EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN

Gary D Wales
4502 E Buckeye Rd
Madison WI 53716

Complainant

vs.

Affiliated Carriage Systems Inc
1403 Gilson St
Madison WI 53715

Respondent

RECOMMENDED FINDINGS OF FACTS
CONCLUSIONS OF LAW AND ORDER

CASE NO. 20122017

EEOC CASE NO. 26B201200028

This matter came up for a public hearing on the merits of the complaint on May 14 and 15, 2013 before Hearing Examiner Clifford E. Blackwell, III, in room LL-120 of the Madison Municipal Building, 215 Martin Luther King Jr. Blvd., Madison, Wisconsin. The Complainant, Gary Wales, appeared in person and by his attorney Richard A. Rice of the law firm Fox & Fox, S.C. The Respondent, Affiliated Carriage Systems, Inc. d/b/a Ridgeway Carriers, appeared by its owner, Jostein Brekke and by its attorney, Eric Brekke.

Based upon the record of the proceedings in this matter, the Hearing Examiner now issues his Recommended Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Complainant is a male who was 59 years old in November of 2011.

2. The Respondent is an employer doing business in Madison, Wisconsin, with its principle place of business located at 1605 Todd Drive in the City of Madison.

3. The Respondent is a local transportation company that has a separate over-the-road trucking operation doing business as Ridgeway Carriers.

4. The Respondent owns, subject to financing, five (5) trucks designated as truck 012, 112, 212, 312 and 412. Each truck is assigned to a specific driver and absent some compelling reason is driven only by the assigned driver. The Complainant was assigned truck 312.

5. Because the trucks are owned subject to financing, it is important that the trucks be out carrying freight as much of the time as possible in order to pay for the operating and financing costs of the truck. Generally speaking, each truck was required to make two

trips per week with mileage of between 2,500 and 3,000 miles per trip to make the truck profitable.

6. Each truck would, from time to time, experience downtime for repairs or for time off for the driver assigned to the truck. For the most part, drivers would not be reassigned to a truck whose driver was on vacation or was otherwise not scheduled.

7. The Complainant began work with the Respondent in October of 2010. While the Complainant sometimes proved himself to be reliable and able to "run hard," he was particular about the runs he wanted to make and was often difficult to schedule to keep him on the road. Also, Dispatchers reported that the Complainant had a temper and was often personally disagreeable and demanding of time off. On more than one occasion, a Dispatcher had to ask the owner of the company, Jostein Brekke, to intervene with the Complainant to take an assignment that the Complainant did not want to take.

8. The majority of other drivers were male and approximately of the same age as the Complainant. The lone exception for most of 2011 was Shaina Frolik, a woman in her twenties. Frolik, for the most part, was assigned to truck 412.

9. Frolik began work as a driver for the Respondent in late March or early April, 2011. In late September, 2011 or early October, 2011, Frolik left employment with the Respondent to work with her boyfriend. That work arrangement was not successful and Frolik returned to work for the Respondent in late October or early November, 2011.

10. In November of 2011, the Complainant took one to two weeks off early in the month. He then drove a route, approximately November 9 to November 17, 2011, and was back before Thanksgiving. He took Thanksgiving off. No agreement was made as to when the Complainant would get his next load after Thanksgiving. It appears that the Complainant believed he could take two weeks off from his last run.

11. On or about November 25, 2011, Tim Murray, the then-Dispatcher, had a load for which he needed a driver. Murray contacted the Complainant. The Complainant refused to accept assignment of the load. Frolik had just returned from delivering a load and her truck, 412, was in need of repair. After consultation with the owner, Murray assigned Frolik to take the load and to use the Complainant's truck, 312 to carry the load. The Complainant's personal property was removed from truck 312 and Frolik was given truck 312 to take the load that the Complainant had refused.

12. After returning from the late November, 2011 load, Frolik again took another load that had been declined by the Complainant. Frolik continued to accept loads using truck 312. It is not clear when truck 412 was once again roadworthy.

13. The Complainant was ready to accept work again as of early December, 2011. It is not clear that there was a truck available for the Complainant to use as Frolik was still using truck 312 to handle loads through December, 2011 and January, 2012.

14. After the Thanksgiving weekend, the Complainant contacted the Respondent to find out when he could return to work. Generally, he was not told that he could return to work. At some point, the Complainant was told that he was in layoff status and that he could

apply for unemployment compensation. The Complainant was told that he would be the first person recalled.

