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File: 566-02-7321

Citation: 2014 PSLRB 95



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

MAGDALENA FORNER

Grievor

and

**DEPUTY HEAD
(Department of the Environment)**

Respondent

Indexed as

Forner v. Deputy Head (Department of the Environment)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: John G. Jaworski, adjudicator

For the Grievor: James Lingwood, counsel

For the Respondent: Barry Benkendorf, counsel

Heard at Edmonton, Alberta,
October 8 to 11 and November 5 and 6, 2013.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Magdalena Forner (“the grievor”) worked for Environment Canada (“EC”) as an atmospheric processes scientist, classified at the Physical Sciences PC-02 group and level, at the Meteorological Service of Canada (“MSC”), in the Prairie and Northern Region (“PNR”), in the Air Quality Science Unit (“AQSU”), in Edmonton, Alberta. On January 31, 2012, the respondent terminated her employment for unsatisfactory performance.

[2] On February 29, 2012, the grievor filed a grievance against her termination, alleging that the conclusion that her performance was unsatisfactory was unfair, unreasonable and in bad faith. She further alleged that the assessment of her performance was disciplinary in nature and was without just cause. As relief, she has requested a declaration that the conclusion that her performance was unsatisfactory is unreasonable, unfair or in bad faith and has requested as relief reinstatement to her position with compensation for all lost wages and benefits. She has also requested that all records be expunged, she be made whole in every way and any other remedy that this Board deems just.

[3] On June 11, 2012, the grievance was denied at the final level of the grievance process and was referred to adjudication on July 23, 2012, under both paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *Public Service Labour Relations Act* (“the Act”).

[4] At the outset of the hearing, the grievor withdrew the reference to adjudication under paragraph 209(1)(b) of the Act, which alleged that the assessment of her performance was disciplinary in nature.

II. Summary of the evidence

[5] EC is divided up into five regions: Atlantic, Quebec, Ontario, PNR, and Pacific and Yukon. Each region has within it a Science Division, which in turn has an AQSU. The AQSU for the PNR is located in Edmonton.

[6] The AQSU carries out three basic functions as it relates to air quality in a region: monitoring, modelling and analysis. Some of the work of the AQSU is done in conjunction with the provinces; some data is collected directly by the AQSU, while some is collected by provincial groups known as “air sheds.” Data is collected and

transmitted to the AQSU where it is monitored and analysed, and in some instances, computer models are used to create simulations. The information is packaged and put into reports to share with other parts of EC, other federal departments, provincial ministries and non-government organizations.

[7] The AQSU monitors a variety of different chemical pollutants that are in the air. Two of the fields within which the AQSU conducts its work are the Air Quality Health Index (“AQHI”) and mercury. The AQHI is categorized on a numerical scale formulated by an equation based on the input of levels of pollutants. Mercury is a toxin under the *Canadian Environmental Protection Act, 1999* (S.C. 1999, c. 33) and is monitored by the AQSU.

[8] The respondent called Rachel Mintz and Christine Best to testify. The grievor testified on her behalf.

[9] The grievor has a master’s of science granted in 2002 from the University of Windsor. The title of her thesis was “Mercury Content in Fish and Sediment.” Prior to being hired by EC, she worked at the Great Lakes Institute for Environmental Research in Windsor, Ontario (affiliated with the University of Windsor, Faculty of Science), as a research assistant. The grievor started work with EC on June 29, 2009, at the MSC in the PNR AQSU.

[10] Ms. Mintz obtained her bachelor of science degree from the University of Alberta and her master’s of science in chemical engineering with a specialization in environmental engineering from the University of Calgary. She joined EC in 2004. She is currently an acting manager for the PNR Science Division of EC at the PC-05 group and level. During all material times, Ms. Mintz reported to the director (or acting director) of the Science Division.

[11] Ms. Mintz reported indirectly to Ms. Best, who was the regional director for the MSC for the PNR. Ms. Best had been in that position since June 2010 and has been with EC since 1990. Ms. Best has a bachelor of science degree in physics and is a professionally trained meteorologist. As the regional director, she is responsible for just under 300 employees, of which 10 are direct management reports. She is responsible for all areas of the weather service for Alberta, Saskatchewan, Manitoba, Nunavut and the Northwest Territories. Her office is located in the same building and on the same floor as the AQSU in Edmonton.

[12] In 2011, the AQSU was composed of six employees, including the grievor and Ms. Mintz. The grievor was one of three PC-02s in the unit; there was another scientist, who was at the PC-03 level, and one technician at the EG-06 group and level.

[13] Ms. Mintz testified that she was responsible for recommending that the grievor be hired to work in the AQSU as the grievor was in a pool of qualified PC candidates, had a master's degree, tested well on air quality, appeared to her to be a good fit for the group and there was a vacant position in the unit.

[14] Initially, after the grievor was hired, she was assigned to work on mercury projects as this was what her background was in and what she had done her master's work in.

[15] Ms. Mintz supervised the grievor from the commencement of her employment in June 2009 until February 2010. From February 2010 until October 2010, Ms. Mintz was away from the AQSU on language training. While Ms. Mintz was away, the grievor was supervised by either Brian Bukoski or Brian Procter.

[16] The grievor's first performance appraisal (Exhibit E-1, Tab 3), for the fiscal year ending March 31, 2010, indicated that the grievor was performing up to expectations. Ms. Mintz testified that she was responsible for the performance appraisal, with some input from Messrs. Bukoski and Procter. Ms. Mintz stated that the grievor was enthusiastic, and everything that she saw of the grievor's work to that point was positive.

[17] Ms. Mintz testified that when she returned to the AQSU after her language training, it was reported to her that there had been a dispute that the grievor had been embroiled in with the AQSU technician over the quality control of data being gathered on a mercury project being conducted by the grievor and assisted by the technician. The grievor's report with respect to the project had not been completed, and it appeared to Ms. Mintz that this was due to the dispute between the grievor and the technician. Ms. Mintz states that she gave the grievor guidance with respect to the data and thought that this would remedy the situation. It did not.

[18] Ms. Mintz stated that by January 2011, she had become concerned about the grievor's ability to do the work required of her. It was at or about this time that Ms. Mintz started to notice what she described as "territorial behaviour" from the

grievor. She stated that the behaviour also included the grievor contacting a lot of people outside of the unit to discuss issues; as well, the grievor appeared to be fixated on data issues. Ms. Mintz described the behaviour as questioning the honesty and integrity of the members of the AQSU, which in turn caused disruption to the unit. The main issues appeared to involve the quality control of data.

[19] In January 2011, the grievor was working on a project identified as the “2009 Genesee Air Quality Project” (“the Genesee project”). The data for the Genesee project was contained in files on an EC AQSU computer hard drive. According to the evidence of Ms. Mintz, the grievor refused to complete the tasks assigned to her as part of the Genesee project, because she had concerns about the safety and security of the data.

[20] A meeting was held on January 31, 2011. The grievor, Ms. Mintz and Kent Maier, from Human Resources (“HR”), were present. According to Ms. Mintz, the purpose of the meeting was to address the grievor’s refusal to quality control the data with respect to the Genesee project. Ms. Mintz stated that at that time, she believed that what happened was an aberration — a new employee with some growing pains. Ms. Mintz and Mr. Maier created minutes of the meeting (Exhibit E-1, Tab 5, Attachment 3). The grievor also made notes of the meeting (Exhibit E-1, Tab 5, Attachment 4). Ms. Mintz stated that at the end of the meeting, she believed that the grievor understood what was expected of her and that the grievor would proceed in the manner that she was instructed to with respect to the quality control of the data.

[21] On February 1, 2011, the grievor sent emails (Exhibit E-1, Tab 5, Attachments 5 and 6) that caused Ms. Mintz concern. Ms. Mintz interpreted these emails as the grievor refusing to do the work that she had been instructed to do the day before and in the manner she had been instructed. Ms. Mintz stated that due to the emails, she took the Genesee project away from the grievor. Ms. Mintz testified that over the course of the next few days, she found the grievor’s behaviour to be odd and erratic. Ms. Mintz described a number of incidents, and she summed up by stating that the grievor was appearing to her to be the opposite of the person she had hired.

[22] Ms. Mintz made notes of the events that took place between January 31 and February 16, 2011, which are found at Exhibit E-1, Tab 6. One of the incidents was also detailed in a memo dated February 4, 2011 (Exhibit E-1, Tab 5, Attachment 9). According to the memo, on February 4, 2011, Ms. Mintz wanted to meet with the grievor to discuss some of the behaviour she had noticed the previous few days. The

grievor refused. After consulting HR, Ms. Mintz requested that the grievor meet with her in Ms. Mintz's office, to which the grievor indicated she would prefer to stay in her cubicle. Ms. Mintz did go to the grievor's cubicle, during which a discussion ensued, wherein the grievor asked Ms. Mintz on several occasions not only if she was a scientist but to see her EC identification.

[23] Ms. Mintz testified that, in her opinion, at this time (the beginning of February 2011), the grievor was not working at the level of a PC-02.

[24] Ms. Mintz also testified that in or about January and February 2011, she received reports from other employees about the grievor's behaviour that it was making some people uncomfortable and that it was disruptive.

[25] Ms. Best testified that she managed by exception, meaning that in a large organization, she lets her managers do their jobs unless something needs her attention. She stated that she was aware of issues involving the grievor given the proximity of the AQSU to her own office. She would see and hear things as she was in the same physical location as that group.

[26] Ms. Best stated that prior to January 2011, her interaction with the grievor was minimal; her only recollection was at the office Christmas party in December 2010, where she stated they had a pleasant conversation. Equally, she stated she did not know Ms. Mintz very well.

[27] Ms. Best testified that she first became aware of issues with the grievor in late January or early February 2011. She had heard about some issues that had arisen; however, the behaviour that had caught her attention was that of the leaving of envelopes.

[28] Both Ms. Mintz and Ms. Best described the envelope leaving. The grievor had delivered envelopes to two different employees, which were marked to be opened only by the addressees. Inside each of these envelopes was another envelope, which was addressed to Ms. Best. One of the envelopes was addressed to Curtis Mooney, and the contents are found at Exhibit E-1, Tab 5, Attachment 8.

[29] Ms. Mintz testified that Mr. Mooney brought the envelope to her attention, and as Ms. Best was out of town, they called her and spoke to her. In her testimony, Ms. Best corroborated that she was in Toronto at the time and did receive a call about

the envelope within an envelope and instructed Ms. Mintz and Mr. Mooney to open the envelope addressed to her in case it contained important information. There was no letter, note or memo inside the envelope addressed to Ms. Best; it contained three pages, which were screenshot printouts from a computer index. Ms. Best testified that the information contained therein was meaningless to her, and that she did not know what it was or why it had been forwarded to her or forwarded to her in the manner it was.

[30] Ms. Mintz testified that given the behaviour that she had witnessed, she spoke with HR and Ms. Best, and a decision was reached to place the grievor on sick leave and require her to attend a fitness-to-work (“FTW”) evaluation. Ms. Best testified that she was in favour of the FTW evaluation as she was concerned that the grievor was exhibiting odd behaviour and not communicating in a normal manner with the other employees and her manager, and she was not performing in her work tasks. Ms. Best stated that she spoke with the grievor and suggested to her that she visit her own doctor. Eventually, when nothing seemed to change, Ms. Best testified that she and Ms. Mintz determined that a FTW evaluation was the appropriate way to deal with the issue.

[31] The grievor was away from the workplace from February 7 to 11, 2011, returning on Monday February 14, 2011.

[32] The grievor was advised of the decision to require her to undergo a FTW evaluation by a memo from Ms. Best dated February 16, 2011 (Exhibit E-1, Tab 5, Attachment 15), which stated as follows:

On February 7, 2011 you and I spoke in my office about management concerns regarding your recent behaviour. I told you that we were concerned that you may have health issues that are affecting your judgement, your perceptions and your workplace behaviour.

...

After speaking to your managers, it has become clear that your behaviour has not improved and the disruption to the work and to others in the workplace has become unmanageable. There has been no evidence of you accepting responsibility for this disruption, or of acknowledging that your behaviour is not acceptable.

As the employer we need to ensure that you are fit to work and at this point from your behaviour in the workplace and your lack of cooperation in addressing this issue we are not confident that you are in a healthy state. Therefore, we are placing you on sick leave until a Fitness To Work assessment can be completed by Health Canada. This will take several weeks, so the sooner it gets started, the better. We will need you to provide some information and sign consent forms.

...

[33] After being given the February 16, 2011 memo, the grievor left work and was on authorized sick leave. The FTW evaluation was sent to the Workplace Health and Public Safety Program at Health Canada (“HC”) under cover of a letter dated February 22, 2011 (Exhibit E-1, Tab 8).

