

EQUAL OPPORTUNITY TRIBUNAL OF WESTERN AUSTRALIA

No 24 of 1993

BETWEEN:

CAROL DOLPHIN

Complainant

against

DENNIS LONGA

First Respondent

and

ROSS SANDISON

Second Respondent

REASONS FOR DECISION

BEFORE: Ms C O'Brien - Deputy President
Mrs B. Buick - Member
Ms P. Thorley - Deputy Member

Counsel for the Complainant - Mr G. McIntyre

Counsel for the Respondents - Mr G. O'Hara

HEARD: 6, 7 and 14 April 1994
4, 5 and 6 May 1994
13 and 14 June 1994

REASONS DELIVERED: 14 July 1994

INTRODUCTION

Dennis Longa ("Mr Longa") and Ross Sandison ("Mr Sandison") are the First and Second Respondents in this matter respectively. At all material times they were partners and proprietors of a security firm called Denros Security ("Denros"). The business had been set up by the two men in 1991 and operated in the Rockingham area.

Carol Dolphin ("the Complainant") commenced employment as a security guard with Denros in March 1992. Prior to then, she had no previous experience as a security guard. On occasions, her husband, Patrick Dolphin, who had a full time job as an ambulance driver, also worked as a guard with Denros. Mr Dolphin was a former police officer and was using his previous experience in that capacity to assist Denros with formulating security procedures and guidelines for security guards consistent with their obligations under the Criminal Code.

Michael Dunn ("Mr Dunn") was the Dolphins' Accountant. He introduced them to Mr Longa and Mr Sandison. Mr Dunn shared premises with Denros and was described as the manager of the business. He was responsible for the financial administration of the business and Mr Longa and Mr Sandison looked to him to sort out a variety of problems including staffing problems from time to time. As it turned out, they apparently relied heavily on him to deal with various complaints made by the Complainant. The Complainant left her employment with Denros on 17 June 1992. Her complaints before the Tribunal involve conduct by one or both of the Respondents from about mid-May 1992 until she left Denros on 17 June 1992. In their broadest terms, the complaints involve allegations of discrimination on the grounds of her sex and sexual harassment. During the relevant period apart from the Respondents, it appeared that Denros employed the Complainant, Graeme Lawless and Jason Clarke as security guards with the Complainant's husband performing security duty from time to time.

Two types of shifts could be worked. One was a "mobile shift" which involved a security guard patrolling a particular area in a car, checking on the security of business premises and so on. These mobile shifts operated from 8.00pm until 4.00am. The

Complainant never worked on a mobile shift. Mobile shifts took in what was referred to as "the industrial run" which was a patrol of industrial areas around Rockingham.

The other sort of shift is referred to as "static guard duty". Usually the hours of this shift were from midnight until 4.00am. The two static guard shifts relevant to this case operated at Challenger Ford, a car yard in Rockingham and at the Rockingham City Shopping Centre ("the Shopping Centre").

During the course of the mobile shifts, the security guards would call in at the Shopping Centre and take a coffee break with the guard on static guard duty there. Usually these coffee breaks would last for up to fifteen minutes. A supervisor, either Mr Sandison or Mr Longa, would meet the guard rostered at the Shopping Centre at midnight and hand to that person their radio and any relevant keys to premises. At the end of the static guard duty a supervisor would meet the guard and collect the radio and keys. The Complainant alleges three incidents of sexual harassment by Mr Sandison whilst she was on guard duty. The first allegedly occurred at Challenger Ford and the other two whilst the Complainant was on duty at the Shopping Centre.

HISTORY OF THE COMPLAINT

The Complainant made a written complaint against the Respondents as outlined above, to the Equal Opportunity Commission ("the Commission") dated 25 June 1992. By letter dated 27 July 1992, the Complainant amended her complaint to include an allegation of sexual harassment against Mr Sandison. The complaint was then the subject of the Commission's conciliation process. On 23 December 1992, the Commissioner for Equal Opportunity declined the complaint as lacking in substance pursuant to Section 89 of the Equal Opportunity Act ("the Act"). On 10 January, 1993 the Complainant gave the Commissioner written notice pursuant to Section 90(2) of the Act requiring the Commissioner to refer her complaint to the Equal Opportunity Tribunal. That was done by letter dated 31 August 1993. There is no explanation for the delay in the Commissioner referring the matter to the Tribunal. The Tribunal observes in any case, especially one involving the highly sensitive and personal issues such as alleged in this case should be before the Tribunal as a matter of urgency.

The Tribunal emphasises that it knows nothing of the Commissioner's reasons for declining the complaint and nothing of the conciliation process save the material contained in the Commissioner's Report to the Tribunal which was an exhibit in the hearing.

The hearing before the Tribunal was listed for three days spread over about 2 months. In fact, the hearing lasted approximately six full days for almost three of which the Complainant was giving evidence. Submissions on the issue of compensation were deferred pending the Tribunal's decision on the liability of the Respondents in respect of the various claims against them.

THE COMPLAINANT'S CASE

The Points of Claim and the Amended Further and Better Particulars of the Points of Claim filed on behalf of the Complainant are not helpful in particularly identifying her complaint. In some respects no evidence was led in support of her complaint as particularised in the Amended Further and Better Particulars. For example, Point of Claim 9(a) alleges discrimination on the ground of sex in that the Respondents attempted to discuss and did discuss matters purportedly relating to her sex life with her. This complaint was particularised in the Amended Further and Better Particulars in paragraph 3 that Mr Longa and Mr Sandison said words to the effect that between her husband's shifts and her own that they could not have sex very often because they would never be at home at the same time and that "their sex life must be nil." On this occasion Mr Longa suggested to the Complainant that she must be having sex on the job. The Complainant gave no evidence of that nor were the Respondents cross-examined on the issue. Further, paragraph 9(e) of the Points of Claim alleges sex discrimination in that Mr Longa threatened to tell the Complainant's spouse that she was having an affair with a fellow male employee. As particularised in paragraph 7 of the Amended Further and Better Particulars of Claim, it was said on the Complainant's behalf that the threat was made by Mr Longa to Mr Dunn who related the contents of the "threat to the Complainant's husband". Again, there was no evidence of such a threat from any of the witnesses called on behalf of the Complainant nor were any witnesses cross-examined about it.

No explanation was forthcoming as to why no evidence was addressed on these issues.

The Complainant did not specifically withdraw the allegations. The Tribunal does not intend to consider them as part of the Complainant's claim.

In effect, as the evidence emerged, final address, the substance of her complaints is as follows:

1. The Respondents discriminated against the Complainant on the grounds of her sex in that she "was instructed to purchase part of a uniform in connection with her employment, namely black trousers, which she did purchase and for which she has not been reimbursed."
2. Mr Sandison discriminated against the Complainant on the grounds of her sex and sexually harassed her by making comments of a sexual nature to the effect of "I have had an affair with a married woman", "I don't mind the fact that you are a married woman" "You make me so horny I can't do my work".
3. The Respondents discriminated against the complaint on the grounds of her sex and sexually harassed her in that "on numerous occasions they engaged in unwelcome conduct of a sexual nature in that they alleged "without justification" that the Complainant was having an "affair" with a male security guard whilst on duty at the Shopping Centre.
4. Mr Sandison discriminated against the Complainant on the grounds of her sex in that he ordered that no visual or radio contact be made with the Complainant in the course of her shift thereby placing her at risk; he ordered other employees of Denros to stay away from the Shopping Centre at which the Complainant was stationed; he refused to provide the Complainant with backup assistance following a break-in at the Leisure Inn; and contrary to established procedure ordered the Complainant to enter the premises prior to the arrival of the police.

5. On 19 May 1992 Mr Sandison made unwelcome sexual advances towards the Complainant whilst she was carrying out observation duties at Challenger Ford in Rockingham.
6. On 21 May 1992 Mr Sandison made unwelcome sexual advances to the Complainant while she was carrying out static patrol duties at the Shopping Centre.
7. Mr Sandison discriminated against the Complainant on the grounds of her sex in that on 26 May 1992 he made unwelcome sexual advances towards her at the Shopping Centre whilst she was on duty.
8. On or about 16 June 1992 Mr Longa discriminated against the Complainant on the grounds of her sex and sexually harassed her by undoing his trousers three times in front of the Complainant at the Shopping Centre while she was on duty as a security guard.

STATUTORY PROVISIONS

Section 8 of the Act provides that discrimination occurs, if, on the ground of the sex the aggrieved person, the discriminator treats the aggrieved person less favourably than in the circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person of the opposite sex.

Section 11(2) relevantly provides that it is unlawful for an employer to discriminate against an employee on the ground of the employee's sex by dismissing the employee or by subjecting the employee to any other detriment.

