williams had started working as a truck driver at least ten years earlier. He then got into the construction business, but would come back and drive in the winter months (Tr. III 947). He had not used Travis Williams when he fired anyone before, because he never had to have someone there. Mr. Travis Williams just stood there observing (Tr. III 947). Ms. Gehringer came on board right away (Tr. III 948).

Mr. Williams recalled that the Complainant sent him an email stating that people were being told she was taking money. He told her that he did not say anything, and that it probably came from one of the drivers. Mr. Williams told her that he could not control what the drivers said, and she knew better than to listen to them (Tr. IV 51).

ISSUES

The issues for decision in this case are:

1. Whether the Complainant engaged in protected activity as contemplated within the STAA.
2. If so, whether the Respondents had knowledge of this protected activity.
3. Whether the Respondents took adverse action against the Complainant.
4. If so, whether the protected was activity a contributing factor to the adverse action.
5. If so, whether the Respondents have shown by clear and convincing evidence that they would have taken the adverse action notwithstanding the protected activity.

THE SURFACE TRANSPORTATION ASSISTANCE ACT

In passing the Transportation Act, Congress “recognized that employees in the transportation industry are often best able to detect safety violations and yet, because they may be threatened with discharge for cooperating with enforcement agencies, they need express protection against retaliation for reporting these violations.” *See Yellow Freight Sys., Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994) (citations omitted).

As a result, Congress enacted section 405 of the Surface Transportation Assistance Act, 49 U.S.C. § 31105, to protect “employees in the commercial motor transportation industry from being discharged in retaliation for refusing to operate a motor vehicle that does not comply with applicable state and federal safety regulations or for filing complaints alleging such noncompliance.” *See Brock v. Roadway Express, Inc.*, 481 U.S. 252, 255 (1987).

49 U.S.C.A. § 31105(a)(1) (“the Act”), provides that an employer may not discharge, discipline, or discriminate against an employee-operator of a commercial motor vehicle regarding pay, terms or privileges of employment because the employee has engaged in certain protected activity. The protected activity includes making a complaint “related to a violation of a commercial motor vehicle safety regulation, standard, or order.” § 31105(a)(1)(A). Internal complaints to management are protected under the Act. *Reed v. National Minerals Corp.*, Case No. 1991-STA-34, (Sec’y., July 24, 1992), slip op. at 4. A “commercial motor vehicle” includes “any self-propelled . . . vehicle used on the highways in commerce principally to transport passengers or cargo” with a gross vehicle weight rating of ten thousand or more pounds. 49 U.S.C. App. § 2301(1).

To prevail under the Act, a complainant must prove that she engaged in protected activity, that the employer was aware of the activity, that the employer took adverse employment action against the complainant, and that there was a causal connection between the protected activity and the adverse employment action. *Schwartz v. Young’s Commercial Transfer, Inc.*, ARB No. 02-122, ALJ No. 2001-STA-33, slip op. at 8-9 (ARB Oct. 31, 2003); *Assistant Sec’y v. Minnesota Corn Processors, Inc.*, ARB No. 01-042, ALJ No. 2000-STA-0044, slip op. at 4 (ARB July 31, 2003).

Credibility

In making my determination in this claim, I have assessed the credibility of all of the witnesses, but in particular, that of the two principal witnesses, the Complainant and Mr. Williams. With respect to several key issues in dispute, I accord more weight to the testimony of Mr. Williams. There are several factors that bear on my conclusion.

One factor that leads me to doubt the accuracy and reliability of the Complainant’s testimony is her willingness to make public accusations of serious misconduct or criminal activity against numerous persons that are not supported by a shred of evidence, and are based on nothing but speculation. Thus, the Complainant has accused current and former employees of the DOT of improperly divulging her identity as the person who made the complaint about Mr. Martin’s drug test results. To that end, the Complainant called Mr. Calkin, formerly with the DOT and now a private consultant, apparently for the purpose of showing that Mr. Calkin was Mr. Williams’ inside connection to the DOT, which would have enabled him to learn that she made the complaint about Earl Martin. She attempted to show that Mr. Calkin provided Mr. Williams with advance “inside information” on expected fines in connection with an audit for which he worked for Mr. Williams as a consultant. But Mr. Calkin explained how he was able to estimate the fines from publicly available information. The Complainant then attempted to impeach Mr. Calkin by charging him with violating the federal ethics statute for former employees, a statute that she clearly misunderstood, and which did not apply to Mr. Calkin’s work as a consultant for Mr. Williams.

The Complainant also claims that employees of the DOT in Montana violated her request for confidentiality, and improperly told Mr. Williams that she had made the complaint about Earl Martin.²⁵ She based this speculation on her assumption that the DOT improperly told Mr.

²⁵ Mr. Calkin testified that there was an OIG investigation based on a complaint about the leak of this information.