15. Eventually, the Complainant applied for unemployment compensation which was granted retroactively to November 25, 2011.

16. In late December, 2011, the Respondent hired John Baxa to be its Safety Manager and to drive trucks. At the time of his hire, Baxa was in his forties.

17. On or about January 23, 2012, the Respondent had a load that needed to be taken to Baraboo. This was the final leg of a load brought by Murray on Murray's last day of employment with the Respondent. The Complainant was called back to work to carry this load. It is not clear what truck the Complainant used to carry this load, but presumably it was truck 312. Several days later, on or about January 27, 2012 Frolik returned to Madison and resigned her employment with the Respondent. Frolik left her employment to return to employment closer to her home. Frolik was also unhappy over a dispute about her compensation with the Respondent. The Complainant was then given truck 312 to drive again on a regular basis.

18. The Complainant had some history of log and other violations that if repeated could risk the Respondent's carrier licenses. In early 2011, the Respondent was "shut down" because of safety violations including one that was attributable to the Complainant and because the then-Manager failed to respond to the inquiry of a regulatory agency.

19. In 2011, the Respondent contracted with Cheryl Armstrong to perform a safety audit of the Respondent's regulatory situation including looking at the logging practices and safety practices of the Respondent's drivers, including the Complainant. Armstrong issued reports in September and October of 2011, detailing her findings which included several areas in which the Complainant needed to improve his performance.

20. Frolik had a history of not submitting her time sheets and billing records on a timely basis despite repeated requests to do so. The Respondent's Dispatcher/Manager worked with Frolik and by January of 2012 this issue had been cleared up.

21. In January of 2012, the Respondent hired Paula Baxa, wife of John Baxa, to perform the duties of the Dispatcher/Manager and to train Bjorn "Beau" Brekke how to perform those duties.

22. Tim Murray, John Baxa and Paula Baxa left employment with the Respondent during 2012.

23. All three Dispatcher/Managers who testified at hearing reported having great difficulty in scheduling the Complainant for runs sufficient to pay for the operation of truck 312. For example, in November of 2011, the Complainant drove 8 out of 30 days in the month. It was necessary for truck 312 to be on the road closer to three of the four weeks of the month.

CONCLUSIONS OF LAW

1. The Complainant is a member of the protected classes “age” and “sex” as those terms are used or defined in the Equal Opportunities Ordinance.

2. The Respondent is an employer within the meaning of the Equal Opportunities Ordinance.

3. The Complainant was not laid off in November of 2011 because of his age in violation of the Equal Opportunities Ordinance.

4. The Complainant was not laid off because of his sex in violation of the Equal Opportunities Ordinance.

ORDER

The complaint is dismissed. The parties shall bear their own costs.

MEMORANDUM DECISION

This case presents an unusual situation in that the Complainant remains employed by the Respondent. Essentially, the Complainant alleges that he was placed on an involuntary layoff for a period of approximately eight weeks from late November, 2011 until the middle or end of January, 2012. The Complainant asserts that the layoff was motivated, in part, by his age and/or his gender. The Respondent asserts that the Complainant’s temporary layoff resulted from the lack of an available truck for him to drive, the Complainant’s desire to take time off and a generally unpleasant demeanor on the part of the Complainant.

The first question to be addressed by the Hearing Examiner is whether this is a case presented by direct or indirect evidence. In the case of a claim presented by direct evidence, the Hearing Examiner must review the facts, weigh the evidence and render a decision without reference or reliance upon inferences appearing in the record. Direct evidence is that which, if believed, demonstrates a fact without reliance upon inference or presumption. In the case of an indirect claim, the Hearing Examiner will apply the McDonnell Douglas/Burdine burden shifting approach to determine whether discrimination has occurred. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). In a claim presented by indirect evidence, the Hearing Examiner will often rely upon inferences and presumptions raised by the evidence.

The testimony and evidence presented in this case create a factual record that more closely fits with a determination of discrimination under the indirect method. In this method, the Hearing Examiner must review the record to determine whether it supports a claim of discrimination or not. This analysis is performed through an application of the facts to the elements of a *prima facie* claim of discrimination and an examination of whether the Respondent has offered a legitimate, nondiscriminatory explanation for its conduct leading to the claim of discrimination. The Complainant might still prevail even if the Respondent presents a legitimate, nondiscriminatory explanation, if he can produce evidence that demonstrates the Respondent’s explanation is either not credible or represents a pretext for an otherwise discriminatory reason. While various burdens shift between the parties in this analytical

approach, the Complainant bears the ultimate burden to establish that discrimination has occurred.