Section 4 defines "employment" to include part time and temporary employment and work under a contract for services. During the course of the hearing, the Complainant was sometimes referred to as a casual employee and on occasions as a permanent part time employee. For the purposes of this case it is not necessary to categorise the

Complainant's employment status. It is sufficient that she was employed by Denros at all relevant times and this was not in dispute during the course of the hearing.

Section 24(1) provides that it is unlawful for a person to harass sexually an employee of that person.

The definition of sexual harassment is contained in Section 24(3). That subsection relevantly provides that a person shall be taken to harass sexually another person if the first mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person or engages in other unwelcome conduct of a sexual nature in relation to the other person, the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request, or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work.

Section 24(4) expands the definition of sexual harassment to include a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

In essence, the Complainant must establish sexual harassment as defined, as well as her belief on reasonable grounds for believing that a rejection of the unwelcome sexual advance, request for sexual favours, other unwelcome conduct of a sexual nature or the making of a statement of a sexual nature would disadvantage her in connection with her employment.

BURDEN OF PROOF

The Complainant bears the burden of establishing that she has been the victim of unlawful discrimination and sexual harassment. The case must be proved on the balance of probabilities. Insofar as the allegations of sexual harassment concerning Mr Sandison which allegedly took place at Challenger Ford and the Shopping Centre, are concerned the Tribunal is mindful of the decision in Briginshaw v. Briginshaw & Another [1938] 60 CLR 336. The High Court discussed the burden of proof in civil matters in the context

of proof of adultery. In the context of civil cases involving proof of criminal conduct, the court rejected an intermediate position between satisfaction beyond reasonable doubt required in a criminal matter and the reasonable satisfaction which in a civil case must, be based on a preponderance of probability.

"When, in a civil proceeding a question arises whether a crime has been committed the standard of persuasion is, according to the better opinion the same as upon other civil issues ... but, consistently with this opinion, weight is given to the presumption of innocence and exactitude of proof is expected (per Dixon J. at 363)."

In the course of its decision making process, the Tribunal has been conscious of the factors outlined by Dixon J. at 362 when His Honour said:

"But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced in inexact proofs, indefinite testimony, or indirect inferences."

CHRONOLOGY OF EVENTS

The Tribunal considers it useful at the outset to outline a chronology of events including the contact the Complainant has had with the Commission and the police.

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|---------------|---|
| 26 March 1992 | The Complainant commenced work at Denros as a security guard. |
| Mid May 1992 | The Respondents start to make suggestions that the Complainant is having an affair with a male security guard (Graeme Lawless).
Radio contact and visual checks on the Complainant were reduced. |

- 19 May 1992 Mr Sandison makes unwelcome sexual advances towards the Complainant at Challenger Ford.
- 21 May 1992 Mr Sandison makes unwelcome sexual advances to the Complainant at the Shopping Centre.
- 26 May 1992 Mr Sandison makes unwelcome sexual advances towards the Complainant at the Shopping Centre.
- 2 June 1992 The Complainant meets with Mr Dunn and Mr Longa to discuss her complaints about isolation whilst on duty.
- 14 June 1992 Multiple alarm at the Leisure Inn. The Complainant was directed to investigate it.
- 16 June 1992 The Complainant meets with Mr Longa and Mr Dunn at a hospital where Mr Dunn had undergone an operation. Problems with Denros discussed.
- 17 June 1992 The Complainant was on duty at the Shopping Centre. Heated argument with Mr Longa. Mr Longa undid his trousers three times in front of her. The Complainant leaves her employment.
- 19 June 1992 The Complainant collapsed at home and was taken to hospital.
- 25 June 1992 The Complainant made a complaint to the Commission about working conditions at Denros and the failure to reimburse her for her trousers.
- 1 July 1992 The Complainant and her husband wrote to the Respondents requesting a meeting to discuss matters concerning "Denros Security and Mrs Carol Dolphin".

- 6 July 1992 The Respondents' solicitors respond to the letter.
- On or about
12 July 1992 The Complainant told her husband of Mr Sandison's unwelcome sexual advances.
- 14 July 1992 The Complainant went to the Rockingham CIB and complained about Sandison's conduct. She alleged the three incidents occurred respectively on 24 May and about one or two days after 28 May.
- 20 July 1992 The Complainant signed a typed statement prepared by the Rockingham CIB.
- 27 July 1992 The Complainant amended her complaint to the Commission by enclosing a copy of a statement to the police alleging sexual harassment by Mr Sandison.
- 21 September 1992 Mr Sandison replied to the Commission in effect establishing an alibi for the times when the three incidents allegedly occurred.
- 12 October 1992 The Complainant amended the date of the alleged three incidents by letter to the Commission.

The Tribunal points out that this chronology by no means covers every significant date or event relevant to matters before the Tribunal and does not constitute its findings on the matters covered in it.

FAILURE TO RE-IMBURSE FOR THE UNIFORM

The Complainant alleged that she was discriminated against on the grounds of her sex in that she was treated less favourably than male employees because she was not reimbursed for her purchase of trousers she was required to obtain as part of her uniform as a security guard.

The Complainant was classified as a casual employee although this term may not have been strictly accurate. In any event all employees at Denros were required to wear a particular uniform. Denros purchased for casual employees one shirt, a pair of black trousers, a pair of shoes, a tie and a jacket or jumper.

The procedure was for an employee to obtain a uniform requisition from Denros and attend at a particular uniform supplier. The uniform would be supplied and Denros would pay the account.

The uniform supplier did not have a pair of trousers to fit the Complainant. However, it appears she was supplied with a shirt. It is uncontested that the Complainant was told by one or other of the Respondents to purchase some trousers elsewhere, to submit the receipt to Denros and that she would be reimbursed. The Complainant did eventually purchase a pair of black trousers and submitted the receipt. However, she alleges that she was never reimbursed for the purchase of the trousers. She alleges that this constituted unlawful discrimination on the grounds of her sex (presumably pursuant to Section 11 (a) and (b)). It was not disputed that the Complainant was not reimbursed for the purchase of her trousers.

In her evidence, the Complainant expanded her complaint on the uniform issue by alleging that she was not reimbursed for the purchase of a pair of shoes and a jumper. However, it seems that only real issue is the failure to reimburse for the trousers.

The Complainant testified that she would have put in the receipt for reimbursement in May. She said that there was no suggestion or hint that she would not get reimbursed. However, the Complainant said that she spoke to Mr Longa and Mr Dunn about not being reimbursed. She testified that Mr Longa's attitude was that as Denros was a small business it would occasionally run into financial problems and there was not much money in the bank that month. The Complainant testified that she was "quite willing to wait". However, there was no suggestion by anybody that she would not eventually be reimbursed for the trousers. Mr Longa denied telling the Complainant that she would have to wait for reimbursement and that he told her that if she found a pair of trousers to

fit she should purchase them and would be reimbursed. He testified that it was never brought to his attention that she had not been reimbursed until the day she collected her final pay. If he knew about the matter he would have simply written a cheque to reimburse her. Apparently when security guards ceased employment with Denros they would hand back the uniform which had been purchased for them. Mr Longa testified that when he became aware that she had not been reimbursed he told the Complainant she might as well keep the trousers as they would not fit any of the other employees and in any event Denros did not pay for them. Mr Longa said the Complainant was agreeable to this.

Ms Sylvana Evans, who took over the financial administration of the Company after Mr Dunn's hospitalisation (and who is still employed by Denros), recalls seeing the receipt for the trousers and thinks it must have been before the Complainant left Denros. Certainly, there was no evidence at all that any employee at Denros had been instructed not to reimburse the Complainant.

In his final address, the Complainant's counsel modified the substance of the Complainant's complaint along the lines of the Respondents failed to provide a system to accommodate women who were not able to obtain a uniform from the usual supplier.

Although it is not necessary to establish deliberate discriminatory conduct for an act of discrimination to take place there must be a causal connection between the alleged discriminatory act and the circumstances of the complaint. (See Waters v. Public Transport Corporation (1991) 173 CLR 349) In this case, arrangements were made for Mrs Dolphin to obtain a pair of black trousers as required. The Tribunal is unable to make a finding on the evidence as to why the Complainant was not reimbursed. It is not satisfied that she was requested to defer her claim until Denros was in a financial position to meet it. In all the circumstances, it appears most likely that the Complainant was not reimbursed through some administrative oversight. The Tribunal is not satisfied that this occurred because the Complainant was a woman. Accordingly, this aspect of the claim is dismissed.