Williams about a complaint by another former employee, Ed Aragon, apparently reasoning that they therefore must have told him about her complaint as well. Yet the Complainant acknowledged that Mr. Aragon himself told the company that he had made the complaint. Nor did she have any knowledge of whether Mr. Aragon had waived his right to confidentiality in connection with his claim.

The Complainant's repeated misrepresentation of the testimony and evidence, discussed below, also reflects adversely on the accuracy and reliability of her testimony.²⁶

*Whether The Complainant Engaged In Activity That Is Protected
Within The Meaning Of The Act*

There are two areas where the Complainant could conceivably be found to have engaged in protected activity. The first would be her claim that she reported numerous instances to Mr. Williams of drivers driving over their hours, or problems with their logs. The Complainant claims that there were numerous such instances, and that drivers regularly came to her with complaints that they were being asked to drive over hours, and that she took these concerns to Mr. Williams. But the record includes little, if any, specific evidence that she did so.

Thus, Mr. Gurr testified that he was asked to run over hours and change his logbooks. But he did not indicate who asked him to do so, that he told the Complainant about any such instances, or that the Complainant took any such issues to Mr. Williams.

Mr. Hilger testified only that he "heard" it was "common practice" for drivers to be asked to run over hours, but he himself was never asked to do so. He did not testify that he brought any such issues to the Complainant, or that she then took them to Mr. Williams.

Mr. Bixby testified that drivers were asked to drive over hours and change their logbooks by the dispatchers. But he did not testify that he brought any such issues to the Complainant; indeed, he stated that he was afraid that he would lose his job if he said anything.

Mr. Brownheim testified that he was asked to drive over hours by the dispatchers, but never to change his logs. He did not testify that he took any complaints to the Complainant.

²⁶ Most seriously, though unrelated to the merits of the Complainant's STAA claim, is the Complainant's accusation that Mr. Bobby Williams, Mr. Travis Williams, and Mr. Youde, Mr. Williams' attorney, planned and carried out an alleged break-in at her home. The Complainant based these scandalous accusations on the fact that, during a deposition attended by Mr. Bobby Williams and Mr. Youde, she mentioned that her son had moved out of her house, and two days later, at a mediation session, Mr. Bobby Williams gave her a "dirty look" just before she got a call from her alarm company about a break-in at her house. I denied Mr. Youde's request to submit exhibits to establish that Mr. Travis Williams was not in Montana at the time of the alleged burglary. As I stated, there was not a shred of evidence to support a conclusion that Mr. Youde, Mr. Bobby Williams, or Mr. Travis Williams were involved in a burglary of the Complainant's home. More important, it was totally irrelevant to the issues presented in this claim. Thus, there was no need for Mr. Bobby Williams, Mr. Travis Williams, or Mr. Youde to present any sort of alibi in connection with this alleged crime. (Tr. IV 5-6).

Mr. Flansburg testified that the dispatchers told the drivers to drive over hours, and identified one incident where the dispatcher contacted his fellow driver repeatedly to make sure the load was delivered. He did not indicate that he ever brought such issues to the Complainant.

Nevertheless, Mr. Williams acknowledged that the Complainant brought issues to him regarding drivers having to run over their hours, and her concerns about the legality of runs. Indeed, it was part of the Complainant's job, as the interim safety person when there was not an employee in this position, to monitor and ensure drivers' compliance with the regulations. I find that, despite the fact that she cannot recall any specific instances, the Complainant engaged in protected activity when she took these problems to Mr. Williams.

I also find that the Complainant engaged in protected activity when she complained to Mr. Williams that Mr. Earl Martin was being sent out on a run without receiving the results of his drug test, and when she reported this to the DOT, along with her concerns about Mr. Hays. Clearly the Complainant was mistaken about the drug testing requirements. As Mr. Calkin, Mr. Williams, and Mr. Carns testified, they were not required to obtain a drug test for Mr. Martin, who was still covered by the company's random drug testing consortium. This was also the conclusion after the DOT audit that resulted from the Complainant's complaint. But while the Complainant may have been incorrect about the drug testing requirements for Mr. Martin, that does not necessarily mean that she did not have a reasonable concern about a possible violation of the safety regulations.²⁷

Respondents' Knowledge of the Complainant's Protected Activity

I find that the Complainant has not established that Mr. Williams knew about her report to the DOT when he made the decision to fire her. The Complainant relies on the timing of her report to the DOT and her termination, speculating that because she was fired the day after she contacted the DOT, it must have been because of her report. Of course, for this to be true, someone at the DOT would have to have notified Mr. Williams about her complaint, and hence the Complainant's accusation that persons at the DOT, as well as Mr. Calkin, tipped Mr. Williams off. But as discussed above, there is no evidence to support this speculation.