[34] The FTW evaluation was completed, and a written report was provided to both the grievor and the respondent. The FTW evaluation report (“FTW report”) was completed by Dr. Marion Donald and is dated May 10, 2011 (Exhibit E-1, Tab 9).

[35] Dr. Donald did not testify.

[36] The FTW report set out the following comments under the heading “Discussion”:

...

Mrs. Forner’s tests suggest her personality is such that she has a strong need to be orderly, organized and to work with well-defined lines of authority. Mrs. Forner would be best suited to a job that “matches” these personality tendencies. Testing results suggest that Mrs. Forner is likely to be “pre-occupied [sic] with rules, minor details, procedures and ethical requirements to the point of demonstrating an excessively inflexible attitude that can have negative consequences within the workplace”. Mrs. Forner may have perfectionist tendencies that interfere with her ability to complete tasks (eg. she may repetitively check for minor details or errors or may focus excessively on insignificant procedures).

[37] Under the heading “Recommendations,” the FTW report stated as follows:

The employer is responsible to clearly communicate concerns about work performance and interpersonal relationships to any employee no matter what the underlying cause is. Ultimately the employer also has to determine whether or

not they can accommodate an employee in light of those concerns. It is Mrs. Forner's responsibility to work towards meeting her employer's performance expectations, preferably in conjunction with her health care providers.

Work site accommodation that may improve the chances of a successful return to work include:

- Ensuring that Mrs. Forner clearly understands her roles and responsibilities, those of her co-workers and those of her superiors.
- Ensuring that Mrs. Forner clearly understands her employer's work expectations.
- Trying to assign Mrs. Forner work that best matches her personality traits.
- Short, regularly scheduled meetings between Mrs. Forner and her supervisor in a private location to provide Mrs. Forner with timely feedback related to concerns about work performance and worksite behaviours. The employer may wish to consider if enlisting the services of an external mediator or facilitator would help to format these discussions and structure them such that maximal benefit could be realized. I would suggest that these meetings be limited to 30 minutes, are held once every week or two for the first 2 months after returning to work. The subsequent frequency would depend on the circumstances at that time.
- If Mrs. Forner's health care providers understood the employer's perception of worksite behaviours it could improve their ability to work with Mrs. Forner to increase her insight and to discuss ways to address concerns as they arise. Provided the health care provider felt it would be helpful, the supervisor could give Mrs. Forner structured written feedback of events where her personality features appear to be causing her difficulties at work. My hope is that Mrs. Forner would voluntarily share and discuss that written information with her health care provider(s). This should only be done if both Mrs. Forner and her health care provider(s) are supportive of using such feedback to facilitate medical follow-up.

[38] Under the heading "Conclusion and Summary," the FTW report stated as follows:

The personality traits that Mrs. Forner demonstrates are typically expected to be long-standing. However with appropriate support and assistance from her health care

provider(s) there is a potential for Mrs. Forner to gain increased insight into them, how they impact those around her and how she can best manage them. Worksite accommodation as outlined above would likely be beneficial.

Mrs. Forner must clearly understand that it is her responsibility to seek professional support (or find an alternative way) to address her employer's concerns and that it is the employer's responsibility to administratively manage work performance concerns. I feel that Mrs. Forner developed an increased grasp of this concept during the time that this Fitness to Work Evaluation was conducted.

[39] In cross-examination, the grievor confirmed that she received both a copy of the material sent to HC requesting the FTW evaluation as well as a copy of the FTW report. The grievor also confirmed that she reviewed the FTW report. Counsel for the respondent brought the grievor to page two of the FTW report, under the heading of "Discussion" at the part of the report referred to in paragraph 36 of this decision. When asked by counsel for the respondent if she agreed with the comments, the grievor stated that she had no recollection of that paragraph.

[40] Counsel for the respondent also brought the grievor to the portion of the FTW report under the heading "Recommendations" and reviewed it with the grievor. The grievor had very little recollection and stated she was not concerned about what the FTW report said. The grievor was brought to the fifth bullet under this heading, referred to at paragraph 37 of this decision, and she stated that she did not believe that she had an obligation to provide her own health care providers with her employer's concerns; nor did she ever bring the concerns of her employer to her health care providers.

[41] On May 26, 2011, the grievor returned to work. A reintegration meeting was held that day, the participants being the grievor, Ms. Mintz, Mr. Maier, Robert Honch, PNR Chief of Science, and Christine Hackett, a representative of the Professional Institute of the Public Service of Canada ("PIPSC"). At Exhibit E-1, Tab 10, are copies of the agenda for the meeting, notes prepared by Ms. Mintz for the meeting and Ms. Mintz's notes prepared after the completion of the meeting, which have the grievor's handwritten notes along the bottom.

[42] Both the grievor and Ms. Mintz were examined and cross-examined on the meeting of May 26, 2011, and the documents found at Exhibit E-1, Tab 10. Discussed at the meeting was the FTW evaluation, the performance evaluation for the year ending

March 31, 2011, management's expectations of the grievor, tasks for the grievor for the upcoming four weeks and the change of location of her workstation.

[43] Ms. Mintz stated that it was not her intention nor did she expect the grievor to return to work at full capacity. She expected that the grievor would need to gradually work up to what was expected of a full-time PC-02 atmospheric scientist over time.

[44] Exhibit G-3 is a sketch prepared by the grievor at the hearing of the layout of the work area of the AQSU. Exhibit G-3 shows the location of the grievor's work cubicle in relation to that of Ms. Mintz both before and after the FTW evaluation. The diagram shows that prior to her FTW evaluation, the grievor's work cubicle was almost directly opposite Ms. Mintz's office, whereas after the FTW evaluation, she was a little further away and around a corner.

[45] Starting with the meeting on May 26, 2011 until January 4, 2012, Ms. Mintz kept detailed notes of the grievor's performance as well as of her interactions with the grievor. At places, these notes include emails, memos and notes that were sent to or received from the grievor during this time frame. These notes were found at Exhibit E-1, Tab 11 ("Ms. Mintz's notes").

[46] Ms. Mintz testified that upon the grievor's return to work, weekly meetings were instituted, whereby Ms. Mintz would meet with the grievor. She stated that the weekly meetings were held as per the recommendations contained in the FTW report, where it recommended "[s]hort, regularly scheduled meetings between Mrs. Forner and her supervisor in a private location to provide Mrs. Forner with timely feedback related to concerns about work performance and worksite behaviours."

[47] Some of these weekly meetings would include Mr. Honch. According to Ms. Mintz, Mr. Honch was present as the FTW report also recommended that "[t]he employer may wish to consider if enlisting the services of an external mediator or facilitator would help to format these discussions and structure them such that maximal benefit could be realized." Ms. Mintz stated that although Mr. Honch was not an external mediator or facilitator, he was suggested as a third person by Ms. Best. Ms. Best testified that she felt that Mr. Honch was a good fit to fill the role of a mediator/facilitator between Ms. Mintz and the grievor, if necessary. She described Mr. Honch as a people-oriented person, who she felt could mediate or facilitate when communication appeared difficult between Ms. Mintz and the grievor. Ms. Best

described Ms. Mintz as more task- and goal-oriented and as focusing on the clients and science.

[48] The grievor confirmed that the weekly meetings with Ms. Mintz and Mr. Honch did take place. She could not recall if Mr. Honch was at all the meetings. The grievor confirmed that the weekly meetings were as a result of the recommendations as set out in the FTW report. While the grievor stated she had no specific recollection of the meetings themselves, she did state that Ms. Mintz did tell her what her tasks were and when they were to be done.

[49] Mr. Honch did not testify.

[50] According to Ms. Mintz, the weekly meetings were scheduled, and an agenda was followed. According to Ms. Mintz, Mr. Honch's task at the meetings was to try and assist the grievor if it appeared that she was having difficulty in understanding. The summaries of these meetings, as noted by Ms. Mintz, are found in Ms. Mintz's notes. The meetings are identified in the notes by the heading of "Weekly Meeting" or "Weekly Update."

[51] Ms. Mintz testified that in addition to the weekly meetings, she made it her practice to speak with the grievor on a daily basis, just to see how things were going and to see if the grievor needed any assistance. These discussions were also at times recorded in Ms. Mintz's notes.

[52] Ms. Mintz testified that shortly after the reintegration meeting, she noticed that the same types of problems with the grievor's work performance prior to the FTW evaluation were continuing. Ms. Mintz testified that despite being actively engaged with the grievor in her work tasks, it appeared to her that the grievor would get bogged down, focus on trivial or fringe tasks, ignore important tasks, and often require direction with respect to simple tasks.

[53] Ms. Mintz described that over the period of May 26 to July 14, 2011, the grievor's performance did not improve, and in fact, she described the grievor's performance as not meeting either that of a PC-01 or even a student, let alone a PC-02.

[54] On or about June 20, 2011, Ms. Mintz assigned the grievor a project involving the analysis of air quality from a Saskatoon, Saskatchewan, monitoring station ("Saskatoon data project") involving air quality due to forest fires. In essence, the

grievor was to gather data, which had been collected from the Saskatoon monitoring station, analyse the data, look for trends, and write a report, answering two questions. The grievor was given a deadline of July 13, 2011, for the completion of this project. As part of the assigned task, the grievor was required to develop a work plan.

[55] On or about July 7, 2011, Ms. Mintz assigned the grievor a second work assignment, which was meant to follow the completion of the Saskatoon data project. This work task was to see if EC could develop an Air Quality Health Index climatology (“AQHI climatology project”). This will be more fully discussed later in the decision.

[56] Ms. Mintz testified that during the course of the Saskatoon data project, she met with the grievor on a daily basis and spent a considerable amount of time walking her through the task and steps that needed to be taken to complete the task (including the work plan). According to Ms. Mintz, not only was the work associated with the Saskatoon data project not completed by the deadline, the grievor did not achieve the work plan tasks associated with the project, and a significant amount of coaching was needed to achieve the incomplete result. According to Ms. Mintz, the grievor did not answer the questions posed by the task and did not draw the scientific conclusions that are expected of a PC-02 atmospheric scientist. It appeared to Ms. Mintz that the grievor could not synthesize data, evaluate data, analyse data or draw conclusions.

[57] Ms. Mintz testified that she found that the grievor, despite being given extensive specific direction and coaching, could not follow those directions and could not achieve the desired result. In the end, Ms. Mintz stated that she did the work herself and then provided it to the grievor such that she could understand what was expected of her.

[58] Ms. Mintz stated that upon receipt of the grievor’s report on the Saskatoon data project, she met with Ms. Best and Mr. Maier on July 14, 2011 to discuss the grievor’s continued lack of acceptable performance, and it was determined that the grievor would be placed on a formal performance management plan (“PMP”).

[59] Ms. Mintz testified that at her weekly meeting with the grievor on July 20, 2011, she explained to the grievor that due to her performance issues, she was being placed on a PMP. Ms. Mintz stated that during this meeting, she discussed with the grievor her performance problems and also explained to her the PMP process. There are extensive notes Ms. Mintz kept of this meeting found in Ms. Mintz’s notes at pages 12 to 14.

[60] The grievor did not testify in chief about her performance on the Saskatoon data project. The grievor was cross-examined on the July 20, 2011 meeting and specifically with respect to the Saskatoon data project. The grievor was brought to Ms. Mintz's notes of the July 20, 2011 meeting, where Ms. Mintz had reflected that the grievor was having difficulty manipulating, analysing and synthesizing the data. The grievor had difficulty recalling the meeting and what was discussed. She stated that she did 95 percent of the work. When pressed that she did not do the analysis portion of the assignment, she admitted that she had not. When it was put to her that the analysis portion of the work is what distinguishes a PC-02 from a PC-01, she stated she did not know. The grievor agreed that she was placed on the PMP due to her performance on the Saskatoon data project.

[61] The grievor was placed on the PMP on July 26, 2011. The initial written action plan document was signed by Ms. Mintz and is found at Exhibit E-1, Tab 13. Also found at Exhibit E-1, Tab 13, immediately following the initial action plan document, are 15 weekly PMP action plan documents, dated from August 15 to December 16, 2011 (save and except the three-week period of September 30 to October 21, 2011, when the grievor was on annual leave).

[62] Ms. Mintz explained the written PMP action plan documents and the PMP process she followed for the balance of the grievor's employment. Ms. Mintz stated that she would create the weekly PMP action plan document from the notes she kept and her recollection of her interaction with the grievor over the previous week. She would then send the PMP action plan document to the grievor for her review and input.