The Respondent is a business entity doing business under the umbrella of Affiliated Carriage Systems of Wisconsin, Inc. The Respondent's business is to provide trucking services for local freight hauling as well as long distance freight hauling. At all times relevant to this proceeding, the Respondent owned five trucks.

The trucking business of the Respondent began in approximately 2009, when Patrick Roach approached the owner of Affiliated Carriage Systems, Inc. with a proposal for the trucking company. Roach had experience in the trucking industry as did Jostein Brekke, owner of the Respondent. However, Roach had experienced economic difficulties and served time in prison which limited his ability to re-enter the trucking industry. Roach proposed that he would manage and drive trucks for the new entity if Brekke would provide the financing.

The business started with two or three trucks identified as trucks 012, 112 and 212. In 2010, Roach approached the Complainant to see if he would be willing to drive trucks for the Respondent. The complainant agreed. As part of his inducement of the Complainant, Roach persuaded the Respondent to purchase a new truck for the use of the Complainant. This truck was designated as truck 312. Subsequent to the hire of the Complainant, the Respondent purchased a fifth truck, which was designated 412, and hired a driver for that truck.

Due to fluctuating and generally high fuel costs, aggressive price competition and other factors, the economic margins of a successful trucking company are extremely narrow. Given these narrow margins, it is critical to the success of a trucking business to keep its trucks on the road hauling freight as much as possible. While a truck that sits idle may not generate so many expenses, neither does it generate revenue. In this regard, most truck drivers wish to be scheduled for as much road time as possible. Truck drivers are paid on the basis of the miles driven with adjustments for costs and expenses incurred along the way.

While the trucks are owned by the Respondent, the drivers generally are assigned to a given truck and do not move to other trucks except in unusual circumstances. If a driver's usually assigned truck is unavailable due to repairs the driver of that truck normally does not drive another truck because the other trucks are being used by other drivers or would take substantial efforts to remove the usual driver's property from the truck.

While a given truck is assigned to a particular driver, the trucks are generally being purchased by the Respondent and there are payments which need be made on those trucks. In order to bring in enough income to defray the installment payments on a truck, it must be kept on the road bringing in income. As a rule of thumb, each driver should be doing two or more runs per week with each run averaging 2,500 to 3,000 miles per trip. If a truck is not on the road for more than a week or so, the truck is likely not bringing in enough income to support its payments and its upkeep.

In late 2010 and early 2011, the Respondent was cited by the Department of Transportation Federal Motor Carrier Safety Administration for a number of log and other safety violations. The Respondent's then-Manager, Pat Roach, failed to respond to the citation and as a result, the Respondent's trucking operation was suspended for some period of time. Though the reason for the suspension was due to Roach's failure to respond to the federal agency, at

least one of the log or safety violations leading to the original citation was attributable to the Complainant. Roach's actions in failing to respond to the Motor Carrier Safety Administration ultimately resulted in his termination.

The record is not clear who performed the duties of Dispatcher/Manager for most of 2011. In the Respondent's operation, the Dispatcher/Manager was responsible for assigning runs to the drivers and making sure that the paperwork associated with each run was maintained and filed. While being concerned for the interests and wishes of the drivers plays a role in the assignment of runs, the Dispatcher is supposed to be the final authority on keeping trucks and drivers on the road in the most efficient and productive manner possible. The relationship between the Complainant and the various Dispatcher/Managers has a direct bearing on the outcome of this case.

The Complainant contends that either his age and/or his sex played a role in the Respondent's decision to lay him off while allowing other younger drivers or a woman driver continue to receive driving assignments. The Respondent asserts that the decision to lay the Complainant off in late November, 2011 resulted from the Complainant's refusal to accept a load after Thanksgiving and the temporary loss of truck 412 to the rotation.