THE ALLEGED AFFAIR

A great deal of evidence was concentrated on the alleged affair between the Complainant and Graeme Lawless. The Complainant's evidence is that no-one directly confronted her with the allegation that she was having an affair with Mr Lawless. However, she said that over a period of time there was "a lot of innuendo and talk, rumours about me and Mr Lawless". (T63) She testified that the Respondents were commenting that Mr Lawless was spending too much time at the Shopping Centre where she was stationed. Further, Mr Sandison made comments along the lines of "What is the attraction at the Shopping Centre?" Eventually, the Complainant realised that Mr Sandison was connecting Mr Lawless staying at the Shopping Centre for so long with as an attraction to herself. The Complainant testified that towards the end of her employment, Mr Longa told her that he had spoken to Mr Dunn to "get him to tell my husband to kick my arse for what I was doing at work". (T64). When the Complainant, Mr Longa and Mr Dunn discussed work issues at the hospital on 16 June, Mr Longa is alleged to have said words to the effect that he started the rumour about the Complainant having an affair with Mr Lawless. In evidence both Mr Lawless and the Complainant denied that they were having an affair. Mr Lawless testified that the Complainant had told him that the Respondents thought that they were having an affair. Mr Lawless testified that Mr Longa mentioned it about 6 weeks later when he asked Mr Lawless straight out was he having an affair with Carol Dolphin. Lawless denied it and he said Mr Longa appeared to believe him.

The Complainant told her husband about the comments concerning the affair. Further, she said that she tried to discuss the innuendo with the Respondents but they declined to do so as they "didn't want a confrontation about it" (T258). Under cross-examination, the Complainant agreed that the formulation of her complaint on this particular issue in paragraph 9(f) in her Points of Claim was not true as the Respondents "didn't actually come out and accuse me" of the affair (T262).

Mr Dunn testified that the issue of an affair was raised by Mr Longa in the context that something was going on and that the Complainant and Mr Lawless were spending too much time together. Mr Dunn's evidence was not particularly cogent and he testified that Mr Longa did not use any "specific words" to allege the affair (T468).

Sylvana Evans testified that she heard gossip or snide remarks concerning the Complainant and Mr Lawless from Messrs Dunn, Longa and Sandison. The remarks were along the lines of the amount of time Mr Lawless and the Complainant were sitting in cars and queries as to whether there was "something going on" (T691).

Ms Evans testified that nobody made an outright suggestion that the Complainant and Mr Lawless were having an affair but it was more along the lines of innuendo. In fact, Ms Evans testified "I mean, everybody says that sort of thing everyday about somebody. It's just idle gossip. That's all." That may well be true, but in many cases such comments cause hurt and embarrassment even if there is no intention to do so.

The Complainant testified that Mr Lawless was instructed to keep away from the Shopping Centre and she believed this was done because the Respondents considered she was having an affair with Mr Lawless. Mr Lawless testified that when he was working on "the industrial run" he did go to the Shopping Centre but that Mr Sandison told him not to go there because there had been so many break-ins down in the industrial area that he wanted a car there full-time. Mr Lawless had no cause to disbelieve the reason given for that instruction.

The Complainant testified that during her last shift Mr Longa told her that he had told Mr Dunn that he had seen Mr Lawless and the Complainant at the Shopping Centre for four hours having sex. Mr Dunn also testified that Mr Longa made that comment. Mr Longa denied it.

The Tribunal considers that Mr Longa and Mr Sandison each came to the conclusion, probably at different times and for different reasons that Mr Lawless and the Complainant were having some sort of relationship. However, the Complainant was never directly confronted with this. It may have been appropriate to do so if it were a real concern on the part of her employers that Mr Lawless was spending time at the Shopping Centre and obviously neglecting his other duties.

The Tribunal finds that there was some oblique reference made from time to time that the

Complainant and Mr Lawless were having a relationship. However, the Tribunal is not prepared to find that the Complainant was discriminated against on the grounds of her sex by such comments being made. It was no doubt unpleasant or at least uncomfortable for the Complainant to be the subject of such comment and that might in some circumstances constitute a "detriment" (Section 11 2(d)). However, the Tribunal is not satisfied that there was any causal connection between the comments and the fact that the Complainant is a woman.

Although such comments may have been unwelcome, there is absolutely no evidence that the Complainant had any grounds, reasonable or otherwise, for believing that taking objection to the unwelcome comments would disadvantage her in any way in connection with her employment. Indeed she testified that she tried to discuss it with the Respondents but they did not want a confrontation. That she attempted to discuss it indicates that she had no fear of suffering any disadvantage in her employment. Accordingly, the Tribunal is of the view that the making of such comments did not, in the circumstances of this case, constitute sexual harassment.

The Tribunal rejects this aspect of the claim. (Further there was no evidence of any threat to Mr Longa to tell Mr Dolphin about the alleged affair. The closest evidence to such a threat was Mr Longa's comment to Mr Dunn that someone should tell Mr Dolphin and get him to "kick her arse".)

ALLEGED SEXUAL HARASSMENT BY MR SANDISON

The most significant and serious aspect of the Complainant's complaint before the Tribunal involves three alleged incidents in May 1992 when Mr Sandison in effect, is alleged to have sexually assaulted the Complainant. It was not argued on behalf of Mr Sandison that such incidents, if they occurred did not constitute sexual harassment within Section 24(3). The difficult issue for the Tribunal to determine is whether the incidents did occur as outlined by the Complainant or at all.

The Complainant testified that whilst Mr Longa was on holiday in May, Mr Sandison started to spend a lot of time with her. They worked together every night and according

to the Complainant Mr Sandison would spend more and more time at her place of work instead of attending to his own duties. On one occasion, he asked her whether she was able to bear children. The Complainant considered this to be a "very odd comment to make" but in the context of the conversation at the time thought that he might be referring to the possibility of maternity leave in the future (T61).

During this period of time, Mr Sandison also told the Complainant that he was having an affair with a married woman, that he did not mind that she was married as long as he found her attractive, it did not matter. The Complainant made mention of this in her statement to the CIB. However in her Points of Claim she alleged that Mr Sandison said "I don't mind the fact that you are a married woman". At the time, the Complainant had no reason to believe that the remark about married women was directed at her (T62).

During the time he spent with the Complainant, Mr Sandison spoke of the fact that he did not have a permanent partner and of the difficulties his work presented in having a social life. Mr Sandison denied such conversations, saying that he did not discuss his personal life with anyone.

Patrick Dolphin testified that towards the middle of May his wife's attitude suddenly changed and she became "quite distant", "a bit evasive about certain topics" (T352). She told her husband that Mr Sandison was spending an unusual amount of time with her during her shift and asking a lot of very personal questions that "he was becoming very, very friendly, getting too close" (T352). As a result of being told this, Mr Dolphin would call in at the Shopping Centre when returning from ambulance calls. He testified to having an actual recollection of doing this on four occasions, on three of which he came across Mr Sandison talking with his wife.

Mr Dolphin testified that he demonstrated by kissing his wife goodnight that they were in fact in a close relationship. This he said was "a message" to Mr Sandison and that "Mrs Dolphin was not available" (T354).

The first incident

The Complainant testified that one night she was on duty at Challenger Ford in a position secluded by shrubs. Mr Sandison came over to her car. She was surprised to see him as she was supposed to be under cover. Mr Sandison got into the car and sat talking for a long time. All of a sudden, he leaned over and started rubbing her legs and her breast. The Complainant testified that she was "shocked" (T72). The Complainant said she pushed Mr Sandison away and tried to reason with him saying that they were in an employer/employee relationship and that they had to work together.

Mr Sandison went to get out of the car but leaned across and rubbed his hand on her breast and her legs again and "slobbered on her face". The Complainant stated that it was "revolting" (T73). She said she pushed him away and slapped his face. The Complainant went home but did not tell anybody as she considered it to be a one off event. She stated that she thought about telling her husband but was afraid of losing her job (T75).

She testified that the next time she saw Mr Sandison they both talked about the fact that they had to work together. Mr Sandison assured her that it was a one off incident and that it would not occur again. However, he said to her "You make me so horny, I can't do my work". (T75)

The Complainant responded that he had "a big problem". That night she commenced work at midnight.

The second incident

During the course of her shift on 21 May at about 3.15a.m. the Complainant was on duty at the Shopping Centre at an observation point just above the underground car park.

She testified that she was leaning against some railings, Mr Sandison got out of the car, leaned with his back against the railings, and then turned around and put his arm around the railings so that one arm was on either side of her. He had the lower part of his body pinning her body on to the railings. The Complainant told him to get off as he was

crushing her. He did not do so but she was able to push him back with her body. Mr Sandison then grabbed her hand, turned her around and put his hands down her pants and inside of her underpants. He remarked something along the lines that she did not have a very big bottom but it was nice. The Complainant had her hands on Mr Sandison's chest. At that stage, Jason Clarke, another security guard employed by Denros, arrived. The Complainant testified Mr Sandison "panicked" and pushed her away. She believed Mr Clarke had seen what was going on because he was laughing. The next morning the Complainant telephoned Mr Sandison and told him that "he'd better quit it because I'm sure Jason Clarke must have seen something" (T79) and that Mr Sandison agreed.

