

IN THE MATTER OF AN ARBITRATION OF A GRIEVANCE PURSUANT TO THE SASKATCHEWAN *TRADE UNION ACT*, R.S.S. 1978 c. T-17, AS AMENDED

AND PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1594 AND REGINA PUBLIC LIBRARY

BETWEEN:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1594
(GLORIA QUINTON-CUDDINGTON GRIEVANCE)

UNION/GRIEVOR

AND:

REGINA PUBLIC LIBRARY

EMPLOYER

AWARD

Sole Arbitrator	Kenneth A. Stevenson, Q.C.
Representatives: For the Union	Juliana Saxberg Guy Marsden
For the Employer	Michael Tochor, Q.C. Courtney Keith
Hearing	November 22, December 10, 11 & 16, 2013 January 22, 2014 in Regina, Saskatchewan
Date of Award:	May 9, 2014

AWARD

I. INTRODUCTION

1. On February 13, 2013 Ms. Gloria Quinton-Cuddington (the "Grievor") was disciplined for conduct which occurred between December 12, 2012 and January 28, 2013. She was suspended without pay for ten working days (February 15 to March 1, 2013 inclusive) and at the end of her suspension she served a four-month disciplinary demotion. The Union filed a grievance on February 15, 2013.

2. RPL alleges that the Grievor, contrary to specific instructions, initiated changes to over 270,000 existing bibliographic records and in the process, on at least two occasions, her actions resulted in shutting down the entire Provincial Library System. RPL says that the Grievor's actions "*... speak to a significant abrogation of the fundamental expectations of your position and the authorities entrusted to you by the Employer and they demand a significant disciplinary response*".

3. The Union says RPL has not proven the basic factual allegations against the Grievor to an acceptable standard, nor has it proven that the Grievor had the mental state required to sustain an allegation of disciplinable misconduct or that the Grievor acted in a careless, reckless or negligent manner. It says that RPL has not established just and reasonable cause for the alleged non-culpable incompetence, or alleged insubordination. Alternatively, if the Grievor was guilty of any misconduct, the same was minor without any dishonest or culpable intent.

4. In this matter there are substantive differences in the evidence on material matters. My ultimate decision will be dependent on the facts I find and the decisions which I will need to make in respect of the credibility of the evidence given by the witnesses.

5. The parties agree that I have been properly appointed as sole arbitrator with jurisdiction to hear and determine matters raised by the grievance. In the event the grievance is allowed, I am to reserve jurisdiction on the issue of remedy, to permit the parties to resolve this matter.

II. BACKGROUND

6. RPL is a public library with a number of branches in the City of Regina. RPL is a member of Saskatchewan Information and Library Services Consortium (“SILS”). SILS is a Province-wide consortium of all public libraries in Saskatchewan, including the Provincial Library and a few schools.

7. Within SILS, RPL has been assigned responsibility for catalogue maintenance and integrity. Catalogue maintenance is directed by SILS through the direction of the SILS Cataloguing Management Group (“CMG”) which decides how to implement the policy of the SILS Board of Directors. Under SILS cataloguing is no longer done at the branches; RPL is not a cataloguing agency. SILS controls who can make changes to the records of other members; agencies can add their own records for new orders. The changes that RPL can make to the SILS database is tied with the permission level. RPL can change bibliographic records: change and delete within the SILS guidelines based on SILS parameters and instructions.

8. RPL is the lead in a deduplication process (“deduping”); duplicate or multiple entries are merged into one record in order to make it easier for patrons to use. The Grievor and her team of five cataloguers and processing clerk, are responsible for the deduping. By November 2012 deduping had been ongoing at RPL for some length of time; it engaged approximately 40% of the cataloguing employees’ time. In order to merge bibliographic records (author, title – as work), the employee looks at the records and chooses the better one which should be put into the record. This is a time-consuming process. Only two records could be done at a time; if there were more, the process is repeated.

9. The Grievor has been employed by RPL since October 1, 1974. Since August 24, 2009 she has held the position of Cataloguing and Processing Supervisor. She is responsible for the oversight of five employees – cataloguers and processing clerks. These employees work on the database so information is user friendly, correct and to ensure that users get the books as soon as possible. The cataloguing department is responsible for the SILS database deduping.