[63] The PMP action plan documents were set out in a format that consisted of boxes, which would set out what work/tasks were assigned and expected of the grievor, what the deadline for the work/tasks was, how the work/tasks were to be carried out, and what Ms. Mintz would do to assist the grievor to carry out and complete her work/tasks.

[64] The first PMP action plan document stated that Ms. Mintz would provide the grievor coaching and would check-in with the grievor at her workstation on a daily or near daily basis. The purpose of Ms. Mintz checking in with the grievor was to allow the grievor the opportunity to inform Ms. Mintz of the status of the work and ask any questions or seek necessary input. The daily check-in also allowed Ms. Mintz to instruct, advise and counsel the grievor if it appeared to Ms. Mintz that the grievor had

gone off course or required assistance. In addition to the daily check-in, a weekly meeting was scheduled to allow the grievor and Ms. Mintz to discuss the annual work plan and its status.

[65] Just prior to being placed on the PMP, on July 18, 2011, Ms. Mintz assigned the grievor a third work assignment, involving the assessment of air quality in regards to the City of Red Deer (Alberta) civic yards (“Red Deer task”). According to Ms. Mintz, there was an air quality monitoring station in Red Deer, and in 2009, the civic yards, which house the city’s vehicles, moved closer to the monitoring station. The task assigned to the grievor was to analyse existing data both before and after the move of the civic yards to see what, if any, effect it had on the air quality being observed at the station. The due date for the completion of this assignment was July 29, 2011.

[66] As at the time she was placed into the PMP, the grievor had two work tasks assigned to her, the AQHI climatology project and the Red Deer task.

[67] Ms. Mintz testified that shortly after advising the grievor that she was being placed on the PMP, she noticed the grievor reading a math text on exponential equations and a statistics book. She further testified that she thought this was odd that someone with a master’s degree in science would be reading such elementary material and recalled asking the grievor if she had taken a statistics course, to which she states the grievor told her she could not remember. Ms. Mintz stated that it was troubling to her that someone with a master’s degree in science could only vaguely speak about statistics. This concern caused her to confirm that the grievor actually had obtained her master’s degree in science.

[68] The grievor testified that she was reading textbooks because she was now working in the modelling and analysis division in the office, an area that she had never worked in, and as such, she was reviewing texts with respect to this type of work.

[69] The grievor was out of the office on sick leave starting July 25, 2011 and returned to work on July 28, 2011. According to Ms. Mintz, due to the grievor’s absence, she decided that she would extend the completion date for the Red Deer task. Ms. Mintz stated that she asked the grievor to forward to her what work she had completed on the task so that she could determine how much more time would be required; however, she received no response.

[70] On July 29, 2011, the grievor emailed Ms. Mintz, advising her that she was going to see her doctor. The grievor was off sick the balance of Friday July 29, 2011 and did not return to work the following week (August 2-5, 2011), returning to work on August 8, 2011. At the daily meeting on August 8, 2011, Ms. Mintz extended the time for the completion of the Red Deer task to August 15, 2011. Ms. Mintz recalls the grievor asking for an additional 4-5 weeks to complete the work, and she agreed to extend the deadline to August 24, 2011.

[71] Ms. Mintz stated that on or about on Friday August 19, 2011, the grievor emailed her regarding both the Red Deer task and the AQHI climatology project. With respect to the Red Deer task, the grievor stated that she felt she was in a conflict of interest because some of the site design for the civic yards was done by a group of architects which employed her husband. With respect to the AQHI climatology project, the grievor stated that she felt she was taking someone's job. Ms. Mintz stated that she responded to the email on these points on Monday August 22, 2011 and confirmed that she was neither in a conflict regarding the Red Deer task nor was she taking someone's job by doing the AQHI climatology project.

[72] On August 24, 2011, the grievor handed in her completed work on the Red Deer task. The grievor's completed work on the Red Deer task is found at Exhibit E-1, Tab 15. Ms. Mintz described the work as rushed and sloppy; figures were missing, proper labels for the graph axis were absent, and there was no text describing the results and how they led to the conclusions. Most importantly, according to Ms. Mintz, the task the grievor was assigned, to investigate and assess the data before and after the move of the Red Deer civic yards, was not done. The final product only assessed data before the move. In her notes, Ms. Mintz described the work as appearing to be gibberish. Ms. Mintz testified that normally, scientists elaborate on what they saw in the data; how they analysed the data; and, their conclusions based on the data and analysis. According to Ms. Mintz, what the grievor completed and handed in on the Red Deer task was nowhere close to that expected of a PC-02 atmospheric scientist.

[73] The grievor was cross-examined on the Red Deer task. The grievor admitted that she was aware of what the task was, what the deadline was to complete the task, that Ms. Mintz checked in with her on a daily basis, that the grievor had an opportunity to ask any questions she needed of Ms. Mintz and that Ms. Mintz would assist her if she

was off track. The grievor admitted in cross-examination that Ms. Mintz told her she did not meet management's expectations.

[74] In cross-examination, the grievor denied that she missed analysing the most important data, being the data for after the move of the civic yards. At Exhibit E-1, Tab 13, the PMP document for the week of August 22-26, 2011 under "Red Deer task, Management's feedback" stated: "Most importantly, the task required Magda to investigate and assess the data before 2009 and after 2009. Based on her final product, Magda only looked at data before 2009." The grievor stated that she read the PMP document for the week of August 22-26, 2011 and signed the PMP document on September 9, 2011.

[75] Exhibit E-1, Tab 15, is what the grievor delivered to Ms. Mintz for the Red Deer task. The first two pages of the exhibit appear to be the same, save and except that on one, it has the title "Additional task," in bold, and, at the bottom, the grievor's work contact information. The balance of the first two pages comprise two parts: the top, which has three questions posed as part of the task under the heading "Objective," and below the three questions are what appear to be the answers to the three questions under the heading, "Deliverable." Following these pages are 9 pages, each with a different graph. The graphs chart information with respect to nitrogen dioxide ("NO₂"), ozone ("OZ") and particulate matter of less than 2.5 microns ("PM"). There are three graphs for each of NO₂, OZ and PM.

[76] The graphs were not explained to me. The x-axes of six of the nine graphs have data points indicating hours from 1 to 24, while on the other three graphs, the x-axes have data points from 8 through 19 and are simply marked as "Day." What the numbers 8 through 19 represent is not clear. The legend for the graphs identifies points plotted upon the graphs for each year as follows: 2006 is a blue diamond, 2007 is a pink square, 2008 is a yellow triangle and 2009 is a green square. The graphs for PM do not have information for the year 2009. The y-axes on six of the nine graphs that deal with NO₂ and OZ indicate parts per billion ("ppb"), while on the three graphs that deal with PM, the y-axes indicate micrograms per cubic metre of air.

[77] There is no information on the graphs to indicate over what period in any given year the data for each of the NO₂, OZ and PM values was gathered.

[78] The AQHI climatology project involved analyzing observed air quality values that had been obtained over time at various stations in the PNR to determine if and how the AQHI behaves by month and season. This project was more extensive than the Saskatoon data project and the Red Deer task and required the grievor to work with colleagues and interact with outside non-governmental stakeholders. According to Ms. Mintz, this project was PC-02 work. The due date to complete the entire assignment was March 31, 2012; however, there were a number of subcomponents to the project with their own deadlines, including the grievor submitting a work plan.

[79] Ms. Mintz stated that as part of the AQHI climatology project, use of the Excel spreadsheet would have been helpful to the grievor; however, the grievor appeared to not be able to use it. As such, Ms. Mintz showed her how to use the program and arranged for further training for her on the program.

[80] Ms. Mintz testified that as part of the AQHI climatology project, the grievor was to conduct this work in conjunction with her colleagues. Ms. Mintz testified that one of the initial facets of this project was to meet with her colleagues. Ms. Mintz stated that despite knowing that this was something that had to be undertaken at the front end of the work, the grievor was having difficulty meeting with them. According to Ms. Mintz, this should not have been a problem, since the colleagues the grievor was to meet with worked in the close proximity to her, in the same office. What made this particularly troubling for Ms. Mintz is that despite having been assigned this work in early July 2011, as of early August 2011, the grievor had still not met with the colleagues and had not even been able to schedule a meeting. It was clear to Ms. Mintz that the difficulty in scheduling the meeting was not from the colleagues' end. While the meeting between the grievor and her colleagues was to have been one of the first things carried out in this project, and a deadline of August 3, 2011 was set to complete this task, it did not actually happen until September 1, 2011.

[81] According to Ms. Mintz, the AQHI is calculated by a formula, which involves inputting and manipulating data for NO₂, O₃ and PM. Ms. Mintz testified that while the calculation is not overly complicated, and any university science student can understand the calculation, it can be cumbersome due to the amount of data from different places over time. Any given city may have a number of air quality monitoring stations.

[82] Ms. Mintz stated that the data for the AQHI climatology project had already been accumulated and quality controlled; as such, what was required by the grievor was organizing and analyzing the data. A deadline of August 25, 2011 was set for the grievor to organize the data for one station and calculate its AQHI.

[83] With respect to the daily check-in meetings, Ms. Mintz testified that it became apparent to her that the grievor continued to have a recurring problem of focussing on mundane issues unrelated to her specific work assignments. This problem can be encapsulated from the following note found in Ms. Mintz's notes for August 17, 2011:

Daily check-in with Magda

This took 1 hour. Discussion went in various directions.

*I asked her what she was working on. She said she was going to work on the AQHI project. She pointed to her calendar. I looked and said okay, how come it says DM Message and shows a block of time of 2 hours. She stated that she read either or both (as unclear) the DM message and the Oil sands air monitoring plan for 2 hours this morning. **I told she has been told on several occasions that these two items are considered off-focus for the tasks that have been assigned to her.** She said "but they are priority" items and referred to an email of mine (Staff Meeting re-cap) where we listed the information that was given to the S&T folks on priority programs. She also noted that as an atmospheric process scientist, she needs to do monitoring. I told her she is not limited to monitoring, and she doesn't need to be reading the oil sands monitoring plan for the work she has been assigned. She then said that she doesn't understand "off-course" because that is "of course: and that her English isn't very good. I asked her if my intention was clear to her regardless of the term off- course or off-focus. She nodded. I told her she cannot be spending hours a day reading these documents that don't directly relate to her work. She said it is impossible to stop herself from learning her passion.*

...

Magda asked if she can have 30 minutes to sort out the MasterCard issue from June. I told her that has been dealt with, no one has remaining questions. She spent several minutes trying to explain to me why this is an issue to her. I told her to drop it, trust finance, trust the system we have in place. There is no point in spending any more time on this. No spending 30 minutes on this.

I told her I feel very frustrated that we keep having conversations about the same subject matter. The daily

check ins are to talk directly about work and it is frustrating to be discussing items in which decisions and discussion have already been made.

...

[Sic throughout]

[Emphasis in the original]

[84] On August 22, 2011, Ms. Mintz's notes outline the daily check-in meeting of that day and state as follows:

...

10:15 am.

Daily Checkin.

Asked Magda what she was doing - she was reading the Oil Sands Monitoring Plan. I told her she has already been told this is off focus. She needs to get back to her tasks at hand. She indicated that her two tasks require clarity - she feels one is a conflict of interest and the other is taking someone else's job. I told her this is not the case, and she should not be reading the oil sands monitoring plan when she has work to do. I told her she can read it at home, or when she has a few minutes here and there. I told her that she has already been told this on a number of occasions.

...

[85] Ms. Mintz's testimony in front of me and her notes disclosed a recurring issue of the grievor not being able to carry out the basic functions related to tasks assigned to her. Ms. Mintz's notes disclose that both on August 24 and 25, 2011 with respect to the grievor's assignment regarding AQHI climatology project calculations, the grievor was having trouble doing the calculations, and on both those occasions, Ms. Mintz's evidence was that she showed her how to do the work. Her notes disclose these actions as follows:

August 24, 2011

...

1:00 pm Daily Check In

...

Magda asked if I could help her with the AQHI calculation part – she was stuck with figuring out the methodology in excel [sic]. I showed her how to fill in the cells to calculate the AQHI.

...

August 25, 2011

...

Sent in her AQHI formula. Calculation isn't quite right. Asked her to check and try it again.

Went and showed her how to re-do the calculation. Helped her sort out the number of brackets. She was also missing two hours. Showed her how to calculate the first two hours for the three hour running average. Also told her she should try doing the calculation "by hand" and spot check one of the data points.

Magda emailed back the new calculation. But said she doesn't have a calculator that she knows how to use. I told her to break down the formula – use excel [sic] or the calculator of the computer to sort out the equation.

...