Though the Complainant's employment began in October of 2010 and continued as of the time of hearing, the focus of the complaint deals with the months of November and December 2011 and January of 2012. November of 2011 began with the Complainant at home not driving. From the record, it is not clear whether the Complainant had requested and had been granted the time off or simply refused loads during that period. Disputes about the Complainant's willingness to accept loads is a continuing theme in this record. On or about November 9, the Complainant took a load and returned on November 17, 2011. The Complainant did not drive between November 17 and Thanksgiving Day, November 24, 2011. The Complainant specifically requested Thanksgiving Day off. This request was granted.

On November 25, 2011, the then-Dispatcher/Manager, Tim Murray, booked a load to be picked up the next day, November 26, 2011. On November 25, 2011, Murray called the Complainant to schedule him to pick up the load on November 26, 2011.

There is a dispute in the record as to the manner in which the Complainant declined to accept the load scheduled by Murray. Murray stated that the Complainant was rude and profane and asked something to the effect of "What part of two weeks off do you not understand?" While the Complainant stated that he did not use foul language or be rude to Murray, it does not appear that he disputes the fact that he did not accept the load which was to be picked up on November 26, 2011.

When Murray did not get the Complainant's agreement to take the load on November 26, 2011, Murray asked Shaina Frolik to take the load. She agreed, but was without her usual truck, 412, because the motor had been pulled for repairs. After consultation with Jostein Brekke, Murray called the Complainant and told him that Frolik would use his truck and that his personal property would be removed and placed in the Respondent's office. The Complainant objected, but there was nothing to be done as the Complainant was unwilling to come to the office to clean out his truck.

The Complainant next called the Respondent at a date uncertain but likely in the first week of December asking for his next assignment. Murray had a load destined for the east coast, but apparently, the Complainant declined that destination. Frolik was once again asked to take the load which she did. After Frolik returned from this second load for which she covered for the Complainant, Murray and Jostein Brekke were not inclined to regularly schedule the Complainant.

The Complainant called Murray frequently to find out when he'd be scheduled again. Murray, who wanted to have the Complainant terminated, told the Complainant that he was on call and that he could fill in additional time by driving taxi cab for the Respondent on a part-time basis. This brings the account up to just before Christmas, 2011.

At or about this time, the Respondent hired John Baxa to drive truck and to be the Respondent's Safety Manager. Baxa at the time was in his forties, approximately fifteen (15) years younger than the Complainant.

Murray had begun working as a driver for the Respondent, but upon Roach's termination in or around September, 2011, Murray took over the Dispatcher/Manager position. In late December, 2011, Murray began teaching Bjorn Brekke those duties. Shortly after John Baxa began, he suggested to Bjorn Brekke that Paula Baxa, John's wife, could take over the Dispatcher/Manager duties and could teach Brekke how to perform them. Paula Baxa began that employment the first week of January, 2012. It is not clear from the record, when exactly, Murray no longer worked as the Dispatcher/Manager and had returned to driving duties.

The Complainant continued to contact the Respondent seeking to be placed on the driving schedule again, but was told that he was laid off, but could be recalled.

On or about January 22, 2012, Jostein Brekke called the Complainant to see if he'd take a load from Madison to Baraboo on January 23, 2012. This load was the terminal part of Tim Murray's final load for the Respondent. Murray had given his notice effective January 23, 2012 and was not available to complete the delivery.

The Complainant accepted the load and returned the same day. It appears that the Complainant was offered the opportunity to take a load upon his return, but that he had not expected to be offered a longer run and was unprepared. He declined a load that was offered to him. On or about January 27, 2012, Frolik returned from a run. There was a dispute over pay and Frolik quit over the dispute and to return to employment closer to her home. The Complainant then took over Frolik's runs and duties.

The question presented by this record is whether it demonstrates that the Complainant's age and/or sex played a motivating role in the decision not to assign him work from late November, 2011 or early December, 2011 until his run on January 23, 2012. The first step is to determine whether the Complainant has met his burden to demonstrate a *prima facie* claim of discrimination. Essentially, the Complainant must show that he is a member of he declared protected classes, that he has experienced an adverse employment action and that there is credible evidence showing that his adverse action was motivate, at least in some part, by his membership in his claimed protected classes.

The Complainant is a member of the protected classes age and sex. He, in late 2011, was approximately 59 years old. That is well over the Title VII age limit of 40 years of age. The question concerning this protected class is that most other workers of the Respondent were relatively close to the Complainant's age. However, in his claim, he compares his treatment to that of two employees who were substantially younger than himself, John Baxa and Shaina Frolik. These comparators are sufficient to place the Complainant in the protected class age.