The Complainant also speculated that Ms. Henry could have overheard her talking on the phone with the DOT while she was outside smoking. Unfortunately for the Complainant, there is no evidence to support this speculation.

Mr. Williams, whose testimony I find to be fully credible, testified that he had no idea that the Complainant had contacted the DOT, even when the DOT performed the audit in September 2011, which they told him was based on a complaint. He learned that the complaint had been made by the Complainant from his attorney.

But most importantly, more than two weeks before the Complainant called the DOT, Mr. Williams had hired Ms. Gehringer as her replacement.²⁸ The decision to terminate the

²⁷ The Respondents concede that the Complainant's report to the DOT constituted protected activity under the Act.

²⁸ The Complainant argues vehemently that she was not "replaced," apparently reasoning that she was the general manager, and Ms. Gehringer was hired as a bookkeeper. The Complainant's status as the "general manager" is

Complainant had been made well before Mr. Martin was brought back on as a driver, and well before the Complainant contacted the DOT.

I find that the Complainant has not met her burden to establish that Mr. Williams was aware of her report to the DOT concerning Mr. Martin and Mr. Hays when he made the decision to terminate her. But Mr. Williams was aware, as he testified, that the Complainant brought concerns to him about drivers exceeding their hours and having problems with their logs.

*Whether the Complainant's Protected Activity was a Contributing
Factor in Mr. Williams' Decision to Fire Her*

It is the Complainant's burden to prove by a preponderance of the evidence that her protected activity was a contributing factor in the unfavorable personnel action. A contributing factor is "any factor which, alone or in combination with other factors, tends to affect in any way the outcome of the decision." *Clark v. Pace Airlines, Inc.*, ARB No. 04-150 (Nov. 30, 2006), slip op. at 11. Temporal proximity can support an inference of retaliation, although the inference is not necessarily dispositive. *Robinson v. Northwest Airlines, Inc.*, ARB No. 04-041 (Nov. 30, 2005), slip op. at 9. Where an employer has established one or more legitimate reasons for the adverse actions, the temporal inference alone may be insufficient to meet the employee's burden to show that her protected activity was a contributing factor. *Barber v. Planet Airways, Inc.*, ARB No 04-056 (Apr. 28, 2006).

I find that the Complainant has not met her burden to establish by a preponderance of the evidence that her protected activity, that is, her complaints to Mr. Williams about drivers driving over their hours or having problems with their logs, was a factor in his decision to terminate her. Mr. Williams, whose testimony I found to be fully credible, categorically stated that the Complainant's reports of issues with driver hours and logs did not play any part in his decision to fire her.²⁹

Indeed, Mr. Williams provided a number of reasons for his decision to terminate the Complainant, and replace her with Ms. Gehringer. Mr. Williams described a situation that started out well when he first hired the Complainant, but began to deteriorate in the last year that she worked for him. He testified that he fired the Complainant because she was incompetent, because she ruined his business, because she ran off all of his long term employees, and because his bankers, accountants, and insurance agents had questions about her performance. He is convinced that if he had not fired the Complainant, his trucking company, a 40 year old business, would no longer exist.

debatable, as the evidence strongly suggests this was a title she bestowed on herself. Nevertheless, it is clear that Mr. Williams' intent when he interviewed and hired Ms. Gehringer was to fire the Complainant, and employ Ms. Gehringer to perform her bookkeeping and accounting duties. With Brian Remus already working as the Employer's full-time safety director, Ms. Keeler's duties as "general manager" – safety and bookkeeping – were now both accounted for by other employees.

²⁹ As Mr. Williams had already hired Ms. Gehringer when the Complainant complained to him about sending Mr. Martin out without his drug test results (as well as the incident involving Mr. Hays), that complaint could not have been a factor in his decision to terminate her, a decision that had already been made.

Mr. Williams' account of his reasons for firing the Complainant is supported by the testimony from Mr. Brown, the banker for JE Williams and WHW Trucking, who confirmed that he had concerns about the Complainant's performance that he passed along to Mr. Williams. According to Mr. Brown, the updates that the Complainant provided to him for the 2010 tax year were inconsistent, and did not match up with the bank's information; when he tried to explain these inconsistencies to the Complainant, he did not always receive reasonable answers.

Mr. Kanuit, the accountant who prepared taxes for JE Williams and WHW starting in the 2009 tax year, also expressed concerns to Mr. Williams about the Complainant's performance. Mr. Kanuit started noticing problems with the information provided by the Complainant for the 2010 tax year: the liability accounts were not balanced, and payments were not coded properly to interest, principal, and late charges, which would influence the financial statements, and have a direct bearing on interest expense, something that is material for a trucking company dependent on borrowing money for operations. Mr. Kanuit testified that when he asked the Complainant for the amortization schedules, she told him that she did not have any, even though they had established amortization schedules for all of the loans. Mr. Kanuit knew that the Complainant was not telling him the truth when she told him that she used the notices from the bank to determine the interest and loan amounts, because if this were the case, the loans would have been balanced. Mr. Kanuit vividly recalled meeting with Mr. Williams in the summer of 2011 and discussing internal controls, segregation of duties, and the need for a good accounting system and employees who adhered to it.