[86] The testimony of Ms. Mintz, which is corroborated by her notes at Exhibit E-1, Tab 11, and the PMP action plan documents, was that the grievor continued to get bogged down with carrying out tasks, which were not central to her work assignments. It was also the testimony of Ms. Mintz and set out in her notes and the PMP action plan documents that the grievor continued to have difficulty carrying out the core functions of her position. Ms. Mintz's testimony and her notes and the PMP action plan documents reflect that Ms. Mintz was expending an inordinate amount of time instructing and coaching the grievor in the core functions of her position in what Ms. Mintz described as basic tasks that someone with a master's degree in science should be able to do as a matter of course. At Exhibit E-1, Tab 13, the PMP for the review period of September 6-9, 2011, Ms. Mintz wrote as follows:

...

Magda sent in the meeting notes. Information generated is a couple of metrics and the document is $\frac{3}{4}$ of a page long. Magda is waiting to finalize the document; however this is a small amount of work that shouldn't take more than a few hours. The draft version sent has 10 sentences added to an existing 10 sentences. It has taken her much longer than it

should to finalize the document and the progress is unsatisfactory.

Magda is continuing to make progress on the metrics. Significant coaching continues. The level and variety of this work is not PC-02; however this type of work is proving to be best suited to Magda.

On September 9, Magda left me a signed letter indicating that the Regina data has two years of missing data. Her note provides recommendations which include informing the database manager, and informing clients and team members. The response given to her was the same as the directions that were given to her the previous week for the Fort McKay data. She needs to realign the data to make sure the dates match for each pollutant. I am fully aware of the fact that there is missing data, and she will be able to best display this issue in the table that she is generating that summarizes and tallies the data for each station. Each time Magda sends these letters, she is demonstrating her inability to be resourceful and her lack of judgement. It is noted that this time the note did not recommend delaying the project, as did last week's note.

[87] On September 9, 2011, Ms. Mintz assigned the grievor a new task, to investigate the nitrogen dioxide concentrations at Fort McKay and Red Deer Alberta (“the NO2 task”), which was similar to a nitrogen dioxide case study carried out by one of her co-workers. The earlier case study looked at the Edmonton and Calgary stations. It was a simple study that looked at NO2 and how it interacts in the atmosphere. The grievor was to take the case study and apply it to the data from the Fort McKay and Red Deer stations. Ms. Mintz stated that the case study was a good example of scientific analysis and could be used to assist the grievor. In essence, Ms. Mintz wanted the grievor to take what the case study did with the Edmonton and Calgary data and do it to the Fort McKay and Red Deer data. The grievor was to provide a report of not more than a few pages, together with figures. The assignment due date was September 22, 2011. According to Ms. Mintz, the grievor already had all the data to complete the task, and the work should not have taken more than a few days. This task was set out in an email found at Exhibit E-1, Tab 17.

[88] As of September 9, 2011, the grievor had only two work-related assignments, the AQHI climatology project and the NO2 task.

[89] The NO2 task was submitted on time. Ms. Mintz stated that it was a better product than the earlier work submitted by the grievor, as it contained sentences and

figures; however, detail and scientific interpretation was still lacking. Ms. Mintz stated that she did not expect the same level of work out of the grievor as presented in the case study, but she did expect a scientific comparison. She stated that the work submitted was what she expected from a student and was not that of a PC-02.

[90] The final task assigned to the grievor was the “NAPS-BTEX” assignment. “NAPS” is short for “National Air Pollution Surveillance Network,” and “BTEX” is short for a suite of pollutants being benzene, toluene, ethyl benzene and xylene. The assignment was given to her during the week of November 7, 2011, and reference to it appears in the PMP document for the weekly meeting of November 21, 2011.

[91] According to Ms. Mintz, three weeks into the NAPS-BTEX assignment, the grievor was still getting acquainted with the data on the file. As of the end of the first week of December 2011, Ms. Mintz removed this work from the grievor. The PMP document for the review period of December 5-9, 2011 stated, under “Management’s Feedback to date,” with respect to the NAPS-BTEX assignment, as follows:

Magda was sick for the majority of the week. However, Magda provided a signed letter titled “BTEX draft plan” on December 9. Her plan outlines issues with the BTEX file. She has judged the calibration to be incorrect and the data to be invalid for peer review publication. Magda’s recommendation were to contact the BTEX project leader and provide this person information on her findings.

Magda’s letter does not meet PC-02 expectations. Magda has not discussed with her colleagues (lack of communication, lack of sufficient information gathering) and has not demonstrated scientific curiosity, analytical thinking or critical judgment. A more appropriate response would have included suggestions on next steps and would have documented the discussion with colleagues. Magda has been given strong coaching on these expectations, yet she still does not sufficiently execute the directions. Magda also continues to be fixated on the concept of a project leader. On this file, there has been team effort, and there is currently not one single person as the project leader.

Without being able to convince Magda that the data is valid and that the calibrations are correct, there is no further work for her on this file.

[92] On August 25, 2011, the grievor was orally reprimanded by Ms. Best for refusing to follow direction provided by Ms. Mintz with respect to work assigned. A discipline hearing was held on that day, and a written record was made of the meeting. As part of

the corrective action, the situation was to be followed up by Ms. Best and the grievor two weeks later. The written record, the grievor's response and the follow-up documentation were included at Exhibit E-1, Tab 20. Ms. Best testified that the oral reprimand was given to the grievor at the meeting and also that the grievor was given the speaking notes. The speaking notes set out both the context of the discipline and examples of the behaviour as follows:

Context

...

You were sent for a Fitness to Work Evaluation because of:

- *Disruptive behaviour*
- *Unacceptable performance*

You were not found to be unfit for work by the Health Canada physician.

Since your return your manager has been working to gradually reintegrate you into the work unit; however, your job performance has not been acceptable and a Performance Management Plan has been put into place. Your manager is dealing with the performance issues.

Behaviour Issue

My concern is the unreasonable amount of time your manager - and her manager have to spend because of your refusal to follow your manager's direction and complete tasks as assigned.

My management team have significant demands on their time and I am finding that the Science section, especially the Air Quality Science Group, has had difficulty managing its workload. A significant contributor to this is the unreasonable amount of time the AQSU manager must spend with you in order to get you to do your work. This is above and beyond the time expected to be spend on a Performance Management Plan.

Recent specific examples:

- *You had to be repeatedly told not to spend work time reading documentation that does not pertain to your assigned work, particularly with deadlines approaching. In this case it was the Oil sands Monitoring Plan and the various links associated with the DM's recent message*

- *You have repeatedly put off meeting with your colleagues as part of a project. Your manager has provided you with clarification and coaching regarding the meetings, but you have not yet acted.*
- *You did not comply with repeated requests to appropriately document your recent sick leave.*

[93] On September 26, 2011, the grievor was given a written reprimand by Ms. Best. This written reprimand was due to actions of the grievor in refusing to follow specific instructions of Ms. Mintz and Mr. Honch.

[94] The grievor was out of the office on annual leave from September 30, 2011 to October 21, 2011. She returned to the office on Monday October 24, 2011; however, she was off sick for the balance of that week, returning to work on Monday October 31, 2011.

[95] The grievor was asked about her health during the time frame of September 2011 to January 2012. She described problems with digestion and that she had a number of medical appointments and tests during this period. She also described a problem with her jaw, which occurred in December 2011, lasted approximately six weeks, caused her considerable pain, loss of sleep, an inability to converse and required her to have a liquid diet. In cross-examination, when asked whether she actually told a representative of management specifically about her digestion problems, she stated that she could not recall.

[96] Ms. Mintz's notes record that the grievor was off sick on November 22, 23 and 24, 2011. The grievor was in the office on Friday November 25, 2011. The notation for Friday November 25, 2011 states, in part, as follows:

...

Nov 25 - in the office. Sent in sick leave. She has now used up all 5 days that were credited.

Emailed Magda about the extended leave.

Talked to her in the afternoon. She said she had back and jaw pain, so that's why she was sick.

[97] Ms. Mintz's notes reflect the November 29, 2011 weekly update meeting with the grievor was cancelled as the grievor's jaw was bothering her, and it was painful for her to speak.

[98] Ms. Mintz testified that during this period in December 2011, when the grievor was experiencing problems with her jaw, she had occasion to go to see the grievor. On December 16, 2011, Ms. Mintz stated that she went to see the grievor, who did not respond verbally. Ms. Mintz recorded the exchange in her notes as follows:

Approached Magda. Asked her how it is going. She motioned to her jaw. I asked if it still hurt to speak. She nodded. Stood from her desk and looked down at the ground. I told her if she has any questions, she can email me or write them down. She sort of smiled. I asked if that was a reasonable plan. I then said thanks and walked away.

[99] Ms. Mintz testified that on December 19, 2011, she had emailed the grievor about what she was doing, as she had received an email from the grievor on December 15, 2011 and another on December 19, 2011 about something that had nothing to do with her work, something that Ms. Mintz described as a mass email. The grievor did not respond, and as such, Ms. Mintz went to her cubicle to speak to her. Ms. Mintz stated that the grievor was looking down and would nod or write. In her testimony, Ms. Mintz stated that she was aware of the jaw pain issue and the inability to speak; however, she found the grievor's behaviour strange. She stated that the grievor would turn away from her and face the opposite direction, even out of her peripheral vision. She stated the grievor would have her back to her and not respond in any way. Ms. Mintz described this as happening on more than one occasion in or about this time. Ms. Mintz's notes described the December 19 and 20, 2011 encounters as follows:

December 19

...

Magda hasn't responded to my email this morning about what she is doing. Went to talk to her. She is still unwilling to nod, shake her head, write on a piece of paper. I asked her if she is refusing to communicate with me, and she wouldn't respond.

Tried to do a meeting with Kent, Rob, me and Magda. Figure out why she is unwilling to communicate. Magda wouldn't come into the room.

...

Told Magda, with Kent there, that she can pack it up and go for the day. She is clearly having a bad and difficult day and

not willing to communicate. Expectation is for her to come back tomorrow and let me know what form of communication she is willing to use. Asked if she understood. No response. She stood, averted eye contact, no movement. Kent informed her that not communicating will result in discipline and possible suspension. She was told if she has questions she can contact Kent. She was encouraged to contact the union. No comments, no movement from Magda. Half way through the discussion she stepped back so that the chair was between her and me.

Dec 20 -

Emailed Magda and asked for her communication strategy, 8:25 am. No response by 9:15 am. Approached her and told her that I sent her an email that she needs to respond to right away. I said I would give her 15 more minutes (until 9:35 am) and that the email is in relation to what we are experiencing right now, which is the lack of communication. I said a condition of her being here today is that she finds some way to communicate with us. No response, no nodding, no movement. She stood in the back of her cubicle and looked at the ground.

Email from Magda asking for all communication to go through Christine and through her Union rep.

...

[100] Ms. Best testified that on December 20, 2011, she received an email from the grievor, copied to the local PIPSC representative Jeff Ryder, which stated as follows:

My jaw pain had got worse since yesterday afternoon. I haven't been able to talk since last week and now having only liquid food.

Yesterday afternoon around 2 pm, the AQSU Manager came to into my cubicle and started searching through my files on my laptop and the documents on my desk. I'm not sure what was the reason. Around 3 pm Mr. Rob Honch came into my cubicle and talked for about 10 minutes. I'm not sure what he was saying, he spoke on a soft voice. Around 3:30pm AQSU Manager and Mr. Kent Maier, HR Manager came into my cubicle insisting I talk with them, despite my jaw pain, and that I call my Union representative. This morning around 9:20am AQSU Manager came again into my cubicle and looked at my laptop. Unannounced and unscheduled visit [sic] into my cubicle are aggravating the situation. With your permission, I need this to stop.

I give my permission to tell the appropriate people not to communicate directly with me on the performance and

discipline issues. With your permission, I need that my work assignments come through your office. My Union representative must be included in the correspondence at all times.

[101] Ms. Best responded to the grievor's email of December 20, 2011 that same day as follows:

Magda

It is completely inappropriate for you to expect all of your communications to come through either your director to your union representative. You have presented no reason as to why you can use e-mail with some people and not others. Neither Jeff nor I are able to manage your communications for you.

No one will be directed to stop communicating with you directly. Additionally, you will stop copying your union rep on office communications. If you feel your rights are being violated or you are being disciplined, then you can contact your union at that time.

If you are unable to function normally in the workplace, we need you to go to a doctor and get a note that describes the special accommodations that must be made - if you are able to actually work at all.

I do not agree with your interpretation of events from yesterday afternoon. I was involved by phone in much of what was going on, so I am aware of it all.

There is absolutely no reason why your manager - or other colleagues - cannot drop by your cubicle. Your manager has an obligation to manage you and your activities. If she must enlist the help of others because you refuse to communicate with her, then that is what she must do.