Similarly, most of the Complainant's co-workers, i.e., other truck drivers, were male. The fact that the Complainant compares his treatment to that of Shaina Frolik, the lone female truck driver, helps place him in the protected class sex.

There is no doubt that the Complainant was laid off for a period of time from approximately December 1, 2011 until January 23, 2012. He made himself available for work for which he was qualified and that he had performed for the Respondent in the past. During the period of his layoff, he was not paid by the Respondent and received only unemployment compensation payments. This unquestionably represents an adverse employment action. The Hearing Examiner does find that there is some question as to the exact extent of this layoff, though.

The Complainant uses both direct and indirect evidence to attempt to demonstrate a causal link between the Complainant's membership in his protected classes and his layoff. With respect to the claim of sex discrimination, the Complainant points to a statement allegedly made by Bjorn Brekke. When Brekke was asked why Frolik was using the Complainant's truck and he (the Complainant) wasn't being scheduled, Brekke was alleged to have said that "his (Brekke's) father was [partial to] girls." The Complainant contends that this creates an inference of discrimination.

To further support the inference of discrimination allegedly created by Brekke's statement, the Complainant points to the fact that Frolik, a female, was given/assigned the runs that the Complainant was not given. The Complainant argues that Frolik was rehired after having left employment with the Respondent in order to take these runs.

The Hearing Examiner cannot find that these inferences are sufficient to demonstrate a causal link between the Complainant's sex and his layoff. First, the record is quite clear that Frolik returned to employment with the Respondent in late October or early November of 2011, after having left employment at the end of September, 2011. Frolik had been driving during the month of November and returned only to have her truck 412 sent to the shop for repairs prior to Thanksgiving of 2011 and the date on which the Complainant turned down Murray's scheduled run on November 26, 2011. The record demonstrates that Frolik, though a female, was the person most likely to be able to take the Complainant's run since her truck was not available to her when the Complainant's refused run was scheduled. It does not appear that any other drivers were available.

Even if the Hearing Examiner accepts that Brekke's statement was made, it have more of a flippant or joking edge to it than a serious response intended to explain the circumstances. Had the elder Brekke truly been "partial to girls," one would expect a higher representation of females in the Respondent's workforce. The record is clear that Frolik was the only female driver.

The Hearing Examiner concludes that the Complainant has failed to meet his burden of proof to demonstrate a *prima facie* claim of discrimination based upon the Complainant's sex. Even if the Hearing Examiner could find that the Complainant had demonstrated a *prima facie* case of discrimination, the Complainant must still await to see if the Respondent can meet its burden of production in the next stage of the analytical framework.

Before moving to that stage of the analysis, the Hearing Examiner will return to the Complainant's claim of age discrimination.

Once again, the Complainant points to a statement made by the Respondent as direct evidence of discrimination as well as to other facts demonstrating an indirect claim of discrimination. The Complainant states that Jostein Brekke during the Complainant's layoff indicated that the Complainant either was old or was getting to the point in life where perhaps he wanted to slow down. Again, to support the claim of discrimination based upon age, the Complainant additionally points to Frolik's age, in her twenties, but more pertinently points to the hire of John Baxa, a younger driver, during the Complainant's layoff.

While Frolik's being assigned to runs the Complainant had refused or while her truck was unavailable does not advance the Complainant's position, the hire of Baxa during the period of the Complainant's layoff does create an inference that the Complainant's age played some role in either his layoff or his continued layoff after the hire of Baxa. This inference is sufficiently strong to warrant a finding that the Complainant has made out a *prima facie* claim of age discrimination.

As noted above, finding that the Complainant has met his initial burden of proof is sufficient to shift the burden to the Respondent. The Respondent's burden is one of production, not proof. The Respondent in order to overcome the Complainant's initial demonstration of a *prima facie* claim must set forth one or more legitimate, nondiscriminatory reasons for its taking the allegedly discriminatory action.