10. Ms. Marguerite Porter is a long-time employee of RPL. From October 22, 2012 until March 5, 2013 she was temporary Acting Manager Language Virtual Services. During this time she remained a member of the bargaining unit; she was responsible for supervision of the Grievor.

11. At the CMG meeting on December 11, 2012 decisions from the SILS director's meeting were provided. The material direction for our purpose is:

- All fiction whether hardcover, trade, or mass market paperback will be merged to a single record (some Literature will be the exception)

Ms. Porter, as RPL's representative on CMG, participated in this phone meeting.

12. After the December 11 CMG meeting, Ms. Porter met with the Grievor. Prior to this meeting, she had prepared notes (Exhibit 24) of things to be discussed with the Grievor. Ms. Porter says she informed the Grievor of the CMG direction that on a go-forward basis all fiction whether hard cover, trade or mass-market paperback would be merged to the same record. She told the Grievor to start with the approximately 5,000 titles which RPL had acquired from Chapters. These were to be added to the existing bibs; Ms. Porter says that nothing was said regarding retrospective; it was all to be on a go-forward basis. This was implied in all that she said to the Grievor. The process would involve scanning the International Standard Book Number ("ISBN") to see if there was a paperback record, if so, look for a hardback, then merge the paperback record to the hardback. Ms. Porter did tell the Grievor that she "could add the 500 note field" as the publisher, pagination and printing dates may vary; this would only be on a go-forward basis. She says that the Grievor laughed how they had done this before and now we're doing it again. According to Ms. Porter, her instructions to the Grievor related to: fiction; the books received; on a go-forward basis i.e. new paperback – fiction only. Adding the new books would be time-consuming; done on a one-by-one touching of each record in the process of merging with different ISBNs. This is the process which was being used to dedupe and the Grievor was doing it.

13. According to Ms. Porter, it was not necessary to add the 500 field when adding new mass market or paperbacks to hardbacks. Without the 500 note field, the record would have an ISBN,

the pagination could be incorrect but RPL and other public libraries not concerned with this required accuracy; without these words, the record would still be “correct”. Ms. Porter says that the 500 field should be put in and used for the book being added to the bibliography. Ms. Porter acknowledges that pre-SILS, RPL merged paperback and hardback and this language may have been used; after joining SILS, RPL would not use it as it was not part of putting the hardback and paperback together.

14. Ms. Porter acknowledges that the Grievor must have had a different opinion of what she was to do; retrospective involved lots of time and money. She told the Grievor she could add the 500 note field but only on a go-forward and not retrospective basis; this is not what happened.

15. The Grievor says she made notes at the meeting with Ms. Porter (Exhibit U-15). The Grievor says she was told to start adding paperbacks to the hardcovers; to add the 500 note field to tell the cataloguers that the publisher, pagination and printing dates may vary. She was told that the process was to start right away, but she was given no direction as to what to do. She agrees she was told that the hardcover and paperback were to be changed – only on the ones they merged; RPL was not in charge of new creation therefore only on old records. She was aware of the books purchased from Chapters. Ms. Porter directed her attention to these which were physically present. The Grievor was not shown the draft notes from the CMG meeting nor Ms. Porter’s notes. Her notes refer to adding the ISBN in the paperback records. There is nothing in her notes regarding making the changes retrospective or using Global update. She says that retrospective is not used in doing their work; it is either a clean up or a new bib. The Grievor’s notes include: “put paperback, trade and hardcover on one record – fiction”.

16. Subsequent to the meeting with Ms. Porter the Grievor spoke to her Cataloguing staff. She told them they were to start right now and they were expected to put in the note. The staff asked if there was an easier way; couldn’t she do it. She thought that Global update would be easier, more efficient and take the stress off her people. Rather than one at a time, she could put in a bigger number of records by using a simple command and not need to type it each time. According to the Grievor “we have been merging records for a couple of years or so – we knew what was required,” she didn’t need any direction on “how to merge records”. The Grievor

acknowledges that she never told Ms. Porter that she was using Global update; she was unaware that she needed the approval of her supervisor and authorization of SILS to use Global update.