I expect you to establish a means of communicating with your manager and colleagues by noon tomorrow (Wednesday). I expect you to have a detailed doctor's note by end of day Thursday if special accommodations are required.

If you are medically unable to perform your duties, you should not be coming to the workplace.

Your requests for significantly special treatment are denied at this time. Besides making some allowances for your sore jaw (pending a doctor's note) everything else stays the same.

[102] I was not provided with any evidence that the grievor filed a grievance about the complaints she expressed in her email of December 20, 2011.

[103] Exhibit G-2 is a note dated December 27, 2011 from Dr. Therese Chua of the Jasper Place Medical Centre, which states as follows:

Re: Magdalena Forner

...

To Whom It May Concern:

Ms. Forner can perform her duties as long as she limits her talking to a few words at a time for the couple of weeks. She is to be reassessed in a couple of weeks.

[104] Exhibit G-4 is a series of documents from the Jasper Place Medical Centre. The first is a prescription dated December 27, 2011, from Dr. Chua for the grievor for massage therapy. The second is a note dated January 10, 2012, from Dr. Sue Bernadas, locum for Dr. Chua, which simply stated, "This letter is to certify that Magdalena Forner was assessed in this office and was/is unable to work due to illness/injury." The third is a prescription from Dr. Bernadas, dated January 10, 2012 for the grievor for physiotherapy. The fourth is a note dated January 10, 2012 from Dr. Bernadas, which again simply stated, "This letter is to certify that Magdalena Forner was assessed in this office and was/is unable to work due to illness/injury. She may return to work February 6, 2012."

[105] Neither Dr. Chua nor Dr. Bernadas testified.

[106] The grievor confirmed in cross-examination that while she was experiencing pain with her jaw in December 2011 and January 2012, this did not keep her from either typing on her computer or writing with her hand. She confirmed that there were times that Ms. Mintz would come to see her and speak to her, and she did not respond to her due to the problem with her jaw.

[107] The statement of merit for the position of an atmospheric process scientist (PC-02) was put to the grievor in cross-examination. The grievor testified that she saw the statement of merit for her position prior to February 2011 but could not verify if the one contained at Exhibit E-1, Tab 8, was exactly the same as the one she saw prior to her being hired. In regard to the statement of merit, the grievor confirmed that she

understood that she required the abilities and skills as set out therein to do her job. She also agreed that she knew she was required to have the characteristics as set out in the statement of merit under the heading of “Personal Suitability.”

[108] The job description for the position of atmospheric process scientist (PC-02), also found at Exhibit E-1, Tab 8, was put to the grievor in cross-examination. The grievor testified that prior to February 2011, she had not seen it; however, as of March 2011, she had a complete copy of it. The grievor confirmed in cross-examination that the job description of the atmospheric process scientist (PC-02) outlined her work duties and that she understood that she had to meet the requirements of the job description and the standards as set out in the statement of merit to be a PC-02 atmospheric scientist.

[109] The grievor confirmed in cross-examination that she understood that she had to meet the requirements of both her job description and the statement of merit to be an atmospheric process scientist at the PC-02 group and level.

[110] Exhibit E-1, Tab 24, is a document entitled “Environment Canada Competency Dictionary.” It sets out, by level, the core, function and work-specific competencies. According to Ms. Mintz, it can be used in a number of different ways; she stated she used it for evaluating employees. This document was shown to the grievor in preparation for the hearing before me, and she testified that prior to her preparation for the hearing, she had never been shown this document before. Ms. Mintz testified that she did not believe this document was ever provided to the grievor.

[111] Exhibit E-1, Tab 22, is a document created by Ms. Mintz and is entitled, “Analysis for the purpose of investigating possible alternative employment opportunities (assuming positions available)” (“management assessment document” or “MAD”). According to Ms. Mintz, this MAD was started, in its initial form, in November 2011 and was finalised after the grievor was terminated from her employment. The MAD was an analysis of the grievor’s performance as against the statement of merit criteria for the PC-02 atmospheric scientist position using the competencies as set out in the EC Competency Dictionary.

[112] The MAD was never provided to the grievor prior to the hearing.

[113] The grievor testified in chief that between May 26, 2011 (the date of her return to work following the FTW evaluation) and January 2012 (her termination), she could not recall receiving any communications regarding correcting her work.

[114] The grievor testified in her evidence-in-chief that as part of the PMP, she was never provided with instructions, standards or expectations. She further testified that it was her understanding that she would be on the PMP until her manager saw an improvement in her work.

[115] The grievor admitted in cross-examination that she had both daily and weekly meetings with her manager and typically Ms. Mintz would ask her what she was doing, and that at times she did ask Ms. Mintz for assistance.

[116] In cross-examination, the grievor was brought to several places in Ms. Mintz's notes where there were references to meetings that took place both before and after the PMP was implemented and Ms. Mintz, or someone at the direction of Ms. Mintz, is referenced as providing the grievor with feedback, guidance or assistance with respect to her work and, in places, giving her assistance and instructions. The grievor would often either agree that she had received the feedback, guidance or assistance or that she had no recollection that the meeting or the discussion took place.

[117] In cross-examination, the grievor stated that while she recalled meetings with Ms. Mintz and Mr. Honch (some of the time), she did not recall what was discussed at the meetings. While the grievor admitted that at these meetings, she was told what work to do and when to do the work, she did not recall that she was told how to do the work.

[118] In cross-examination, the grievor was brought to the first page of Ms. Mintz's notes, and the proposition was put to her that one of the reasons for the weekly meetings was to give guidance and feedback to her on her work. The grievor stated that this was possible. The grievor was brought to the location on the first page of Ms. Mintz's notes, where it referred to week one of the grievor's reintegration, where it referenced, "Guidance given to Magda on Excel function short cuts." The grievor stated that she did not recall that. A little further down on the first page of Ms. Mintz's notes under the heading of "June 6-10," there is a reference to June 10 and guidance given to the grievor by Ms. Mintz. The grievor stated she did not recall that. On the second page of Ms. Mintz's notes, under the heading of "June 15," the grievor was brought to a

portion of the notes where Ms. Mintz provided her with guidance, and at that reference, the grievor confirmed that Ms. Mintz provided her with guidance and assistance.

[119] The grievor testified that when she was placed on the PMP, the weekly and daily meetings continued, and Ms. Mintz continued to define the work she was to carry out and the time frame in which it should be done. In cross-examination, the grievor admitted that the written PMPs were provided to her as they were created and that they provided summaries of the work she was to carry out and the deadlines she was to meet. The grievor also admitted that the PMP document also provided her with the opportunity to provide comments on her work.

[120] In cross-examination, the grievor was taken through the second written PMP document for the review period of August 15-19, 2011 and was brought to the first section, which set out the Red Deer task. The first box outlined the task, the second box set out the grievor's progress report to the date of the meeting and the third box set out management's feedback to the grievor to the date of the meeting. The grievor agreed that this format was the format that was followed for the PMP process. The grievor agreed that she did get her manager's feedback on the work. The grievor was also brought to the third written PMP document, for the review period of August 22-26, 2011, and confirmed that the document was set out in the same format as the previous week's PMP document.

[121] The grievor stated that she dreaded going to the weekly PMP meetings because the negative feedback was affecting her. She agreed that she was told on multiple occasions that she was not meeting the expectations of a PC-02. The grievor agreed on cross-examination that she was told on multiple occasions that she was spending time on tasks that were not part of her assigned duties, and because of this, Ms. Best instructed her to obey Ms. Mintz's instructions. The grievor also agreed that at the daily and weekly meetings, Ms. Mintz would advise her she was off-task and instruct her to stop. The grievor admitted that she was told on multiple occasions to stop spending time on the MasterCard issue.

[122] Ms. Best testified that on November 10, 2011, she met with the grievor and discussed the grievor's lack of improved performance. Ms. Best stated that she was trying to get the grievor to talk to someone, a doctor, a priest or a friend, as it was clear to Ms. Best that the grievor did not understand what it was that her employer was

asking her to correct in the workplace. Another meeting was scheduled with the grievor, Ms. Best, Ms. Mintz and Mr. Maier on November 15, 2011 in Ms. Best's office to discuss the grievor's performance. The email invitation for the meeting was sent on November 10, 2011 (Exhibit E-1, Tab 21) and stated as follows:

Magda

You have been under a performance management plan for a few months and recently subject to discipline. As discussed in our meeting today (Nov10), we have not seen sustained improvement and must move on to next steps. Management has tried every reasonable avenue to assist you in improving your performance and behaviour. Unless new information comes to light, we need to move on to the next steps.

These next steps will be discussed in more detail at this meeting. Management has helped to try to bring your performance up to the level required of your current position and this has been unsuccessful to date. The next step is for management to determine if you are suited to another function or position in the workplace. If no other suitable function/position can be found, management will then pursue termination.

If there is information that you would like to share with management that may help with returning your performance and behaviour to satisfactory, please do so at this meeting.

I encourage you to bring a union representative or other person with you to this meeting. HR can help you identify union representatives if you do not know of one.

...

[123] The November 15, 2011 meeting did proceed, and a letter of that same date (Exhibit E-1, Tab 21) was provided to the grievor at the meeting. Ms. Best testified that the purpose of the letter was to tell the grievor that she was not meeting the standard required of her, that the employer had been troubled by her performance since the end of 2010/beginning of 2011 and that she had two months to get her performance "up to snuff." Ms. Best also stated that management would look for something that might meet her competency level. Ms. Best stated that if they saw an improvement in the grievor's performance, they were prepared to give her more time to work and improve her performance; if not, they would try and find something else that better suited her.

[124] The grievor confirmed that she received the November 15, 2011 letter on that day, which letter read, in part, as follows:

The purpose of this letter is to inform you that you are not meeting the requirements of your position and to advise you of the consequences of continued failure to meet these requirements.

Your performance for the period from late July, 2011 to October 28 has been rated as unsatisfactory and you have been working within a Performance Management Plan (PMP) during that time. Persistent shortcomings have been documented in the areas of critical thinking, judgment, effective communication, and initiative.

...

You have been provided with numerous opportunities to make the necessary adjustments to meet the requirements of your position. Specifically, you have been provided with clearly defined expectations, frequent coaching and task-specific training, both formal and on-the-job.

...

You have also been informed of the requirements of your position as a PC-02 Atmospheric Processes Project Scientist by your supervisor and manager, through the establishment of goals in the Performance Objectives and Performance Evaluation process. Feedback has been provided to you on a regular basis, and you have been given opportunities to discuss your needs with your supervisor, manager and director.

. . . you were given limited duties and a light workload to allow you to focus on reintegrating into the workplace and improving your performance to a satisfactory level. The intent was to gradually increase the scope, complexity and volume of work as performance improved, ultimately reaching satisfactory performance at a PC-02 level. Despite the efforts of your supervisor, your performance within the PMP still reflects unsatisfactory performance and you are continuing to be assigned a limited subset of the duties of a PC-02 position. Recent attempts to broaden the scope of responsibilities have resulted in the repetition of problematic behaviours.

...

At this time I must inform you that if by January 16, 2012, your performance has not improved to the point where you meet the requirements of your position, I will proceed in

recommending that you be demoted to a suitable position, if one is available or that your employment be terminated.

...

[125] Ms. Best, in cross-examination, confirmed that the period for which the grievor's performance was assessed for the purpose of determining her unsatisfactory performance ended as at December 16, 2011.

[126] The grievor testified that she took notes of the meetings she had attended after her return to work on May 26, 2011; however, no notes were produced at the hearing.

[127] On January 6, 2012, Ms. Best wrote to the grievor and advised her as follows:

...

On November 15, 2011, I met with you to inform you that your performance for the period late July, 2011 to October 28, 2011 had been rated as unsatisfactory. You have been working within a formalized performance management plan and getting weekly performance feedback since late July.

Currently, your performance assessment for the period of October 31, 2011 until December 16, 2011, remains unsatisfactory with no improvements shown.

Your supervisor and I have been working with you since late July 2011 and have provided you with extensive verbal and written feedback on the various tasks assigned to you as an Atmospheric Process Scientist. Moreover, I advised you that you did not meet the requirements of your PC-02 position and it is clear that you have not demonstrated the skills and competencies required as an Atmospheric Process Scientist.

As you are aware, on November 15, 2011 in our discussion of your performance, I informed you that if your performance did not improve, senior management may consider termination of employment for unsatisfactory performance.

As all previous efforts to assist you in improving your performance have been unsuccessful, I have determined that it is unlikely that any amount of additional attention would overcome the identified deficiencies for you to perform the full range of duties of your position as a PC-02, Atmospheric Process Scientist.