Mr Clarke testified that he recalled going to the Shopping Centre and that there was no indication that anything was amiss. He said the cars were parked outside Time Zone which is not near the location of the incident identified by the Complainant. However, the Tribunal does not rely on this inconsistency in coming to its ultimate finding.

The third incident

The Complainant testified that on 26 May she went to work at the Shopping Centre as usual at midnight. Mr Sandison arrived at the Shopping Centre to hand over the keys and radio to her as he normally did. The Complainant said she was sitting on the front fender on the driver's side of her car.

Mr Sandison had positioned his car, as was the normal practice, so that he could speak "driver to driver". The Complainant said that Mr Sandison was sitting in his car with the door open and checked the whereabouts of Jason Clarke on the radio. The Complainant went over to Mr Sandison to get her keys and her radio. She said as she put her hand out to get the radio Mr Sandison grabbed her hand and turned her around on to his lap. He put her hand on his penis which was exposed. He made some comment about her hands. With his other hand he pulled down the fly of her trousers and put his hands inside her open trousers and her underpants and told her to open her legs. The Complainant said she tried to stop him doing this and told him "No, don't." The Complainant was trying to pull Mr Sandison's hands out of her pants. She then called out "Ross, cops!" whereupon Mr Sandison swore and let go of her. The Complainant then took the radio

and her keys, went to her car and drove to a place where she normally started her lock up. She said "I felt very stupid, very dirty" (T81).

Mr Sandison called by the Shopping Centre again during the course of her shift and the Complainant testified that she told him that he was making her feel dirty. She said Mr Sandison did not respond and "took off".

Thereafter, the Complainant said that Mr Sandison left her alone but did so "to the extreme of not giving me any radio checks".

ALLEGATIONS OF ISOLATION WHILE ON DUTY

On 2 June 1992, the Complainant spoke to Mr Dunn about the lack of radio contact with her while she was on duty. She testified "It was getting pretty dangerous out there because they were just neglecting everything" (T83). Mr Dunn called in Mr Longa because he happened to be working and the discussion centred about the lack of radio procedure. The Complainant testified that she told Mr Dunn that she was having trouble with Mr Sandison and that it was "a hormonal problem". She testified that she "would have loved to have told somebody" and thought about telling Mr Longa but considered that would probably have resulted in her losing her job. She could see the same result whether she told Mr Longa, Mr Dunn or her husband. She testified that she even thought about telling Mr Lawless but there was nothing he could do except "get himself into trouble".

In any event, after voicing her complaints about the lack of radio checks, Mr Longa, according to the Complainant, said that he would speak to Mr Sandison about it. The Complainant said that things improved for a short time thereafter and she would get a radio check "maybe once a night" but the usual practice was "to get a lot more checks than that" (T87).

The Complainant testified that she spoke to Mr Sandison again along the lines that they were mature adults and could still be friends and they could still have a working relationship. However, despite that, the Complainant said that Mr Sandison would still

conduct "very tardy radio checks, if any" (T87).

It was clearly a policy at Denros and a sensible one that whilst on duty guards should not use the radio excessively for personal use. If a particular guard was using the radio another guard would be unable to do so if there was only one channel. Accordingly, it was sensible to keep the channel as free as possible in the event of an emergency.

Further, excessive use of the radios ran down the batteries and "air time" cost Denros money.

On at least one occasion, Mr Sandison requested the security guards to keep the personal contact on the radio to a minimum. However, it is clear that all guards including the Respondents used the radio from time to time for personal talk between themselves. To a certain extent this was tolerated by the Respondents. It was acknowledged that being a security guard was a lonely job.

Apparently, Mr Sandison considered that the Complainant was overly using the radio for personal conversations. On one occasion, he became particularly annoyed when there was an exchange between the Complainant and Mr Lawless about Mr Lawless flashing his spotlight on the Complainant as he drove past the Shopping Centre on his mobile run. There was good natured banter between the Complainant and Mr Lawless wherein endearments ("darling", "honey") were exchanged. However, it is clear that these endearments were of a facetious nature. It appears that these exchanges simply got on Mr Sandison's nerves and he told the Complainant and Mr Lawless to cut it out.

Apart from the request not to use the radio for personal contact unnecessarily, the Tribunal is not satisfied that the Complainant or anybody else was directed not to use the radio. Mr Sandison testified that the safety of the guards was of paramount consideration. The Tribunal is unable to find, on the evidence, that the Complainant was deliberately cut off from radio contact with other guards on duty.

It is likely that after the three incidents involving Mr Sandison that the Complainant was particularly sensitive to her position at work, felt very vulnerable and it was her

perception rather than the reality that there were reduced radio checks.

The Leisure Inn incident

A good deal of evidence focused on an incident at the Leisure Inn. The evidence was in the context of the Complainant's allegations that she was isolated when on duty and not given any back-up.

The Leisure Inn was a tavern which was located in the vicinity of the Shopping Centre. On the night of 14 June 1992, there was a multiple alarm at the Leisure Inn. This indicated that there were intruders inside the premises. Mr Sandison asked the Complainant over the radio whether she had heard the alarm and she replied she had. Mr Lawless radioed in to say he was close to the premises and would come and back up the Complainant. The Complainant testified that Mr Sandison told Mr Lawless "No. Finish what you are doing. See what she finds first" (T87).

The Complainant testified that she went over to the premises and pulled up outside the bottle shop. The proprietor was outside "wielding a golf club". The Complainant looked around the area to ascertain if any windows were broken and could not see "anything really amiss". At that time the police arrived on the scene followed by Mr Lawless. The Complainant testified that Mr Sandison "showed up much later". The Complainant compared her treatment by Mr Sandison at the Leisure Inn with an alarm attended by Jason Clarke at the Kwinana Lunch bar when it appeared as if someone had broken into the premises. The Complainant testified that Mr Longa sent Mr Lawless to back up Jason Clarke and to go into the premises with him and conduct a search.

Under cross-examination the Complainant said she was not instructed to enter the Leisure Inn. Further, she conceded that there was "a big difference" in the circumstances concerning the backup afforded to Jason Clarke at the Kwinana Lunch Bar wherein a backup officer was dispatched to assist him so that the premises could actually be entered.

Mr Sandison testified that the Leisure Inn is monitored by MSS Security. However, Denros is the key holder for alarms which may go off on those premises. He was

telephoned by MSS Security to tell him that a multiple alarm had gone off in the bottle shop. Mr Sandison was asked to attend and was also advised that the police had been notified and they would also be attending. Mr Sandison testified that he radioed the Complainant and asked her to attend the Leisure Inn but to take care as there may be "people on the site". He said he told her that the police would arrive very shortly and that there was "no need to put yourself in danger" (T597). He told her that he would also attend the premises because he had the key. He denied that he ordered her to enter the premises.

Mr Sandison testified that Mr Lawless radioed with an offer to back up the Complainant but Mr Sandison told him that was not necessary because the police were attending, he was attending himself and he did not think it appropriate to waste Mr Lawless' time by requiring him to also attend at the Leisure Inn. Mr Sandison testified that if a guard had to enter a building the policy is that the guard should not enter alone. The back up would always be arranged (T598).

Mr Dunn's version of events, which is hearsay, was to the effect that Mr Sandison directed the Complainant not to attend the Leisure Inn. This is totally inconsistent with other evidence and the Tribunal does not accept Mr Dunn's version.

The Tribunal does not accept that the Complainant was directed to put herself in a dangerous situation by Mr Sandison when the multiple alarm went off at the Leisure Inn. There was no way she could have entered the premises as she did not have a key. Whether or not Mr Sandison told her that he would attend the premises, it was clear that he had to do so as he was the one in possession of the key. When the Complainant arrived at the Leisure Inn the proprietor was already there. The Complainant did a check of the premises and found nothing amiss. Shortly thereafter the police arrived and sometime later Mr Sandison arrived. Despite Mr Sandison's instructions to Mr Lawless not to attend, Mr Lawless also arrived at the premises.

The situation involving the Kwinana Lunch Bar and Jason Clarke was a different situation altogether. Mr Clarke was instructed to enter the premises and that is why a back up

officer was sent. The Tribunal rejects the allegation that the Complainant was discriminated against on the grounds of her sex in all the circumstances relating to her attendance at the Leisure Inn.