It was Mr. Kanuit who advised Mr. Williams to take control of his own money, and to immediately stop allowing the Complainant to get the mail. Mr. Kanuit was concerned that Mr. Williams' company was not making money, when in his experience trucking companies should be making money. After looking at obvious differences in liabilities and accounts, and incorrect balances, he was starting to wonder if the Complainant was competent to perform bookkeeping duties.

Mr. Williams described his frustration with the Complainant's work in the dispatch area, where she focused her attention after her "assessment and evaluation" of the office and shop, and where she was charged with integrating the Keystone trucking software and training the dispatchers on how to do the order entries. He described the chaos that resulted when the Complainant and Mr. George, whom she had hired as a dispatcher, attempted to manage the dispatch area.³⁰ According to Mr. Williams, they were so focused on entering everything into the new Keystone system, they missed the entire dispatch scenario, resulting in bounced and empty miles, deadhead miles, and lost and missed loads.

Mr. Williams described how the Complainant almost cost him his biggest customer, Sysco, by sending an email to Tom Lang instructing them to provide two days advance notice on loads. According to Mr. Williams, this account represented about 30 percent of the business, and millions of dollars in revenue; it also accounted for inbound runs that matched up with outbound

³⁰ Mr. George, by his own admission, had no experience in dispatching trucks on routes that were not fixed.

runs.³¹ When Mr. Williams was contacted by Mr. Lang's superior at Sysco, Dan Locricchio, about the email, Mr. Williams was able to salvage the account only because of his longstanding personal business relationship with the persons at Sysco. When the Complainant persisted, and presented Mr. Williams with a draft of a letter to Sysco, telling them to change their method of ordering or they would not honor their contract to provide trucks, Mr. Williams told her no.

Mr. Williams also testified about problems the Complainant caused with another customer, Amerifresh, by sending a confrontational letter, and telling Ms. Azua, with Amerifresh, not to call Mr. Williams.

The record is also replete with examples of the Complainant instructing Mr. Williams, her boss and the owner of the company, to stop running the company, and essentially turn control over to her. The Complainant's lengthy emails to Mr. Williams reflect her disdain of his business sense, and her disrespect of his authority as her boss. Thus, she sent Mr. Williams lengthy emails telling him to stop undermining her decisions and making decisions without checking with her (RX 6; 12), and instructing him not to take orders, schedule loads, make changes, or take calls, and not to come into the office on Saturday and Sunday (RX 11). The Complainant moved Mr. Williams' desk without his permission, after hounding him unsuccessfully; she disregarded his instructions not to get the mail after he changed the locks; and she disregarded his instructions to fire her son's girlfriend. She testified that Mr. Williams was a "hindrance" to office productivity, and claimed that she "literally" had to babysit him. According to Ms. Henry, the Complainant told her that she was angry with Mr. Williams because he was not doing things the way she wanted; she had ideas, and he was too dumb or too greedy to follow them.

The Complainant disputes Mr. Williams' claim that she ran off his long time employees, arguing that there is no basis for this claim, and that it is a pretext for the real reason for her termination, which was retaliation for her protected activities. According to the Complainant, Mr. Shammel left because he was not happy about being on a budget (Complainant's Brief at 10), and Ms. Schmid was unhappy about losing overtime pay, and called Mr. Williams on Mothers Day 2010 to tell him she was quitting (Complainant's Brief at 11). There is no evidence in the record to support these claims.³²

Mr. Baldwin, Mr. Williams' long term head of dispatch, was fired by the Complainant, with the consent of Mr. Williams, after an incident involving an invoice that was negotiated downward by Mr. Baldwin. Mr. Baldwin clearly felt that the Complainant was the driving force behind his termination. The exhibits submitted by the Complainant reflect tension between Mr. Baldwin and the Complainant almost from the beginning. The Complainant prepared a "Jim Baldwin Warning" dated August 6, 2009, setting out her complaints about Mr. Baldwin in detail, as well as a one page unsigned statement apparently meant to be signed by Mr. Williams, setting out responses to the Complainant's complaints (CX 107).

³¹ The Complainant's claim that she and Mr. George received numerous calls from drivers that the Sysco Denver loads could not be run legally within the hours of service allowed by law is not supported by the record. Complainant's Response Brief at 32.

³² The Complainant is proceeding *pro se*, and is thus granted a certain amount of leeway. This does not give her license to supplement her testimony, or to mischaracterize or misrepresent the evidence in the record.