Therefore I am recommending to the delegated authority, David Grimes, Assistant Deputy Minister, Meteorological

Service of Canada, that action is taken to terminate your employment for unsatisfactory performance in accordance with section 12. (1)(d) of the Financial Administration Act.

...

[128] By letter dated January 26, 2012 from David Grimes, Assistant Deputy Minister of Environment Canada, the grievor's employment was terminated. The letter outlined the reasoning behind the termination as follows:

...

This is further to the letter you received from Christine Best, Regional Director, Weather and Environmental Operations, Meteorological Service of Canada dated January 6, 2012, outlining the problems with your work performance assessed over the period of late July 2011 until late December, 2011. Your unsatisfactory work performance has caused management serious concerns and has resulted in significant and extraordinary efforts to provide additional training and coaching to assist you in meeting performance expectations. In spite of these measures, you have failed to demonstrate a significant and sustained improvement. Your performance has deteriorated to a less than satisfactory level and has remained so for the last fourteen review periods.

I have reached the conclusion that you are not able to perform the full range of duties of your position as a PC-02 Atmospheric Process Scientist. Further, since all previous efforts to assist you in improving your performance have been unsuccessful, I have determined that it is unlikely that any amount of additional work would overcome the identified deficiencies. As well, attempts to locate an alternate position at both the PC-01 and PC-02 level have been unsuccessful because you have demonstrated a lack of the key competencies required for other PC type work.

...

[129] Ms. Mintz testified that she agreed with the decision to terminate the grievor's employment because she did not see the grievor meeting the criteria as set out in the statement of merit, which was why she was hired in the first place. Ms. Mintz stated that the grievor seemed to continue to question the validity of the data. She had trouble processing and analysing the data and synthesising information. She continued to be off-topic and off-focus, despite being reminded time and time again. The grievor could not interpret the science and come to a conclusion, which was critical in her job. As an employee, the grievor could not work in a team; she was not able to adapt or

communicate. Ms. Mintz stated that the grievor had trouble with judgment, as she would time and time again question the same things she had already received answers to.

[130] Ms. Mintz stated that when she compared the statement of merit criteria to the work and behaviour of the grievor, she could barely find anything that the grievor was accomplishing.

III. Summary of the arguments

A. For the respondent

[131] The respondent states that section 230 of the *Act* sets a high standard for the grievor to overcome to allow an adjudicator to overturn the decision of the employer to terminate employment for unsatisfactory performance.

[132] The respondent relies on *Raymond v. Treasury Board*, 2010 PSLRB 23; *Plamondon v. Deputy Head (Department of Foreign Affairs and International Trade)*, 2011 PSLRB 90; *Mazerolle v. Deputy Head (Department of Citizenship and Immigration)*, 2012 PSLRB 6; and *Reddy v. Office of the Superintendent of Financial Institutions*, 2012 PSLRB 94.

[133] The test in cases such as these is set out in *Raymond* at paragraphs 121-124:

121. ...Was it reasonable, based on the evidence, for the deputy head to deem the performance of the employee in question unsatisfactory?

122. If the adjudicator finds that the deputy head's assessment of the employee's performance was reasonable, he or she has exhausted his or her jurisdiction and must find that the demotion was for cause. It is important to note that, under section 230 of the Act, the adjudicator's assessment must focus not on the reasonableness of the employer's decision to demote the employee but rather on the reasonableness of the employer's assessment of the employee's performance. Consequently, it is not the decision to demote that is at issue but the assessment of the adequacy of the employee's performance. Those criteria are much more restrictive than those under the former Act, which still apply to demotions and terminations for reasons other than unsatisfactory performance.

123. By including section 230 in the Act, I believe that Parliament clearly wished to limit an adjudicator's scope of

intervention in two ways. First, Parliament wanted to avoid having the adjudicator substitute his or her opinion for that of the employer with respect to the assessment of the employee's performance by not allowing the adjudicator to intervene unless there is evidence that the deputy head's assessment was unreasonable. I see in the legislative framework Parliament's recognition that the employer is in a better position than the adjudicator to assess the quality of an employee's performance, whom it sees perform on a daily basis.

124. Second, an adjudicator does not have the mandate to assess the appropriateness of the demotion or termination measure if the adjudicator finds that it was reasonable for the deputy head to deem the performance unsatisfactory. Thus, either the deputy head's assessment that the employee's performance was unsatisfactory was reasonable, and the demotion is maintained, or the deputy head's assessment was unreasonable, and the demotion is set aside. The adjudicator may not substitute a penalty that he or she considers more appropriate.

[134] The respondent states that in both *Raymond* and *Plamondon*, the term "reasonable" is defined as it has been set out by the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, as follows:

[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. . . .

[135] Although the grievor appeared to start work and have positive reviews, it was clear that there were problems, which were outlined in the letter that was dated February 20, 2011 and sent to HC. It is clear from the evidence that the problems initially identified as far back as February 2011 continued throughout her employment, until her termination.

[136] The time period that the grievor's work was assessed was roughly one year. The same problems that were identified in early 2011 were the same being exhibited by the grievor late in 2011. It was clear from the evidence that the behaviour of the grievor was not going to change, and her work performance was actually deteriorating.

[137] The grievor was exhibiting tendencies, which demonstrated a pattern of her being distracted from her core work tasks. When she would go off-focus and her manager would instruct her not to do something, she would fail to comply with the instruction.

[138] A repeated problem existed when it came to data. The grievor was required to analyze the data. Instead of analyzing the data, the grievor would focus on auditing or quality controlling the data.

[139] The grievor was provided with a high degree of mentoring and coaching from Ms. Mintz. On a daily basis, Ms. Mintz would stop by to see what she was doing and see if she needed help and would offer help. If the grievor had any questions, there were plenty of opportunities for her to ask those questions of Ms. Mintz. Despite the many opportunities, the grievor admitted in cross-examination that she rarely asked any questions.

[140] Exhibit E-1, Tab 5, Attachment 3, is a record of a meeting held on January 31, 2011, in which a dispute over an assigned task regarding the Genesse project was discussed. During the course of the meeting, it was made clear to the grievor what her specific task was. This was the first of multiple meetings in which the grievor's manager met with her and set out specific direction. In addition to the daily meetings, there are also weekly meetings that are documented. Eventually the grievor was placed on the PMP, of which there are 16 written PMP documents.

[141] The grievor was clearly aware of the employer's dissatisfaction with her performance as early as February 2011. In February 2011, the employer removed the grievor from work and sent her for a HC assessment. The grievor was provided with a copy of the material sent to HC dated February 20, 2011, requesting the assessment. A simple review of the letter discloses that the employer is unhappy with the grievor's performance.

[142] The FTW report dated May 10, 2011 clearly outlines that the grievor has personality traits that may pose difficulty for her in her employment. There is clear direction in that report for the grievor's own health care providers to work in conjunction with her employer to assist the grievor in working through these personality traits. It was incumbent on the grievor to permit her employer the opportunity to work in conjunction with her health care providers to address these issues. The grievor failed to take this step.

[143] The FTW report discloses the same traits that the employer identified, which traits and behaviours continued to the end of the grievor's employment. If the grievor argues that she did not have enough time to improve, this is incorrect, as her behaviour was not likely going to change.

[144] There were not only multiple meetings, emails and directions from Ms. Mintz, but there were meetings, emails and direction from Ms. Best. Ms. Best's involvement is important; it demonstrates that the employer was not letting the grievor just "flap in the wind." Ms. Best was responsible for over 300 employees yet was spending an inordinate amount of time trying to get the grievor on track.

[145] The meetings, emails, PMPs, letters and discussions clearly spelled out for the grievor the expectations and requirements she was required to meet. It is inconceivable that the grievor did not know what she had to do or the standards that were expected of her.

[146] With respect to the evidence, Ms. Mintz made notes contemporaneously with the events as they occurred. Those notes were entered into evidence. In addition, Ms. Mintz had a clear recollection of events, independent of the notes. On the other hand, the grievor was a difficult witness who relied only on her memory. The grievor stated she had notes but did not provide them. In many instances, the grievor had no recollection of the events in question, and when cross-examined, much of her recollection was limited or inaccurate. Where there is a conflict in the evidence, given all of the evidence, the testimony of Ms. Mintz and Ms. Best should be preferred over that of the grievor.

[147] With respect to the Saskatoon data project, Ms. Mintz stated that it was not delivered on time and the task assigned was not achieved and that more coaching was required than would have been expected for that of a PC-02. It was the grievor's

performance on the Saskatoon data project that led the employer to place the grievor on the PMP.

[148] It is clear from the notes of Ms. Mintz that the grievor was not just placed on the PMP and left there without any direction or assistance. Ms. Mintz spent a considerable amount of time and effort trying to figure out what the problem(s) were. Ms. Mintz asked the grievor a great deal of questions. The record shows that anything the grievor needed was provided.

[149] The Red Deer task was designed to determine the impact of the movement of the city's civic yards would have on air quality. The yards moved in 2009, but the grievor failed to assess the air quality after the movement of the yards. If you are tasked with comparing the movement of the yards, it makes sense to assess the data both before and after the move; the grievor failed to do this, which is a basic scientific premise.

[150] The grievor's performance with the AQHI climatology project was no different than the other projects. The grievor required significant coaching. She was distracted. She focused on fringe work tasks unrelated to the project. Every few days, new distractions took her away from the project. She had to be continually brought back on-task by her manager.

[151] The NO₂ assignment disclosed to the employer that the grievor was not progressing.

[152] The final task assigned to the grievor was the NAPS-BTEX project, which was assigned in November 2011. The grievor again had difficulty dealing with data. One month into this assignment, Ms. Mintz determined that she could not convince the grievor that the data was valid, so there was no point in having the grievor continue to work on the assignment.

[153] While it is the respondent's position that the employer only had to assign the grievor work and point out that she was not meeting the standard required of her, the employer in this case went much further. The grievor's manager was much more involved due to the lack of critical thinking, shortcomings in communication, easy distractibility and the inability to grasp simple concepts.

[154] The grievor spent inordinate amounts of time on matters not directly related to her work, which her manager had to remind her were off-focus. The grievor could not demonstrate that she could do the science work properly; she had difficulty communicating, and she had difficulty completing basic day-to-day tasks.

B. For the grievor

[155] The grievor submits that the test for reasonableness is that which is set out at paragraph 131 of *Raymond*, which states as follows:

. . . I do not see how it would be possible to find that it was reasonable for a deputy head to consider the performance of one of his or her employees unsatisfactory if the evidence showed the following:

- the deputy head or the supervisors who assessed the employee's performance were involved in a bad faith exercise;*
- the employee was not subject to appropriate standards of performance;*
- the employer did not clearly communicate the standards of performance to the employee that he or she was required to meet; or*
- the employee did not receive the tools, training and mentoring required to meet the standards of performance in a reasonable period.*

[156] The grievor stated that her argument was based on the following three points:

1. Standards by which the grievor was being judged were never clearly communicated to her;
2. The grievor was not given the appropriate assistance, tools, and guidance and mentoring; and
3. The grievor was denied a reasonable period of time to improve her performance.

1. Failure to clearly communicate standards

[157] The communication of work requirements and standards from the employer were inconsistent. While the grievor has a limited recollection of the weekly meetings,

the absence of evidence is not evidence in and of itself. The grievor states that she was not provided with instructions as to what she was to do, the standard she was required to meet and against which she would be judged, and how she was to meet that standard.

[158] The employer's standards, which the grievor was required to meet, are found at Exhibit E-1, Tab 22, the MAD, which was created based on Exhibit E-1, Tab 24, the EC Competency Dictionary. Neither the MAD nor the EC Competency Dictionary was ever provided to the grievor.

[159] The MAD was more or less complete, according to Ms. Mintz, in late November or early December 2011. The MAD, on its face, states that it was created in November 2011 and December 2011 and finalized in February 2012. It is the standards that are set out in the MAD against which the grievor was judged. How can the grievor meet standards that she was never provided? Extremely important is that the MAD was being compiled when the grievor was on notice that her job was in jeopardy. The employer should have provided the MAD to the grievor and should have added a further column in it, which set out for the grievor what she could have done to address the problems that the employer had identified.

[160] Given the evidence as set out in the FTW report and the grievor's personality traits, it was critical to provide to her a written set of standards that states to her this is the standard against which you are being judged and how you are failing to meet that standard. According to the evidence of Ms. Mintz, when she gave instruction to the grievor, it was not sinking in; if that was the case, how can the employer justify not giving the required standards to the grievor in writing?

[161] The statement of merit criteria and the PC-02 work description are *pro forma* documents that were not tailored to the grievor's problems.