FINDINGS AS TO THE ALLEGED SEXUAL HARASSMENT OF THE COMPLAINANT BY MR SANDISON

The Tribunal is faced with a very difficult task of deciding what version of events, if any, it should accept. The bulk of the evidence boils down to the accounts of the Complainant and Mr Sandison which are diametrically opposed. The Complainant's allegations against Mr Sandison were reasonably detailed. They are consistent, apart from the dates of the three incidents, with what she told the police. Her version of events was not tested in cross-examination. Mr Sandison simply denied all allegations of sexual harassment in relation to the three incidents outlined above.

There is little, if any, direct evidence to support the Complainant's allegations. Those allegations constitute extremely serious examples of sexual harassment. In effect, the Complainant alleges three counts of sexual assault against Mr Sandison. These assaults were perpetrated, on her story, at night whilst she was alone, by a man who was in a position of power, not only in terms of his authority over her as her employer but also in terms of his physical superiority. As is common in this type of case, there were no independent eye witnesses. There is some circumstantial evidence which tends to support the Complainant's version of events, for example, her collapse and hospitalisation several days after she left her employment with Denros. This may be attributable to Mr Sandison's alleged behaviour. However, that evidence cannot of itself tip the scales in favour of the Tribunal accepting the Complainant's account unless the Tribunal is otherwise prepared to accept her evidence over that of Mr Sandison.

LACK OF COMPLAINT

The Tribunal appreciates that there are many cogent reasons why a woman would not complain about sexual assaults perpetrated upon her. Lack of complaint is particularly understandable where the perpetrator is in a position of authority and the Complainant runs the risk of losing her employment if a complaint is made. Other reasons for lack of

complaint include humiliation, a desire not to re-live the incidents, a perception that the Complainant's story would not be believed, fear of the perpetrator and so on. A complaint may in certain circumstances be an expected reaction to incidents which have taken place. For example, if a person is sexually attacked in a park by a stranger and left badly injured. In other circumstances, it may not be such an expected reaction as, for example, in some of the instances outlined above.

It is of note that Mr Dolphin's evidence was that when the Complainant eventually told him about Mr Sandison's behaviour, she also told him that Mr Sandison had said to her if she told anyone he would just deny it and asked her on occasions if she had told her husband yet. However, the Complainant made no mention of this in her evidence. The Tribunal does not consider this to be particularly significant in coming to its finding given all of the circumstances although if it is true it is a reasonable explanation as to why she did not complain.

After the first incident at Challenger Ford, the Complainant believed it to be a one-off incident. She maintained that she had reasoned with Mr Sandison along the lines that the behaviour was unacceptable for an employer/employee relationship. Further, as she maintained throughout, she is a person who prefers to deal with her own problems. If the Complainant's version of events is true, it was reasonable for her to believe that Mr Sandison would not repeat his behaviour and understandable for her not to make a detailed (or any) complaint about it.

The second incident was, if anything, more distressing and serious than the first. Thereafter, the Complainant could have no reasonable grounds for believing that the behaviour by Mr Sandison would not be repeated. It occurred 2 nights after the first incident and after Mr Sandison's assurance that his behaviour would not be repeated. After the second incident she apparently took no steps to protect herself from a repeat of the behaviour. For example, she might have requested a different roster. However, she continued to work alone at the Shopping Centre in the early hours of the morning knowing that Mr Sandison's usual practice was to drop in during the course of his shift to speak to her. Notwithstanding her professed love of her job and her fear of losing it if

she complained, it is perhaps unusual that the Complainant was prepared to expose herself to a repeat of the behaviour when she was in effect, powerless to physically repel Mr Sandison. This is especially so given the serious nature of the allegations she has levelled against Mr Sandison in relation to the first and second incidents.

Why no specific complaints to Mr Longa and Mr Dunn

The Complainant had the opportunity of making a complaint about Mr Sandison, at least in general terms, during the discussion she had with Mr Longa and Mr Dunn on 2 June 1992. On that occasion, she chose to mention only the lack of radio and visual checks. There was the oblique reference to the effect that the Complainant was having trouble with Mr Sandison but she put it down to a "hormonal problem". She testified that she thought about telling Mr Longa and Mr Dunn but considered that the consequence would be that she would lose her job. She testified that Mr Dunn "probably would have been the first person that I would have gone to, because of his demeanour and ...he did handle problems very well." But she feared she would lose her job. Further, she believed that she "had done something right" after the third incident because "it had stopped" (T149).

On 16 June, the Complainant visited Mr Dunn in hospital. Mr Dunn's recollection of the conversation cannot totally be relied upon. He testified that within six to eight hours of his kidney stone operation he was out of his hospital bed, indeed outside the hospital building having a cigarette and discussing with Mr Longa and the Complainant her difficulties at work. The Tribunal is not prepared to accept Mr Dunn's evidence on this. However, it does find that the conversation occurred whilst Mr Dunn was recovering from a serious operation and was still very unwell. His recollection of the conversation differs in substantial detail from that of the Complainant and Mr Longa especially as it related to the detail of the Complainant's allegations about Mr Sandison. The Tribunal has no hesitation in rejecting Mr Dunn's version of the conversation concerning that on the grounds that he was in ill health at the time and his recollection appears to be tainted by subsequent conversations about the relevant incidents and subsequent events.

The Complainant had a great deal of difficulty in recalling the conversation at the hospital. However, she said that Mr Longa was "prompting" her to tell Mr Dunn what she had told him about Mr Sandison.

She said words to the effect to Mr Dunn "Do you want me to spell it out for you?" and Mr Dunn replied "No" (T102). Mr Longa recalls the Complainant saying this but the context in which she said it is not clear from his evidence.

The Complainant testified that she had spoken to Mr Longa on the morning of 16 June (before she went to the hospital) when Mr Longa asked her "...what the problem was with Ross, because Ross then wanted.... me out" (T89).

It is clear from Mr Longa's evidence that the Complainant had, on the morning of 16 June, told him or at least gave him the impression that Mr Sandison had made unwelcome advances of a sexual nature towards her. The Complainant had some difficulty in precisely articulating what she said to Mr Longa on the morning of 16 June and later during the course of her shift at the Shopping Centre on 17 June. However, the Tribunal accepts that at the hospital Mr Longa pressed the Complainant to tell Mr Dunn what she had told him about Mr Sandison. He must have been referring to the conversation on the morning on 16 June. Despite the Complainant's confusion about what was said when, the Tribunal accepts that she did indicate to Mr Longa on the morning of 16 June that there was a problem with Mr Sandison's conduct towards her and that it was of an unwelcome sexual nature.

The Complainant said that during the conversation at the hospital which was on the afternoon of 16 June, Mr Longa was encouraging the Complainant to tell Mr Dunn about Mr Sandison. Although Mr Dunn testified that the Complainant told him of at least one incident of sexual assault (at Challenger Ford) in some detail, the Complainant denied this and Mr Longa supports her evidence in this regard. Accordingly, the Tribunal rejects Mr Dunn's recollection of the conversation on this point. However, it accepts that like Mr Longa, Mr Dunn was left with the impression that Mr Sandison's behaviour towards the Complainant was of an unwelcome sexual nature.

The Complainant said she did not give details of Mr Sandison's behaviour to Mr Dunn and Mr Longa. However, it is clear that Mr Longa gained the impression that the Complainant was alleging that Mr Sandison was sexually harassing her. He testified that the Complainant told him that "she was harassed by Ross. No gory details; I wasn't much interested in it myself" (T546). His evidence was along the lines that the Complainant was complaining that Mr Sandison was sexually harassing her in some way. However, he said that she did not use the word "harassment". It is clear from Mr Longa's evidence and that of Mr Dunn that the Complainant made it clear that she did not want to work with Mr Sandison. Although Mr Longa said he could not recall why she said that, the Tribunal considers that it is as clear as crystal that it was in the context of Mr Sandison's behaviour towards her which Mr Longa took as sexual harassment.

Accordingly, the Tribunal finds that although the Complainant did not in precise terms "spell out" her complaint against Mr Sandison, she gave both Mr Longa and Mr Dunn the impression that something of a sexual nature, unwanted by her, was occurring between her and Mr Sandison.

Some arrangement was worked out whereby she would be rostered only with Mr Longa and not with Mr Sandison.

There was also a good deal of discussion (the evidence concerning which is very confusing) about the Dolphins, Mr Longa and Mr Dunn buying Mr Sandison out of the business. However, it appears no one was in a financial position to do so.