Mr. Brownheim testified that when he first started driving with the Respondent, the office was a little bit more organized, but after about 8 months, it started to deteriorate, and totally took a dive when the Complainant came in. He stated that it was like a revolving door with the office employees and drivers; every day there was someone different. Karl Shammel, Lucy Schmid, and Jean Reuter left; it seemed like the moment the Complainant came on, she was cleaning house every months. The dispatch section took a nosedive in terms of organization.

The testimony reflects that the atmosphere in the months leading up to the Complainant's termination was tense and stressful. The Complainant and her son attribute this to Mr. Williams, and his insistence on running his own business.³³ Mr. Carns and Ms. Henry both laid the blame on the Complainant. Mr. Carns stated that there was so much dissension in the office that it affected him physically; Ms. Henry began leaving the office precisely at 4:00 p.m. in order to avoid the Complainant.³⁴ Numerous witnesses testified that when the Complainant discovered that Mr. Williams had changed the mailbox locks, after disregarding his instruction not to get the mail, she created a scene, running through the office yelling obscenities, and telling employees they would not get their paychecks.³⁵

In summary, the record supports the conclusion that Mr. Williams had more than ample reasons to fire the Complainant, which he decided to do after Ms. Henry came to him with the ultimatum that it was either her or the Complainant. The Complainant argues that Mr. Brown and Mr. Kanuit had "nothing negative to say under oath about her professionalism, insubordination, abilities, or capabilities of doing her job." (Complainant's Response Brief at 37). But the Complainant's claim ignores their testimony about their concerns with the Complainant's performance, which they passed along to Mr. Williams. In particular, Mr. Kanuit, who provided detailed testimony about his concerns starting in 2011, clearly felt that the Complainant was lying to him about how she balanced the loans, and he advised Mr. Williams to take back the mail and deposits from her.

The record clearly establishes that Mr. Williams had a reasonable basis to be dissatisfied with the Complainant's performance, especially as reflected in the advice he received from his financial advisers. It is not the Court's place to determine if Mr. Williams exercised sound business judgment when he decided to fire the Complainant. But I find that the evidence overwhelmingly supports Mr. Williams' stated reasons for firing the Complainant.

I find that the Complainant has not met her burden to show by a preponderance of the evidence that her protected activity was a factor in Mr. Williams' decision to fire her. But even

³³ I do not accord any credence to Jeremy Keeler's testimony. He provided no firsthand information, but testified to what he had been told by the Complainant. Moreover, his demeanor clearly reflected animosity and disdain for Mr. Williams.

³⁴ There is no support for the Complainant's claim that the testimony of Mr. Carns and Ms. Henry was "staged," in other words, that they committed perjury, in an attempt to show a reason for firing the Complainant. Complainant's Brief at 43. Nor is the Complainant's "personal knowledge" of Mr. and Mrs. Henry's 2010 income as reported on their tax returns, cited by the Complainant to establish that Ms. Henry's testimony was a "complete lie," a part of the record. Complainant's Response Brief at 9.

³⁵ The Complainant's claim that there was no evidence that she was the cause of drama in the office ignores much of the hearing testimony. Complainant's Response Brief at 5.

if she had, I find that the Respondent has established by clear and convincing evidence that it had a legitimate and non-pretextual business reason to fire her.

The Complainant claims that she was fired because of her attempts to make Mr. Williams “run legal,” and her constant confrontations with him about following the law. Thus, according to the Complainant,

I was fired because I would not back down from teaching dispatchers to run legally, from insisting drivers be allowed to run legally and to request the Owner of the companies to back the findings to his “ONE” client, Sysco Denver and ask for their help so the loads could possibly be run legally under the laws of the D.O.T.

Complainant’s Response Brief at 36.

The Complainant’s argument is based on a faulty premise, which is not supported by the evidence, that Mr. Williams runs his trucking companies illegally as a matter of course and general business practice, and that she was the lone voice struggling to force him to comply with the law.

To be sure, the evidence reflects that JE Williams, as well as WHW, was cited for numerous safety violations during audits by the DOT in 2009 and 2010, and was still struggling to bring its safety compliance numbers up when Mr. Williams hired a qualified safety person, Mr. Remus, and sought the assistance of Mr. Calkin as a consultant. Indeed, as Mr. Williams testified, one of the problems in this area was the succession of unqualified safety persons hired by the Complainant, including her son Cory Keeler, and her husband’s friend Robert Ostermiller, who had no experience in the trucking industry. It was Mr. Williams who hired Mr. Remus, and paid him a premium salary to take the position.