[162] The term "clearly" is important and must mean something. Providing a volume of material does not satisfy the requirement to convey information clearly. The grievor was entitled to a clear statement of what needed to change. While there is evidence of a lot of documents and a lot of tasks and duties, the grievor was never provided the appropriate tools and training to assist her in achieving this goal.

[163] The communications from the employer were inconsistent. The grievor was repeatedly instructed by Ms. Mintz not to communicate with people without vetting those communications through a manager (in most circumstances Ms. Mintz herself); in fact, the grievor found herself subject to discipline for those communications. At the same time, the grievor was criticized for failing to act independently.

2. Appropriate tools and training

[164] The grievor referred to *Canada Council for the Arts v. Public Service Alliance of Canada*, 2003 CLB 15013. While the employer has produced a lot of documents to suggest what was not going correctly, it did not provide to the grievor the tools and training for her to achieve the goal of meeting expectations. Ms. Mintz stated that she had an open-door policy but was disappointed when the grievor did not come forward. It is the grievor's position that it was not up to her to come to Ms. Mintz but for Ms. Mintz to go to her.

[165] According to Ms. Mintz, minimal supervision and working independently were expected, and this was reflected in the respondent's approach right until the termination of the grievor. The grievor referred to Ms. Mintz's notes, where Ms. Mintz stated that she expected independence from the grievor; independence was the goal, not the means. Mentoring and other tools and techniques were required to remedy the problem and achieve the goal. These tools and techniques were not provided.

[166] The grievor stated that it was not sufficient of the employer to argue that the grievor exhibited bad judgment; if the employer wanted the grievor to correct this, the employer should have given the grievor examples of what good judgment was as opposed to her bad judgment. The grievor argued that the employer had a duty to identify the problem and provide feedback.

[167] The grievor referred me to *O'Leary v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2007 PSLRB 10, where it states at paragraphs 306 and 316 as follows:

306. . . . Aside from the fact that the action plan mentioned that Ms. Hodder and Mr. O'Leary would meet on a daily basis, nothing in the action plan was aimed at addressing the problems the grievor was experiencing on the job. It is a list of the tasks a staffing officer should perform and contains no real actions that would provide the support and mentoring

the grievor needed for the job to overcome his lack of experience in staffing. . . .

. . .

316. . . . I am also of the view that the employer failed to provide sufficient training to assist the grievor in overcoming his difficulties. The training and assistance provided were deficient in more than one way. The action plan did not propose any real means to remedy the problems, additional training was refused until files and backlog were cleaned up, and, other than two days with Mr. Millican, no on-the-job training was offered. . . .

3. Reasonable period of time

[168] The grievor was not provided a reasonable period of time to improve. The employer originally advised the grievor she had two months to improve and then reneged on that and gave her only one month. On November 15, 2011, the grievor was told if she did not improve by January 16, 2012, Ms. Best would recommend that she be terminated from her position. The decision to recommend termination had been made by Ms. Best by January 6, 2012, and Ms. Best admitted in her testimony that she only relied on information up to December 16, 2011 to make that decision. According to the grievor, this is fatal to the employer's case. Having provided the grievor with two months to improve, they were now barred from terminating her.

[169] The grievor referred me to *Chambers v. Axia Netmedia Corporation*, 2004 NSSC 24, wherein the court stated at paragraph 62 that:

[62] Where the employer offers a stated period of probation, combined with a specific warning as to the deficiencies in performance and the consequences of a failure to rectify them, and the employee accepts, it is not, absent the very clearest language to the contrary, for the employer to abrogate the stated period and earlier dismiss the employee. . . .

. . .

It is not open to the employer to give, on the one hand, and to take away with the other.

[170] The grievor also cites *District of Parry Sound Social Services Administration Board v. Ontario Public Service Employees Union Local 324*, [2003] 2 S.C.R. 157, where the Court states, at page 181, as follows:

To begin with, I think it useful to stress the presumption that the legislature does not intend to change existing law or to depart from established principle, policies or practices. In Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co., [1956] S.C.R. 610, at p. 614, for example, Fauteux J. (as he then was) wrote that “a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed”. In Slight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038, at p. 1077, Lamer J. (as he then was) wrote that “in the absence of a clear provision to the contrary, the legislator would not be assumed to have intended to alter the pre-existing ordinary rules of common law”.

[171] The grievor requested as relief that she be reinstated with all lost wages and benefits and with interest on those losses.

C. Respondent’s reply

[172] The grievor has mixed up the assessment period and the termination period. The grievor was on sick leave between January 6 and January 16, 2012. She was terminated on January 26, 2012. What would the grievor realistically have done since she was off on sick leave?

[173] While the grievor was provided with a warning in November 2011, there was no requirement at all to provide her with a warning.

[174] While the grievor stated she was not given the standards against which she was expected to perform, what is meant by the jurisprudence is that the employee must be given concrete practical standards that the employee can understand. This is reflected in *Canada Council for the Arts*.

[175] The grievor seems to be suggesting that there is a reverse onus or responsibility: if the employee is not meeting the requirements of the position and is not communicating what it is that is problematic, it is incumbent on the employer to come forward and provide assistance. While the employer disagrees with this proposition, it actually did what it could to try and find out what the problems were. Ms. Mintz went to great lengths to determine what the cause of the problems was and provide the grievor with assistance to remedy the situation.

[176] The grievor submitted that the MAD should have been given to the grievor as a performance management tool. The employer chose the PMP process, and daily and weekly meetings were used to discuss what was happening and what should be done. The grievor understood what the expectations were from these meetings and documents.

[177] If you accept the grievor's argument, it is virtually impossible for the employer to meet the criteria being advanced by the grievor.

[178] Section 230 of the *Act* is not the common law, and it clearly is different from the common law. *O'Leary* is not the law.

[179] The grievor may not have been provided with the MAD; however, the employer had clearly communicated to the grievor on a daily basis, often on a weekly basis, what was expected of her, and this communication continued in the written PMP documents.

IV. Reasons

[180] Section 230 of the *Act* dictates the jurisdiction of an adjudicator with respect to non-disciplinary termination for cause and states as follows:

230. In the case of an employee in the core public administration or an employee of a separate agency designated under subsection 209(3), in making a decision in respect of an employee's individual grievance relating to a termination of employment or demotion for unsatisfactory performance, an adjudicator must determine the termination or demotion to have been for cause if the opinion of the deputy head that the employee's performance was unsatisfactory is determined by the adjudicator to have been reasonable.

[181] "Reasonable" in the context of judicial review has been defined by the Supreme Court in *Dunsmuir* as follows:

(47) Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of

articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. . . .

[182] I believe the Supreme Court's standard of how courts ought to judge decisions of administrative tribunals holds true for an administrative tribunal when asked to judge, on a reasonableness standard, the decision of the employer under section 230 of the *Act*.

[183] The respondent argued that reasonableness was as defined by the SCC in *Dunsmuir*, while the grievor argued that reasonableness was as set out in *Raymond* at paragraph 131. I do not believe that the two definitions are mutually exclusive. The SCC has defined what reasonableness means in a broad or theoretical sense, and *Raymond* assists in understanding what it means in the context of the *Act*.

[184] I agree with the reasoning found at paragraphs 123 and 124 of *Raymond* that Parliament, by including section 230 of the *Act*, clearly wished to limit the scope of an adjudicator's intervention. It did not want an adjudicator to substitute his or her own opinion for that of the employer with respect to the assessment of the employee's performance, unless there is evidence that the deputy head's assessment was clearly unreasonable. Quite simply, the question I must answer is whether or not the assessment that the grievor's performance was unsatisfactory, by Ms. Mintz and Ms. Best, and accepted by the deputy head, was reasonable. This is a two-part question: first, was the grievor's performance unsatisfactory, and, second, if so, was the assessment reasonable? If it was, my jurisdiction is exhausted, and the termination must stand.

A. Was the grievor's performance unsatisfactory?

[185] The grievor began working as an atmospheric processes scientist in the Edmonton office of the AQSU in the MSC of EC in late June 2009. It appeared that there was no issue with her performance from that point until late in 2010. Indeed, the grievor's first performance appraisal for the fiscal year ending March 31, 2010 indicated that she was performing up to expectations. The first inkling of issues with the grievor occurred in October 2010, when Ms. Mintz received a report about a dispute between the grievor and another employee over the quality control issues of

gathered data. Ms. Mintz testified that at this time, she gave the grievor some instruction, which she believed remedied the situation; however, it had not.

[186] It was the testimony of Ms. Mintz that due to an incident with respect to the Genesee project, she was concerned about the grievor's ability to carry out work that was assigned to her. A meeting was held on January 31, 2011 between the grievor, Ms. Mintz and Mr. Maier of HR. The focus of the problem was the quality control of data. Notes were taken of the meeting, and minutes were produced. It was the evidence of Ms. Mintz that she believed by the end of that meeting that the problems the grievor was having with respect to the data were an aberration and the issue was resolved. This, though, was not in fact the case, and the following day, the grievor sent a series of emails, which Ms. Mintz interpreted as refusing to carry out the work that had been discussed and agreed to at the meeting the previous day. As a result, Ms. Mintz took the work away from the grievor.

[187] The evidence discloses that the grievor's behaviour in the workplace after the January 31, 2011 meeting and over the course of the next couple of weeks was, in the view of Ms. Mintz, odd and erratic. As a result of this behaviour, the grievor was placed on sick leave and required to participate in a FTW evaluation.

[188] The grievor was away from work on sick leave with pay from February 16 to May 26, 2011. During this period, she was examined by a HC physician, who issued the FTW report on May 10, 2011. The FTW report was provided to both the grievor and the employer. The FTW report indicated that the grievor had certain personality traits that affected her behaviour at work. The FTW report made recommendations to both the employer and the grievor with respect to the grievor's work environment and assignments. Those recommendations are set out at paragraphs 37 and 38 of this decision and will be addressed later in these reasons.

[189] The position of an atmospheric processes scientist (PC-02), as set out in the statement of merit criteria, required the grievor to

- extract and synthesize scientific data, analyze it, and draw conclusions;
- plan, organize and conduct research projects;
- conduct work with minimal supervision;

- communicate effectively both orally and in writing;
- have effective interpersonal relationships and work in a team;
- be dependable and be able to adapt;
- demonstrate good judgement; and
- be innovative and show initiative.

[190] These criteria as set out in the statement of merit are mirrored, while not in the same words, in the job description of the grievor, a copy of which was provided to the grievor.

[191] The evidence disclosed that the grievor, despite her efforts, was unable to carry out the primary tasks related to her position.

[192] From the time of her reintegration in May 2011 until her termination, the grievor was given five significant work assignments: the Saskatoon data project, the AQHI climatology project, the Red Deer task, the NO₂ task and the NAPS-BTEX assignment, all of which, according to Ms. Mintz, would have been considered standard work for someone at the PC-02 level. Three of the five tasks were completed prior to the grievor's termination; the fourth, the AQHI climatology project, was not slated to be completed until March 2012, and the fifth, the NAPS-BTEX assignment, was taken away from her.

[193] The evidence disclosed that while the grievor did carry out work towards these five assignments and did provide, in the case of three of the five assignments, a deliverable to her manager in the form of a report, the assessment of the deliverable by Ms. Mintz was that the work completed by the grievor fell far short of that required of a PC-02 atmospheric processes scientist.

[194] The evidence disclosed that while the grievor had produced a report for the Saskatoon data project, it was incomplete. According to Ms. Mintz, the Saskatoon data project was not completed on time; nor did the grievor answer the questions posed to her. The Saskatoon data project was a task assigned to the grievor just after she returned to work in late May 2011. It was her failure at this task that caused the employer to place the grievor on the PMP.

[195] The NO2 task was assigned to the grievor in early September 2011, with a completion deadline of September 22, 2011. The deadline was met; however, the assessment of Ms. Mintz was that the work showed little demonstration of in-depth analysis. Ms. Mintz described the work as well below that of PC-02.

[196] The grievor never completed the AQHI climatology project. This project was a much larger-scale assignment than the other assignments; however, the evidence presented before me demonstrated that the grievor was experiencing difficulties in carrying out and completing tombstone tasks within the larger project, including simple procedural tasks, which were integral to facilitating the progress of the project.

[197] The last assignment given to the grievor was the NAPS-BTEX assignment in early November 2011. This assignment was not completed by the grievor, as it was taken away from her by Ms. Mintz when it was clear that the problems she was experiencing precluded the project's completion by her.