In the present matter, the Respondent's proffered explanation is not entirely clearly stated. As a general matter, the Respondent's explanation is that the Complainant, while sometimes an adequate employee was more frequently unavailable to drive the routes needed due to personal preference and was rude and unpleasant to deal with. When the Respondent needed someone to drive a load on November 26, 2011 and the Complainant stated that he was not available, the Respondent recruited another driver who happened to be a female and younger, but who was willing and available to take the load first offered to the Complainant. When the Complainant declined the next load offered to him upon Frolik's return, the Respondent determined that Frolik was a better option for keeping truck 312 sufficiently busy to pay its expenses than the Complainant was.

Given the economics of the trucking business as outlined above, the Respondent's decision to allow Frolik and eventually, Baxa, to operate trucks 312 and 412 and to keep the Complainant as a reserve driver represents a legitimate, nondiscriminatory explanation for its actions.

The Complainant can overcome the Respondent's proffer by presenting evidence to show that the explanation presented by the Respondent is either not credible or represents a pretext for an otherwise discriminatory motive.

The Complainant's first effort in this regard is to attempt to demonstrate that his testimony is more credible than that of the Respondent and its witnesses. In this regard, the Complainant presented his testimony in a quiet, professional manner without much in the way of emotion except to emphasize points in his testimony. While the Respondent's witnesses uniformly painted the Complainant as a person who frequently used profanity and displayed a strong temper, that person was not in evidence on the witness stand. This supports a finding of credibility on the part of the Complainant.

On the other hand, the Complainant was defensive when he testified about the shortcomings of his logging and safety habits as exemplified by the findings of the Federal Motor Carrier Safety Administration and the report of Cheryl Armstrong, the safety expert hired by the Respondent to review its regulatory compliance. The Hearing Examiner finds it somewhat noteworthy that the Complainant did not call a witness to counter the Respondent's testimony about the Complainant's use of profanity, specifically the testimony of Murray regarding several incidents in which the Complainant was alleged to have caused problems at southern shipping docks due to his use of profanity and being generally difficult to work with. While calling such corroborating witnesses is not required and is somewhat unnecessary given the Complainant's demeanor, the Hearing Examiner expected that one or two "character" witnesses to speak in favor of the Complainant might have been useful.

While the Complainant's testimony was consistent and credible, his testimony was shaded in precisely the manner one would expect of someone testifying to support their own claim. Again, this does not give rise to a reason to seriously question the Complainant's testimony, but corroborating testimony would be helpful in such a situation.

On the Respondent's side, the testimony of Jostein Brekke and Bjorn Brekke, as current owners/employees of the Respondent might be called into question in the same way as the Complainant's. Their testimony would be expected to favor the position of the Respondent as they have a vested interest in the outcome. This would also apply to the testimony of Rick Nesvacil. Despite this anticipated slant to their testimony, the Hearing Examiner also found them to be generally credible and without particularly colored testimony.

Murray and Baxa's testimony was of particular interest to the Hearing Examiner. Since they are not current employees of the Respondent and have no apparent interest in the outcome of the complaint, their testimony should generally be given fairly high credibility. The Complainant did not demonstrate any continuing connection or interest in the outcome of the complaint or a continuing economic interest in the well being of the Respondent on the part of either Murray or Baxa.

The Hearing Examiner cannot find that the Complainant has carried his burden to show a lack of credibility on the part of the Respondent or that the proffered reason of the Respondent represents a pretext for an otherwise discriminatory explanation.

Ultimately, the Complainant must demonstrate by the greater weight of the credible evidence that the Respondent was motivated, at least in part, by his age and/or his sex when it decided to lay him off. On this record the Hearing Examiner finds that the Respondent's concerns that the Complainant wished not to drive his truck as frequently as necessary to pay for the expenses of the truck warranted putting another driver behind the wheel who would drive

the truck to its productive best. That the driver happened to be a younger woman and another younger man does not demonstrate that their sex or age was the factor that made them more attractive than the Complainant. On this record, it was their willingness to be on the road and to do what the Respondent needed to have done to make money in the trucking business.

That the Complainant might not have wanted to be away from his family or only wanted to drive routes with which he was familiar and comfortable does not make him a bad person. It does make him less desirable as an employee where being on the road and following the schedule set by one's Dispatcher/Manager are what's necessary in a struggling business.

The Hearing Examiner concludes that the Complainant has failed to carry his burden of proof to demonstrate that either his sex or age played, at least some part, in the Respondent's decision to temporarily lay him off. The complaint is dismissed.

Signed and dated this 11th day of July, 2016.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Richard F Rice
Erik Brekke