Mr. Calkin, who Mr. Williams hired as a consultant, stated that as a whole, JE Williams has made great strides in improving its compliance from the previous two years, and that Mr. Williams has taken a very active role in trying to reduce violations. Mr. Calkin has worked with Mr. Remus in auditing the logs, and with Mr. Carns on the drug and alcohol testing program and the driver qualifications side, to make sure that everything was being done to fully comply with the regulations. Mr. Calkin felt that the company was doing everything they could to make sure that his directions were being followed. Mr. Calkin put together an hours of service policy for JE Williams, which included penalties for causing or encouraging violations. He felt that with the full support of the employees and management, the company has made substantial strides in the past year.

The Complainant has repeatedly claimed that drivers came to her regularly, four to five a week in person, and ten to fifteen by phone, with complaints that they were pressured to drive over hours, and to change their logs, either by Mr. Williams or by the dispatchers. Although the Complainant initially claimed that she emailed Mr. Williams about these complaints, she then acknowledged that there were no emails discussing specific drivers contacting her; rather, it was so “fast paced” that she walked in and told Mr. Williams about the calls as they occurred. But despite her claim that there were “quite a few” drivers who told her that they could not say no to

a request to run over hours because they were scared, and needed the job, the Complainant could not recall any specific drivers who reported to her that they were instructed to drive over hours or change their logs, either by the dispatchers or Mr. Williams, or that they were scared to say no to such requests.

The Complainant's claim that Mr. Williams has a pattern of firing employees in retaliation for refusing to follow his direct instructions to violate the law is not supported by the record. (Complainant's Brief at 48). Her claim that her witnesses "testified in detail to Mr. Williams pattern of running illegally, his actual demand for them to change their logs and several lost their jobs in retaliation for not following Mr. William's unlawful requests to violate the laws" is based on a blatant misrepresentation of their testimony.

Thus, the Complainant claimed that Mr. Brownheim testified to personal knowledge of Mr. Williams having drivers change logs and run illegally, and gave his "personal interpretation" of how Mr. Williams treated his employees by yelling and belittling them to the point of shame, how Mr. Williams spoke directly to him on several occasions, and how humiliating it was.

In fact, Mr. Brownheim testified that he was asked to drive over hours by the dispatchers, not Mr. Williams; he was never asked to change logs. Mr. Brownheim stated that there were quite a few drivers who falsified logs, but it was the driver's fault if he did so. Mr. Brownheim testified that the only time he heard or saw Mr. Williams be angry was on the phone with him.

The Complainant claimed that Mr. Bixby testified that he was terminated in retaliation after a DOT audit, and felt that he was a scapegoat for Mr. Williams to try to impress the DOT by showing that he fired drivers with log issues. She also claimed that he testified that any loads he was told to run outside his allowable hours was on direct orders from Mr. Williams and Jeff Nilson, and that it was a "known fact" that you would lose your job if you did not run as you were told.

In fact, Mr. Bixby testified that he was fired the morning after an audit, because his logbooks were incorrect. He believed he was dismissed because of other personal issues, including an incident a month earlier where he dragged a tire on a trailer. Mr. Bixby testified that the dispatchers told them to do what they had to do to get the job done, and to redo their logbooks. Although he did what he had to do, including change his logbook, most of the time, he did not; if he was late, he called the office and made arrangements with the dispatchers.

The Complainant claimed that Mr. Hilger testified that he quit after Mr. Williams asked him to drive over his hours, and not wait for his replacement cell phone to arrive.

Mr. Hilger actually testified that although he "heard" it was "common practice" for drivers to be asked to change logs, he was not asked to do so. He was fired when he stayed over after delivering a load, to wait for delivery of a replacement cellphone. Mr. Williams wanted to work him back, and Mr. Hilger did not want to do that. He stated that the letter he received says that he was fired for taking the tops off two trailers at overpasses.

The Complainant claims that Mr. Flansburg testified to personal knowledge of Mr. Williams “running illegally,” and that he was told directly by the dispatcher and Mr. Williams to run his loads regardless of his available hours.

In fact, Mr. Flansburg testified to one incident where the dispatchers told him and his fellow driver that a load absolutely, positively had to be there, and they took that to mean if they did not get it there, their jobs were in jeopardy. He stated that he was fired by Mr. Williams for being “unreliable;” he feels that he was fired in retaliation for filing a workers compensation claim. Mr. Flansburg testified that it was a “general feeling” with the drivers that if they did not deliver on time they would lose their jobs.

The Complainant claims that Mr. Gurr testified in detail about being fired in retaliation for refusing to change his logs, and that Mr. Williams told him that he was fired for “losing customers when he was not willing to change his logs to get there for the delivery.”

In fact, Mr. Gurr, who worked for the Respondent for eight months, testified that he was fired for the potential to lose customers, because he was constantly late. Mr. Gurr claimed that he was late because he did not have time to make the deliveries in the slow trucks. He claimed that he was asked to run over hours on several occasions, and to change logs; he did not indicate who directed him to do so.