[198] The most telling evidence as to whether or not the grievor's work performance was satisfactory is with respect to the Red Deer task. It was the first assignment undertaken during the course of the PMP. While it was handed in on time, what was delivered was, in Ms. Mintz's words, "gibberish." According to Ms. Mintz, the grievor failed to address the key part of the task, which was to compare air quality data from the Red Deer monitoring station before and after the move of the Red Deer civic yards, which move occurred in 2009. The evidence disclosed that the grievor did not assess the data after the move in 2009. While the grievor did produce a deliverable, including a series of nine graphs, the material submitted to me made no sense and no attempt was made by her to explain the material. On this task, the evidence before me clearly demonstrated that the grievor's performance did not meet the criteria as set out in either the statement of merit or her job description.

[199] The evidence before me clearly demonstrated that the grievor's performance was unsatisfactory from June 2011 until the termination of her employment in January 2012.

B. Was the determination by the deputy head reasonable?

[200] As set out in *Raymond*, the following criteria set out what could make a decision unreasonable:

1. The deputy head or the supervisors who assessed the employee's performance were involved in a bad faith exercise;
2. The employee was not subject to appropriate standards of performance;
3. The employer did not clearly communicate the standards of performance to the employee that he or she was required to meet; or
4. The employee did not receive the tools, training and mentoring required to meet the standards of performance in a reasonable period.

[201] The grievor's argument that the employer did not act reasonably is based on the following three points:

1. Standards by which the grievor was being judged were never clearly communicated to her;
2. The grievor was not given the appropriate assistance, tools, and guidance and mentoring; and
3. The grievor was denied a reasonable period of time to improve her performance.

[202] There is no doubt that the personality trait identified in the FTW report was a contributing factor to the grievor's performance problem.

[203] The FTW report stated that the grievor does not have a medical condition but personality features that were long-standing and that could improve if she sought support from her treating health care provider(s) in conjunction with worksite accommodation. The worksite accommodation, which would benefit the grievor, was set out in the FTW report as follows:

1. The employer must ensure that Mrs. Forner clearly understands her roles and responsibilities, those of her co-workers and those of her superiors.
2. The employer must ensure that Mrs. Forner clearly understands her employer's work expectations.
3. The employer should try to assign Mrs. Forner work that best matches her personality traits.

4. Short, regularly scheduled meetings between Mrs. Forner and her supervisor in a private location to provide Mrs. Forner with timely feedback related to concerns about work performance and worksite behaviours. It was suggested that these meetings be limited to 30 minutes; held once every week or two for the first 2 months after returning to work.
5. The employer may wish to consider if enlisting the services of an external mediator or facilitator would help to format these discussions and structure them such that maximal benefit could be realized.

[204] The behaviour identified in the FTW report suggested that the grievor's personality was such that she had a strong need to be orderly and organized, and, as well, she was likely to be preoccupied with rules, minor details, procedures and ethical requirements to the point of demonstrating an excessively inflexible attitude that could have negative consequences in the workplace. The behaviours described in the FTW report coincide with the behaviour that Ms. Mintz described to me about the grievor in the workplace and the manner in which she was carrying out the work assigned to her.

[205] The FTW report also stated that if Ms. Forner's health care providers understood the employer's perception of worksite behaviours, it could improve their ability to work with Ms. Forner to increase her insight and to discuss ways to address concerns as they arise. Provided the health care provider felt it would be helpful, the supervisor could give Ms. Forner structured written feedback of events where her personality features appear to be causing her difficulties at work. The author of the FTW report stated that it was her hope that Ms. Forner would voluntarily share and discuss that written information with her health care provider(s), and this should only be done if both Ms. Forner and her health care provider(s) are supportive of using such feedback to facilitate medical follow-up.

[206] From the evidence put forward, it appears that these behavioural traits had an effect on the grievor's ability to function in the workplace; the evidence of Ms. Mintz both orally and as set out in her extensive notes describe the grievor as not having focus and being off-track, having to be given the same instructions repeatedly. This difficulty, though, is squarely dealt with in the FTW report. The recommendations to the employer could only go so far in assisting the grievor. It is clear that Dr. Donald anticipated that more would be required by also recommending that the grievor

engage her own health care practitioners in the return-to-work and reintegration process. The grievor chose not to do this.

[207] From the evidence I heard, one would suppose that this was a case of a failure to accommodate; however, this is not the case. The grievor did not grieve that she was not accommodated; nor did she lead any evidence or argue that an accommodation was required. The only medical evidence of any relevance is the FTW report. Dr. Donald, the author of the report, was not called to give evidence; nor were the grievor's treating physicians. From the evidence put forward, I find that the employer followed the recommendations as set out by Dr. Donald in the FTW report. Unfortunately, the grievor did not undertake those recommendations suggested to her, which could have assisted her or which may have permitted the employer to further assist her in addressing the difficulties she was encountering.

C. Standards by which the grievor was being judged were never clearly communicated

[208] Ms. Mintz, the grievor's immediate supervisor, kept extensive typewritten notes and records of her meetings and discussions with the grievor from roughly the end of January 2011 until January 2012. The records also include email exchanges, letters and other documents, which were identified by Ms. Mintz and at times the grievor in their evidence before me. Much of the evidence with respect to the determination to recommend the termination of the grievor's employment is found within these notes and records.

[209] While the grievor stated that she kept notes of the meetings she had with her employer, none were produced at the hearing. While this is in and of itself not determinative of how events unfolded, more often than not, when asked a question about something related to her work and the difficulties she was encountering, the grievor would answer that she could not recall.

[210] The grievor argued that the employer failed to communicate the standards which the grievor had to meet, as the MAD and the EC Competency Standards were never communicated to her. According to the grievor, the MAD should not only have been communicated to her but should have contained additional material therein setting out how exactly the grievor could have achieved the standards that she was not meeting.

[211] I disagree with the grievor's submission in this regard. The grievor was told innumerable times by her manager what it was that was required of her. This is evidenced by the testimony of Ms. Mintz and reflected in the numerous documents contained in Exhibit E-1. The evidence of Ms. Mintz was that the MAD was created starting in November 2011, and its purpose was to look at the level of the work being carried out by the grievor and see if there was work at a lower level that the grievor's performance would allow her to carry out.

[212] The grievor, in her submissions, suggested that it was critical to provide her with a written set of standards and specifically the MAD that stated to her what the standard was that she was required to meet and how she was failing to meet those standards. While providing the grievor the MAD and EC Competency Standards was one way the employer could have communicated the information to her, it was not the only way; nor was the employer required to do so in that fashion. The employer chose to follow the recommendations as set out in the FTW report, which included:

- short, regularly scheduled meetings both on a daily and weekly basis;
- timely feedback with respect to work performance and behaviours;
- use of a mediator or facilitator;
- trying to assign work that matches her personality;
- ensuring that the grievor understands her work expectations; and
- ensuring that the grievor understands her role and that of her co-workers and superiors.

[213] It is clear to me from the evidence provided in the hearing both in the form of oral testimony by Ms. Mintz and the grievor as well as the documentary evidence contained in the written evidence that not only did the employer follow the recommendations of the FTW evaluation but that Ms. Mintz spent an inordinate amount of time explaining to the grievor the requirements of her position, the level of performance that was expected of her and how to do the work assigned to her. While the grievor may not have been provided with the MAD or the EC Competency Standards, there is no mystery that the standards against which the grievor was being judged were communicated to her, as was how she could meet those standards.

[214] As early as July 20, 2011, the following notation was made in Ms. Mintz's notes with respect to the standard she was to meet:

July 20 - Weekly Update Meeting

...

Summary notes: When told she had not met the target on the Saskatoon data analysis, she said she tried everything she could, apologized, said she will try to do everything right and that she will ask for more clarifications. Magda was informed that the performance issues were not for a lack of trying, but that she is showing issues with manipulating, interpreting and synthesizing data. The expectation for a PC-02 air quality scientist (atmospheric processes scientist) is that they can do this combination of manipulate/interpret/synthesize data and information. She was given the copy of the email sent back to David Lavoue answering the specific questions that she had failed to answer. She was told she can keep the copy as an example.

...

[215] The grievor argued that the employer disciplined her for some of her actions, when clearly this was "performance related" and not misconduct. I was not provided with any evidence that the grievor grieved the discipline she received nor if she grieved what relief was requested or granted. The discipline was for specific behaviour and was behaviour that clearly appeared to be similar in nature to that for which the grievor was eventually terminated for unsatisfactory performance. The fact that the grievor was disciplined for that behaviour does not render unreasonable the determination by the deputy head that the grievor's performance was unsatisfactory. Perhaps that action to discipline was not appropriate; however, that issue is not before me, nor was there evidence that the termination was a disguised disciplinary discharge. In addition, the evidence of Ms. Best was that the grievor was clearly not getting the message about her behaviour, and Ms. Best hoped that the disciplinary route would spur the grievor on to correct her performance. Perhaps that thought was misguided, as the discipline did not change the behaviour or performance.

D. The grievor was not given the appropriate assistance, tools, and guidance and mentoring

[216] It is difficult to contemplate what more could have been done by the employer in this regard. Starting in late May 2011, Ms. Mintz was meeting with the grievor on

almost a daily basis. In addition to the almost daily meetings, Ms. Mintz had weekly meetings, and after the implementation of the PMP, she also provided weekly written documents that outlined what work was ongoing, the grievor's report on the work, management's expectations, and management's direction and support.

[217] The grievor had ample opportunity to ask questions of her manager and to get help where needed. What was evident from the evidence presented is that the grievor would often repeatedly ask questions and pursue matters of a fringe nature while ignoring potentially important questions on her assigned tasks. Ms. Mintz testified that she provided assistance, feedback and guidance to the grievor, and the grievor acknowledged in cross-examination that Ms. Mintz did do this in some cases, and in other cases, the grievor stated that she did not recall. I have no reason to doubt the evidence of Ms. Mintz in this regard, as it is also reflected in the notes and documents that were created contemporaneously with the events as they occurred, and in some cases, the grievor herself acknowledged that it was provided.

[218] A review of the PMP documentation discloses that guidance and feedback were clearly given as these documents were provided to the grievor, and in some circumstances, they were signed by the grievor.

[219] When an employee comes to a job that requires a very high level of education (many of which notably carry a professional designation, such as a lawyer or doctor or engineer), it is anticipated that the employees who are hired with that background as a prerequisite can carry out basic functions related to the obtaining of that degree and/or professional designation. The grievor was hired into her position on the strength of her educational background, which was a master's degree in science. It was the evidence of Ms. Mintz that the grievor was having difficulty in carrying out basic elementary scientific calculations. While any job for any employer may have its own peculiarities attached to it, depending on any number of circumstances, I do not believe that providing tools, assistance and mentoring encompasses requiring an employer to provide the basics, which were set out in the statement of merit criteria, which the employee was supposed to bring with them to the job.

[220] From the evidence presented to me, it appeared that many of the grievor's failings related to her inability to meet the criteria as set out as a prerequisite for the position and not on adjusting to certain peculiarities of the specific position.

E. The grievor was denied a reasonable period of time to improve her performance

[221] In essence, the grievor's position was that in November 2011, the employer gave her two months in which to improve, and by only giving her one month instead of the two months, it was estopped from terminating her employment.

[222] The grievor was well aware of the employer's dissatisfaction of her work as far back as June 2011. It was her poor performance on the Saskatoon data project that was the impetus for the employer to place her on the PMP. If there was any doubt about the employer's concern about the grievor's unsatisfactory performance, that doubt was clearly erased when she was placed on the PMP in July 2011.

[223] The basis for the finding by the employer that the grievor's performance was unsatisfactory covered the time frame from the end of June 2011 until mid-December 2011, just under six months. The employer had over the course of this time frame provided the grievor four major work assignments in which the grievor's performance did not show any real improvement. The evidence before me disclosed the same performance difficulties being exhibited by the grievor in June of 2011 were being exhibited late in the year.

[224] While it is true that Ms. Best stated that the assessment of the grievor's performance ended on December 16, 2011, the grievor was not terminated until January 26, 2012. I was provided with no evidence that the grievor's performance had improved by the date of termination. I was provided with no evidence that the grievor's performance could have improved during the time frame after December 16, 2011 and January 26, 2012. I am convinced that this was not a situation where the addition of any further time would have made any difference. The last assignment given to the grievor, NAPS-BTEX, was taken away from her by Ms. Mintz on or about December 13, 2011. By the Christmas holiday, the grievor had been sent home and was working at home due to her jaw issues and the difficulties surrounding her communication in the workplace with Ms. Mintz. She did not return to the workplace after December 22, 2011 and was on sick leave without pay after January 10, 2012.

[225] I find that based on the evidence before me, the decision by the deputy head to terminate the employment of the grievor for unsatisfactory performance was reasonable.

[226] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[227] The grievance is dismissed.

October 31, 2014.

**John G. Jaworski,
adjudicator**