In the early hours of 17 June when the Complainant was on duty at the Shopping Centre, she had a heated conversation with Mr Longa. Neither party can be particularly precise about the conversation. The Complainant said it was a very disjointed, confusing conversation (T90). Both agree that it was heated. Certainly, there was some discussion about the alleged affair between the Complainant and Mr Lawless. The Complainant said Mr Longa told her that he had seen Mr Lawless and her in the Shopping Centre for four hours having sex. Indeed Mr Dunn testified that Mr Longa had told him this previously. Mr Longa denied saying this. He said he told the Complainant that he had said to Mr

Dunn that someone should tell her husband about what was going on (with her and Mr Lawless) and get him to kick her arse. There was some mention of Mr Sandison's behaviour, but Mr Longa said he got the impression that there was an affair going on between the Complainant and Mr Sandison rather than the Complainant and Mr Lawless.

The Complainant testified that she told Mr Longa that it was "a very personal thing that had happened between Ross and [her]". She said that Mr Longa asked for details but she was unable to discuss the matter with him. She did say to him that "It was something I neither wanted nor asked for" (T89). Those comments may have led to Mr Longa's impression that there was an affair between the Complainant and Mr Sandison. Equally they are capable of referring to the Complainant's account of the alleged sexual assaults. Given Mr Longa's own evidence that during the conversation on the morning of 16 June to the effect that he gained the impression that Mr Sandison had made unwelcome sexual advances towards the Complainant and the subsequent discussion at the hospital which reinforced that impression, the Tribunal rejects Mr Longa's evidence that he thought there was an affair going on between Mr Sandison and the Complainant.

The conversation ended with the Complainant walking off the job. This was taken to be resignation by the Respondents and the Complainant in effect accepts that she resigned but maintained that she had no alternative but to do so because of the way she was treated by the Respondents. She told her husband that she was "chased off the job" and both were relieved that she had left.

The Tribunal accepts that in all of the circumstances, it is understandable that if Mr Sandison did assault the Complainant as alleged that she did not in terms specifically complain to Mr Longa and Mr Dunn about his behaviour. However, it is clear that she expressed her concerns about Mr Sandison to both Mr Longa and Mr Dunn at least as early as 2 June (albeit in terms of the lack of backup at work). She gave Mr Longa the distinct impression that Mr Sandison was making unwelcome sexual advances towards her when she spoke to him on the morning of 16 June. At the hospital, although there was no detailed complaint about Mr Sandison, the Complainant reinforced Mr Longa's impression and left Mr Dunn with a similar impression. Overall, the Tribunal finds that

the Complainant was trying desperately to tell someone about Mr Sandison's conduct in the hope that something could be done about it.

The Complainant's evidence concerning her failure to complain to her husband about Mr Sandison's behaviour needs further consideration.

Why no specific complaint to Mr Dolphin

It is necessary to reflect on the evidence concerning the Complainant's relationship with her husband. Both the Complainant and her husband testified that they have a very close and loving relationship. The Complainant said that if she were to tell anyone about Mr Sandison's behaviour, it would be her husband. She agreed under cross-examination that she did not have a closer friend in the world than her husband. Mr Sandison also testified that the Complainant and her husband appeared to have a close relationship. The Complainant said that every time there was a problem at work her husband would want to go to work for her. He was "looking over her shoulder" when she was writing out her complaint to the Commission. He pressured her to complain to the police against her will. The Tribunal accepts that the Dolphins were and are a close couple. However, we are left with the clear impression that Mr Dolphin exercised a good deal of influence over his wife.

The Complainant had mentioned to her husband that Mr Sandison was becoming over friendly towards her and her husband had taken some positive steps to indicate to Mr Sandison that he and the Complainant were a happy couple and, in effect, that Mr Sandison stood no chance with his wife. The Complainant testified that she did not tell her husband about Mr Sandison's behaviour because she feared that he would, in effect, take the law into his own hands. Further, she feared that if she told her husband she would end up losing her job in any event and that she "also didn't want the bun fight" (T149). She also testified that she is a person who likes to handle her own problems - fight her own "battles".

At or around the time of the three incidents described above, the Complainant began to suffer health problems. She was unable to eat and lost a lot of weight. Her weight loss

was commented upon by others. Her husband who is an ambulance officer and trained in first aid raised the issue of her weight loss but she told him that she was having problems with Mr Sandison (T213) and that her stress was due to the allegations about the affair with Mr Lawless, Mr Sandison's physical attraction for her and the lack of radio communication (T214).

On 19 June, the Complainant was talking on the telephone to her husband when she collapsed. Her husband took her to hospital in the ambulance. She complained of severe stomach pains and of feeling very tired. She underwent certain tests including an internal examination prompted by the treating doctor's assessment that she was displaying all the classic symptoms of sexual assault. The doctor was not called to give evidence and this comment was recounted by Mr Dolphin. Mr Dolphin said that he absolutely rejected the "diagnosis of the doctor". This is somewhat curious given his wife's complaints about Mr Sandison's physical attraction towards her, his attempts to present to Mr Sandison that he and his wife were a close couple, his wife's distance from him around mid-May, her weight loss and obvious stress, her return from her shift after the alleged third incident when she said she wanted a shower because she felt dirty (which according to Mr Dolphin "set alarm bells ringing"), her sudden departure from her work alleging that she was frightened to return, her collapse on 19 June and finally the doctor's assessment that she displayed all the symptoms of sexual assault. Given all of those circumstances together with Mr Sandison's training as an ambulance officer, for him to reject out of hand any suggestion that his wife might have been a victim of sexual assault is most odd. However, it may have been a way of coping with something unpleasant which he did not want to acknowledge.

It is clear from the hospital notes of the Complainant's admission to hospital on 19 June that she complained of being stressed over a period of time and there is some mention of the Complainant "seeking advice from E.E.O. etc".

The Complainant made a complaint to the Commission on 25 June 1992. Her Complaint centred on the failure of Denros to reimburse her for her uniform, the allegations of the affair with Mr Lawless and the isolation during the course of her shift. Whilst not trivial,

these complaints, when compared to the allegations of sexual harassment by Mr Sandison, are not serious.

About three weeks after leaving her employment, the Complainant eventually told her husband in general terms of Mr Sandison's behaviour towards her. Mr Dolphin said that he was angry and hurt that she had not told him previously. The Complainant testified that she eventually told her husband of Mr Sandison's behaviour because she could not go on "living a lie". However, she testified that she was unable to discuss the details of Mr Sandison's behaviour with her husband as she said "It was very humiliating going through these things with my husband. It still is (T138)". Indeed the first Mr Dolphin knew about specific details was when he read her statement to the police.

The first detailed account the Complainant gave of Mr Sandison's behaviour was to the police on 14 July 1992. This occurred a couple of days after she told her husband about it in general terms.

For the sake of completeness, the Tribunal notes the Complainant's evidence under cross-examination that she did not tell any of her close female friends of Mr Sandison's behaviour because she did not want them to be hurt by what had happened to her. She testified that she did not have a large circle of friends and very few close friends.

As to the failure to complain to her husband, the Tribunal does not accept that the main reason for not doing so was the Complainant's fear that she would lose her job. However, that had a bearing on her decision. The Tribunal is not satisfied that the financial circumstances of the family were such that her income was essential for the family to survive. Indeed, she had only been working a matter of months before the incidents allegedly occurred and the family had survived financially, albeit not particularly well off, for years prior to then. Her husband was also earning approximately \$40,000.00 per year in his job as an ambulance driver. The Tribunal accepts that the Complainant may have been concerned about her husband's reaction if he were to be told about Mr Sandison's behaviour and also finds it understandable that the Complainant would have a reluctance to discuss with him the details of Mr Sandison's alleged

behaviour. Despite the close relationship between the Complainant and her husband she felt he was "too close ... to the whole thing" (140).

Although the Complainant did not tell her husband even generally about the alleged sexual assaults before mid July, she did mention Mr Sandison's over friendliness. She complained about isolation at work and in a sense this could be interpreted as a cry for help.

The Tribunal does not find the lack of complaint to Mr Dolphin in any way detracts from the Complainant's credibility. Indeed, it accepts her reasons for not telling him as understandable.

Complaints to the Equal Opportunity Commission

The Complainant testified that she did not tell the Commission employee about Mr Sandison's behaviour because she did not want to discuss it (T143), nor want to do anything about it (T152). As she said "I wanted it to die" (T143). However, she did testify that she was anxious to effect some changes in the workplace and wanted to send a message to the Respondents that they could not get away with treating people the way she had been treated. The Tribunal does not find it particularly unusual that having made the decision to complain to the Commission and taking the trouble to travel from Rockingham to Perth in order to make the complaint, the Complainant complained only of relatively minor incidents at Denros. Her husband was present during the interview with the Commission employee and at that stage she had not told him of Mr Sandison's conduct. She described the Commission employee as "a total stranger." The Complainant was asked to take away the appropriate form and fill it in at home. She then had the opportunity to reflect upon her position and make a complaint about the alleged serious conduct perpetrated by Mr Sandison but did not do so. Instead her four page Complaint focused on the alleged affair with Mr Lawless, lack of radio contact and reimbursement for items of uniform.