The Complainant claims that Mr. Ostermiller testified in detail about Mr. Williams’ hostility toward him for trying to do his job in compliance with the DOT regulations. In fact, Mr. Ostermiller testified that drivers were told to drive over hours, and were intimidated, and fired for refusing to drive over hours, but he could not remember who any of them were. Although he claimed to have witnessed Mr. Williams intimidating drivers, he did not testify to any hostility toward him personally, for trying to do his job in compliance with the law or otherwise.

The Complainant’s claim that Mr. Gurr, Mr. Flansburg, Mr. Bixby, and Mr. Hilger were fired in retaliation for not changing their logs or running over hours is, again, a blatant misrepresentation of the record. (*See* Complainant’s Brief at 48; Response Brief at 62.) Not one of these witnesses so testified. As discussed above, Mr. Bixby was fired for changing his logs, not in retaliation for refusing to change them. Mr. Hilger was fired for taking the tops off of two trailers. Mr. Gurr was fired for being late with a load. Mr. Flansburg claimed he was fired in retaliation for filing a workers compensation claim.³⁶

Nor does any evidence support the Complainant’s claim that Mr. George and Mr. Ostermiller were fired in retaliation for their refusal to condone Mr. Williams’ practices of running illegally. Mr. George testified that he quit; Mr. Ostermiller, who by his own admission

³⁶ In her Response Brief at page 24, the Complainant claimed that the Respondents’ attorney failed to include the testimony of other drivers who quit because of Mr. Williams’ unlawful dispatching practices. This may be because NO driver testified that he quit because of Mr. Williams’ unlawful dispatching practices.

was “in over his head,” was fired by the Complainant at Mr. Williams’ direction because he was not qualified for his job.³⁷

The Complainant also alleges that, had she been fired for bona fide reasons, she would have “received [some] type of written reprimand indicating her performance was . . . an issue” before her termination. (Complainant’s Brief at 35). While a termination that did not follow a company’s formal discipline policy could suggest retaliation, the Respondent had no such policy, nor was the Respondent required to have any formal disciplinary policy. I find that the fact that the Complainant did not receive any type of written reprimand does not suggest that her termination was not for “bona fide” reasons. The STAA prevents employers from retaliating against their employees for engaging in protected activity. It does not tell employers how to properly terminate at-will employees.

The Complainant argues that the dispatchers, and Jesse from the shop were complaining to her almost daily (Complainant’s Brief at 19); that the office staff was coming to her with complaints (Complainant’s Brief at 20); and that she was “literally being bombarded with complaints from all employees who were in the direct line of fire from Mr. Williams” (Brief at 24). These characterizations are not supported by anything other than the Complainant’s arguments.

The Complainant’s claim that all of the witnesses recalled a staff meeting days before her termination, where Mr. Williams “apologized” for interrupting their jobs, and stated that the company was in her very capable hands, is a complete fabrication.³⁸ Nor does Complainant’s Exhibit 30 reflect that Mr. Williams promised all staff present during a meeting in May that he would try not to interfere with or be disruptive of their jobs. (Complainant’s Brief at 21, 38).

Mr. Williams, whose testimony I found to be fully credible, made it clear that although he might not necessarily agree with the laws, he believes that it is important to comply with them. Mr. Williams testified that he attempts to do this by monitoring the logs, making sure the drivers are aware of the laws, and using a penalty system for enforcement. He acknowledged that he was not always successful, and that violations happen. Mr. Williams did not think he would ever say “F” the DOT, as claimed by the Complainant, Jeremy Keeler, and Mr. George, because it would make him look like an idiot, and that he did not care about following the law. He pointed out that he has been in the trucking business for 40 years; it is his livelihood, as well as the livelihood of his employees. I note that, even if Mr. Williams in fact made such a statement, it does not follow that he deliberately ran his business in disregard of the law.³⁹

³⁷ The Complainant has misrepresented the record by stating that she “found that Mr. Williams was having Rowdy Anderson go into the Rapid Log program and actually changing [sic] the drivers logs.” Complainant’s Brief at 52. There was absolutely no testimony, including from her, at the hearing to support her claim that Mr. Williams instructed Mr. Anderson to go into the computer and change driver logs. Apparently the Complainant is referring to CX 124, an email in which she advises Mr. Williams that Mr. Anderson had been making changes to the logs after they were in the computer. But the email does not suggest that this was done at Mr. Williams’ direction, or clearly point out the seriousness of *Mr. Williams’ decision* to have Mr. Anderson change the logs, as claimed by the Complainant. Complainant’s Response Brief at 52-53.

³⁸ While witnesses recalled a meeting, none of them recalled Mr. Williams “apologizing.”

³⁹ It would be safe to say that many of us do not have warm and fuzzy feelings for the IRS, but it does not follow that we are tax scofflaws.