The Conciliation Officer suggested to the Complainant that she could try to sort things out with Denros herself. Accordingly, Mr Dolphin wrote to the Respondents on 1 July

requesting a meeting with them at the Shopping Centre "to try to resolve the matters concerning Denros Security and Ms Carol Dolphin." The Respondents handed this letter to their solicitors who replied that the Respondents "are at a loss to understand the significance of your ... letter" and requested that further queries be directed to them. The letter also made mention of the Complainant's resignation from her employment and receipt of full termination entitlements.

The Tribunal finds that the first letter was instigated by Mr Dolphin. Even so, the Complainant was prepared to attend the meeting, confront the man who had allegedly sexually assaulted her on three occasions and discuss other much less serious work related matters.

The Tribunal finds that it is most likely that, the Complainant was manoeuvred into that position by her well-meaning husband, who at that stage was still unaware of the alleged sexual assaults.

Complaint to the Police

After the Complainant told her husband about Mr Sandison's behaviour, it is clear that Mr Dolphin placed considerable pressure on the Complainant to make a complaint to the police. As Mr Dolphin himself said "I was a bit of a bastard...I pushed her pretty hard" (T393). In a sense, Mr Dolphin's attitude is understandable given his previous experience as a police officer and his somewhat paternalistic attitude towards his wife.

The Tribunal finds that the Complainant was most reluctant to tell her story to the police and despite her attempts in evidence to explain why she ended up going to the police (in effect that she needed to talk to somebody who was emotionally removed from the situation) the Tribunal finds had it not been for her husband's insistence she would not have gone to the police. Indeed, she initially spoke to a male police officer, Rick Sullivan. She testified that it was only after speaking to Mr Sullivan for a length of time and after he gained her confidence that she was able to tell him what had happened between Mr Sandison and her. Thereafter, Mr Sullivan called in a female police officer, Louise Ball.

The Tribunal accepts the Complainant's evidence that she did not want the police to investigate the matter. It was a situation of her word against that of Mr Sandison. There were no witnesses to any of the incidents. The Complainant was also conscious that she was unable to be particularly specific about the dates on which the incidents occurred. Further, she had an ongoing reluctance to discuss the issue and to re-live the incidents. This was a constant theme throughout the Complainant's evidence that she simply wanted to forget about what had happened and to get on with her life.

The Complainant initially was taken to the police by her husband on 14 July 1992. After being interviewed by Mr Sullivan and Ms Ball, a typed statement was prepared as a result of the interviews and the Complainant signed that statement on 20 July 1992.

It was a result of the Complainant's discussion with Ms Ball who suggested that she should make a complaint to the Commission together with the same suggestion made by her doctor (to which reference will be made shortly) that the Complainant decided to "amend" her complaint to the Commission and bring the alleged sexual assaults to the Commission's attention.

We pause to consider the Complainant's treatment by her general practitioner, Dr Payne. After her collapse on 19 June 1992, the Complainant thought she had better undergo a complete physical check-up.

She went to her general practitioner, Dr Payne who had treated her on a few occasions over several years. The Complainant did not tell Dr Payne that she had been sexually assaulted but after she had been to the police she told Dr Payne that she had been to the police and told them about "an assault". The doctor asked her if there were any witnesses to the assault and when the Complainant told her there were none, Dr Payne advised her not to go ahead with the complaint in the condition in which she was in.

Again, when questioned why she did not tell Dr Payne about the details of the assaults the Complainant said "I didn't want to get into details. I still find it very hard to go through details (150)". However, the Complainant did discuss with Dr Payne the stress she was

undergoing at work and was prescribed some medication which was probably of an anti-depressant nature.

In any event, the Tribunal finds that the determining factor in changing the Complainant's mind about telling the Commission was Ms Ball's advice to the Complainant along the lines that there was insufficient evidence "to do anything through the police." (T168) However, Ms Ball suggested that she bring it to the attention of the Equal Opportunity Commission. The Complainant discussed it with her husband who suggested that she should do something with the Complaint. In the meantime, the Complainant received a telephone call from the Commission Conciliation Officer who had been talking to Mr Dunn. According to the Complainant the Conciliation Officer said that "things didn't make sense of what he was hearing and he asked me if anything else had happened. I told him I didn't really want to discuss it. He said that if it was work related then he really needed to know about it." (T168)

In the end result, the Complainant decided to bring the allegations concerning Mr Sandison to the attention of the Commission. This she did formally by letter dated 27 July 1992, in which she enclosed a copy of the statement she had made to the police.

Thereafter, the Conciliation process was in progress. As mentioned previously, the Tribunal knows nothing of that process apart from what is contained in the Commissioner's Report which is an exhibit in this matter.

THE DATES OF THE THREE INCIDENTS

In her statement to the police, the Complainant alleged the three incidents occurred on 24 May between 4.00am and 5.30am, 28 May at about 3.15am and then one or two days thereafter. The Complainant testified that she was always unsure about the dates. This was one of the reasons she gave for her reluctance to tell the police about the incidents. However, she testified that Mr Sullivan insisted on her giving dates of the incidents. These dates were worked out at the police station by reference to the Complainant's pay slips. It is not clear whose idea it was to take the pay slips to the police station. However, it is most likely that it was at the instigation of Mr Dolphin who, being an ex

police officer, would have been aware the complaint to the police should be as detailed as possible.

During the course of the conciliation process, the Respondents were advised of the Complainant's allegations and the date of the three incidents involving Mr Sandison. By letter to the Commission dated 21 September 1992, Mr Sandison denied being rostered on duty on the occasions specified by the Complainant. This denial was corroborated by copies of "run sheets" which are documents indicating which driver was on duty for a particular shift. The Complainant was advised in general terms in a telephone conversation with the conciliator that her dates were denied by Mr Sandison. This advice was followed up in an undated letter to the Complainant (TAB 6 Commissioner's Report). By letter dated 12 October 1992, the Complainant advised the Commission that to the best of her knowledge the dates on which the "sexual harassment took place were 19 May 1992 at approximately 5.15am, 21 May 1992 at approximately 3.30am and 26 May 1992 at approximately 12.10am." However, it is clear from the evidence that prior to writing that letter the Complainant had been advised by the Conciliation Officer that Mr Sandison in effect had an alibi for the dates specified in her statement to the police.

The Complainant was cross-examined at some length about the discrepancy in the dates. However, throughout she maintained her position that she was always unsure about the dates and it was only at the insistence of the police that she committed herself to the specific dates in her statement and they had been worked out by reference to her pay slips.

On reviewing the situation after being told by the Conciliation Officer that her dates could not be right the Complainant realised she had misread her pay slips by in effect treating the first date on the pay slip as being day one of her weekly roster instead of the last day (or vice versa). As a result of the Conciliation Officer's insistence that he be provided with "the correct dates" the Complainant attempted a process of reconstruction.

In relation to the second incident, she remembered that the door handle of the driver's side of her car was broken and she had to get into her car through the passenger's door.

That door handle had been replaced by Toyotaways and the Complainant was able to obtain documentation showing when that was done. By that process she was able to fix the date of the second incident as being on 21 May and then from that date worked out the date of the other two incidents. The Complainant testified that when Jason Clarke arrived on the scene interrupting Mr Sandison, the Complainant directed his attention to the broken door handle.

It is particularly significant that Jason Clarke recalls an occasion when he went to the Shopping Centre when Mr Sandison and the Complainant were there and recalls the Complainant mentioning "something about a broken door handle on her car". He was unable to remember which door handle was referred to. (T668)

Were it not for the Complainant's over all credibility about the incidents with Mr Sandison and the fact that she was unchallenged in cross examination about the incidents except for the dates on which they were alleged to have occurred, the Tribunal might have attached some significance to the discrepancy in the dates. However, it is not necessary to find when exactly the three incidents occurred. Further, it is understandable that the Complainant would not have a specific recollection about the particular dates. In the end result, the Tribunal accepts that the second incident did occur on 21 May.

The Tribunal is unable to make a finding when the other two incidents occurred but does not consider that it is necessary to do so. The Tribunal accepts the Complainant's evidence about her uncertainty concerning the dates and finds it understandable that there should be some confusion about the dates in all the circumstances.

As the Tribunal has noted earlier, it is a very difficult fact finding exercise when there are allegations of sexual assault and the only direct evidence as to whether they occurred or did not occur comes from the Complainant and the alleged perpetrator. In this case, Mr Sandison simply denied the allegations. If he did not assault the Complainant then there was little else he could do. He admitted through his counsel that he was on duty on the three dates which the Complainant now says the three incidents occurred.