Mr. Calkin stated that JE Williams as a whole has made great strides in improving its compliance from the previous two years, and that Mr. Williams has taken a very active role in making attempts to reduce violations. As a consultant, Mr. Calkin has worked very closely with Mr. Remus in auditing logs, and with Mr. Carns on the drug and alcohol testing program and the driver qualifications to make sure that the company was doing everything it could to fully comply with the regulations. Mr. Calkin created an hours of service policy, with the full support of Mr. Williams. Mr. Calkin was satisfied that the company was following his directions, controlling their drivers, and making conscientious efforts to follow the rules. He noted that at the last DOT review, the findings were satisfactory, and the company was doing things substantially better. Mr. Calkin felt that he had the full cooperation of Mr. Williams, the dispatch section, and everyone at the company, which has resulted in substantial strides. Mr. Calkin acknowledged that they had not eliminated all violations, but they have reduced them to a satisfactory level, and are working to improve.⁴⁰

In *Frausto v. Beall Concrete Enterprises, Ltd.*, ARB No. 05-122, ALJ No. 2005-STA-9 (ARB Aug. 24, 2007), the ARB affirmed the ALJ's recommended dismissal of the Complainant's STAA complaint where overwhelming and credible evidence supported the Respondent's contention that it terminated the Complainant's employment because of his bizarre and disruptive behavior. Similarly, in this case, I find that the credible evidence overwhelmingly establishes that Mr. Williams' decision to fire the Complainant was not a pretext for discriminating against her because she was concerned that he was "running illegal."

The record establishes that Mr. Williams' trucking business was found to have compliance issues in DOT audits, that Mr. Williams took steps to correct these issues and make sure that his businesses complied with the laws, that the Complainant was part of this process, and as part of her duties took safety and compliance issues to Mr. Williams, and, although violations still occur, Mr. Williams' companies, with the assistance of Mr. Remus and Mr. Calkin, have improved their safety and compliance ratings. It does not establish that Mr. Williams deliberately ran his companies in disregard of the law, and that the Complainant was fired for her attempts to get him to "run legal."

CONCLUSION

Based on the foregoing, I find that the Complainant has established that she engaged in protected activity under the STAA, when she made her complaint to the DOT, and when she reported potential violations of the STAA to Mr. Williams. In addition, I find that, although the Respondents were not aware of the Complainant's complaint to the DOT, the Respondents were aware of the Complainant's protected activity in connection with her reports of driver violations. I also find that the Complainant suffered an "adverse action" when she was fired.

⁴⁰ Mr. Calkin further explained that Mr. Williams took several remedial measures "to reduce the violations as far as they possibly can." (Tr. 125). He elaborated on the various safety measures Mr. Williams approved along with Brian Remus. (Tr. 126). Mr. Calkin emphasized the necessity of Mr. Williams support in implementing new safety measures, noting that "[i]f he wouldn't have supported us, we would've not gotten anywhere." (Tr. 132).

As the Secretary of Labor has previously noted, although whistleblowers are protected from retaliation for blowing the whistle, the fact that any employee may have done so does not afford her protection from being disciplined for reasons other than her whistleblowing activities, nor does it give such an employee carte blanche to ignore the usual obligations involved in an employer-employee relationship. *Dunham v. Brock*, 794 F.2d 1037 (5th Cir. 1986). Thus, "[a]n otherwise protected 'provoked employee' is not automatically absolved from abusing her status and overstepping the defensible bounds of conduct." 794 F.2d at 1041 (citations omitted). *Lopez v. West Texas Utilities*, 86-ERA-25 (Sec'y July 26, 1988).

I find no evidence to indicate that any adverse action taken by Respondents was in any way motivated by the Complainant having engaged in alleged protected activity. The Complainant has not established that the Respondents fired her because of her reports of driver and safety violations to Mr. Williams during the day to day course of business. Nor has the Complainant established that her termination was motivated by any prohibited reasons, as opposed to Mr. Williams' concerns about the quality of her work, his growing mistrust of her, and her repeated disregard for his authority as her employer.

In sum, the Complainant has not demonstrated by a preponderance of the evidence that her protected activities contributed to any adverse action taken against her. Because the Complainant has not met this burden, it is unnecessary to decide whether the Respondents have proven by clear and convincing evidence that they would have terminated the Complainant absent her protected activity. Nevertheless, I also find that the Respondents have established by clear and convincing evidence that they would have terminated the Complainant absent her protected activity.

Accordingly, I find that the Complainant is not entitled to relief under the Act.

RECOMMENDED ORDER

Based on the foregoing, IT IS RECOMMENDED that the complaint of Julie Keeler for relief under the Act be DENIED.

SO ORDERED.

LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative

Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARBCorrespondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1978.110(a) and (b).