The Complainant was examined and cross-examined for almost three full days. She did not resile in any way from her basic account of Mr Sandison's behaviour towards her at Challenger Ford and at the Shopping Centre. The Tribunal had ample opportunity to assess the Complainant's demeanour in the witness box. She was clearly ill at ease in describing the three incidents. On occasions, she was in tears and on one occasion the Tribunal adjourned to allow her to compose herself. Indeed, when her husband was testifying the Tribunal adjourned for a short time because he was also in tears. A person's demeanour in the witness box is not sufficient of itself to persuade the Tribunal to accept that witness' version of events. However the Tribunal is convinced that the Complainant's distress when giving evidence was genuine and was caused by her having to recall and recount Mr Sandison's conduct.

Overall the Complainant's story rings true.

Mr Sandison had the opportunity to assault the Complainant as outlined by her. Her version was not challenged in any way under cross-examination. It was consistent with what she told the police. Her re-action in the witness box and the way in which she described the way she felt during the incidents and thereafter are consistent with the truth of what she alleges. On numerous occasions she said she felt humiliated, dirty and stupid. The Tribunal has already dealt in some detail with her lack of complaint to anyone and for the reasons outlined above finds that understandable.

Mr Sandison was not an impressive witness. He testified that there were occasions as a result of incidents at the Shopping Centre when he had to criticise the complainant's performance as a security guard. He said the Complainant denied not fulfilling her duty properly and on one occasion they got into "a bit of an angry argument."(T608)

Mr Dunn testified that Mr Sandison came to him on occasions and asked for the Complainant to be sacked. However, Mr Dunn told Mr Sandison that there had to be a good reason for an employee to be sacked. It is significant that Mr Longa described the Complainant as one of the best security guards they had and had absolutely no complaint to make about the way she carried out her duties. Although it was not raised in cross-

examination of Mr Sandison, a possible reason as to why he complained to Mr Dunn about the Complainant could be her rejection of him. However, the Tribunal makes no finding along these lines.

Under cross-examination, it was put to Mr Sandison that what had been "a reasonably relaxed sort of organisation became a very tense one." Mr Sandison denied this. (T644) However, the evidence of Mr Dunn, Mr Longa, Ms Evans and the Complainant herself was to the effect that there were discussions about working conditions which often became heated. Ms Evans testified that there were always "squabbles" going on at the office. She recalls one particular occasion when Mr Dunn, Mr Longa and the Complainant were in Mr Dunn's office and the conversation was particularly heated.

The Tribunal finds that Mr Sandison was attempting to play down any disharmony between him and the Complainant.

The Tribunal accepts the Complainant's evidence that she was undergoing a great deal of stress in the weeks following the incidents. The stress was exacerbated by her desire to tell someone about them but unwillingness to do so in detail. The Tribunal finds that her collapse on 19 June was attributable, at least to some extent, to the stress that she was undergoing as a result of the incidents.

In the end result, the Tribunal believes the Complainant's account of the three incidents involving Mr Sandison. The Tribunal is conscious of the burden of proof on the Complainant to establish her case to a high degree of persuasion given the requirement to prove conduct which constitutes criminal offences and finds that she has discharged that onus.

Further, the Tribunal is satisfied beyond any doubt that had the Complainant taken objection to Mr Sandison's conduct by detailing it to Mr Longa, Mr Dunn or for that matter to her husband or Mr Lawless, that she would have lost her job. It was reasonable for her to believe that it would have been impossible for her to continue working thereafter.

Mr Longa's Trousers

The Complainant testified that on her last shift which was in the early hours of 17 June 1992, there was a heated argument between her and Mr Longa. The Tribunal has already referred to that.

The Complainant testified that during the course of the conversation, Mr Longa undid his belt and the buttons on his trousers and opened his fly wide up and pulled his trousers down to his hips and started playing with his shirt.

The Complainant "asked him what the hell he was doing" and told him that it was "not funny."(T90)

The Complainant said that during the course of the shift Mr Longa visited her on several occasions. On another occasion when the Complainant was in the top car park, Mr Longa "did the same thing regarding his trousers."(T99) Further, on a third occasion just before it was time to go home, Mr Longa opened his fly again.

Mr Lawless testified that on one occasion he was also at the Shopping Centre and he saw Mr Longa unzip his fly, undo his belt and tuck in his shirt. He testified that Mr Longa's trousers were "slightly lowered". He said this occurred in the "top car park". Mr Lawless testified that he had seen Mr Longa do this before but never undo his fly.

Mr Longa admitted to a habit of tucking in his shirt. Indeed, he admitted to tucking in his shirt in front of Mrs Dolphin on one occasion during her last shift. However, he was adamant that he turned his back to her while he did it.

Mr Longa is a big man with a very rotund waistline. In 1992 he was thirteen kilograms heavier than he is now. In June 1992 he weighed over 100 kilograms. Essentially, Mr Longa's evidence was along the lines that because of his size, his shirt would always come untucked especially as he got out of the car. He would automatically tuck in his shirt. However, if he had cause to do that he would always turn his back whether he was with a man or a woman.

The Tribunal does not accept that Mr Longa deliberately undid his trousers and fly to cause affront to the Complainant. Rather it is satisfied that Mr Longa tucked his shirt in as was his habit because of his size. It is likely that because of the heated and unpleasant conversation going on between the Complainant and Mr Longa that night culminating in the Complainant leaving her employment as well as her obvious dislike of Mr Longa and Mr Sandison that she has misinterpreted what happened that night. The Tribunal finds that the Complainant has not substantiated this aspect of her case.

OTHER MATTERS

There was quite a deal of correspondence between the Complainant and the Respondents and the Commission contained in the Commissioner's report. The Complainant and Mr Sandison particularly were cross-examined as to certain inconsistencies in their versions of events contained in that correspondence with their sworn evidence. One aspect of Mr Sandison's correspondence which is inconsistent with his sworn testimony impacts on the Tribunal's assessment of his credibility overall.

Although some of the material supplied to the Commission by Mr Sandison indicated that the Complainant was sacked for misconduct and during the course of her employment with Denros had resigned three times, his evidence did not support this. As to her dismissal, Mr Sandison testified that she was not dismissed and that he took her conduct in the early hours of 17 June as a resignation. He said that he was "so wild" when he wrote to the Commission that he took "... the whole thing out of context and just wrote down anything in response."(T614). The Tribunal does not accept his assertion that the Complainant was dismissed for misconduct was written unthinkingly and when Mr Sandison's mind was clouded with anger. It was included in a detailed, typed response of more than 4 pages to the Complainant's initial complaint to the Commission (see TAB 4, letter dated 21 September 1992).

It is noteworthy also that Mr Sandison's solicitors had written to the Complainant on 6 July 1992 advising that she had resigned from her employment. The Tribunal finds that the letter to the Commission was most likely a deliberate attempt to mislead the Commission by deflecting attention from the Complainant's complaint about Denros.

Mr Longa testified that after the conversation at the hospital he told Mr Sandison of the Complainant's allegations about sexual harassment. On the other hand, Mr Sandison testified that the first he knew of those allegations was when he received a letter from the Commission. Mr Longa said that when he told Mr Sandison of the Complainant's allegations (which must have been sometime after the conversation at the hospital but before the Complainant commenced her shift on 17 June) that Mr Sandison then expressed difficulty in working with the Complainant. According to Mr Longa Mr Sandison was upset about the allegations. This is an example of Mr Sandison feigning ignorance about the three incidents until he received a letter from the Commission. The Tribunal finds his evidence in this regard untrue.

The Complainant was also examined on the Amended Particulars of Claim in which certain details (not relating to the three incidents) were not consistent with her evidence. Nothing turns on those inconsistencies. The Amended Further and Better Particulars were clearly drafted by her legal representative (presumably on instructions) and it is understandable that the Complainant may not have been as careful as she should have been when she approved their contents.

Jason Clarke testified that after the Complainant left her employment with Denros he spoke to her on at least one occasion when she threatened to "bring down Denros". This threat was also made during the conversation at the hospital on 16 June 1992. The Complainant conceded that such threats might have been made but they were made in the heat of the moment. Further, Mr Clarke testified that the Complainant had told him that she would get a car and a holiday out of her claim against the Respondents. The Complainant denied this. The Tribunal does not consider it necessary to make a finding on these matters as it is prepared to accept the Complainant's evidence on the significant issue of Mr Sandison's sexual harassment and whether or not the Complainant made such comments does not impact on the Tribunal's assessment of the Complainant's evidence in this regard.