17. Global update is a process within Millennium, the computer software used by SILS at the time. It is used to change a large number of records at one time (text within a record). The evidence is that it can change up to approximately 5,000 records at one time. The user enters "Create List" which is the parameters of the record to be changed; the program selects up to 5,000 records on the list. The operator waits while the changes are made. When the changes are complete the operator deletes the changed records; it then selects the next 5,000 records and the steps are repeated.

18. The Grievor says she has used Global update for over one year in connection with ongoing loading E-book and audio-book files; she was given access by SILS. This was the source of her authority to use it. She says Julie Arie was her supervisor during this work. Ms. Arie never told her there was a limit on the records to do at a time. She says that in January 2013 she was doing this media bank work when Ms. Porter was her supervisor and that Ms. Porter knew she was using Global update.

19. The Grievor says she did a trial on December 12 to see if the commands worked: did "Create List" used "book" with the variable 500 note field with the words "publisher, pagination and printing dates may vary". The process worked. Recognizing she had a lot of records to change, the Grievor continued doing 5,000 at once, but doing it more than once. On December 12 she did four batches of approximately 5,000 records. She did approximately 20,000 records on each of December 18, 20 and January 23. As she was working from a list of approximately 900,000 records, the process took that much time to find the records and make the changes.

20. The Grievor says she first realized there was potentially an issue on Monday, January 28. She was doing what she had done before, but as she was now working with a smaller list, it was faster and easier to identify the record to be deleted. On January 28 the system was slow; one of the Cataloguers told the Grievor that he had received an error message at approximately 9:00 a.m. saying the file was full; this occurred at a time when the Grievor was loading files and

updating. The Grievor says that Bruce Welch in the IT Department told her about the transaction file and to get someone in Saskatoon to empty it. The Grievor says they figured out what was going on, so she sent a note to her former boss, Gerry Burla at SILS to see if Mr. Burla could figure out a way so the transaction file would not fill up. The email the Grievor sent reads:

Sent: January-28-13 12:59 p.m.
To: Gerry Burla
Subject: SILS capacity

Hi Gerry,

As a part of the database clean up it is necessary to add a note to each of the Bib. records to the effect that the publishers, printing dates and number of pages may vary as we merge records together and add trade and mass market items to the same bib. records as hard copy editions (while adding the isbn's of course). Needless to say this process is more efficiently done changing 5000 records at a time using Global update than changing the records one at a time by staff. It would appear however that there is a somewhat limited ability to deal with these changes unless the people in Saskatoon monitor and empty out the transaction files more often. As I have no desire to crash the system, but still need to change about 550,000 records as quickly as possible I would like to know how many records I can safely change on any given day. Technically I could input up to 150,000 changes fairly easily but I know the system can't deal with it unless the file is cleared more often. Could you let me know how many records can safely be altered and ask the people in Saskatoon to keep an eye on the file and clear it more often.

Thanks,
Gloria

The Grievor says the first sentence states what she understood to be direction she was given by Ms. Porter. She understood the note applied to "just the book" and not all the records. The Grievor's understanding was that she had to change the 500 field "just for the old ones",

21. Ms. Lynn Reynish is employed by RPL working as an Assistant Administrator at SILS; she was so employed in January/February 2013. At the request of her supervisor, Maureen Woods at CMG, she prepared a "Timeline of Events Around RPL Global update of Bibliographic Records" ("Timeline") (Exhibit 6). The Timeline shows that at approximately 8:30 a.m. on December 12 that log-in user "Rcatgqc" did an update on approximately 20,000 bibliographic records. The Timeline shows the following activity by the same log-in user:

Dec. 12 (~8:30 am): Rcatgqc did an update of several thousand (around 20,000) bibliographic records.

Dec. 18 (~10:00 am): Rcatgqc did another update of several thousand (around 20,000) bibliographic records.

Dec. 20 (~11:00 am): Rcatgqc did another update of several thousand (around 20,000) bibliographic records.

Jan. 23 (~1:00 pm): Rcatgqc did another update of several thousand (around 20,000) bibliographic records.

Jan. 24 (~8:30 am): Rcatgqc did another update but this time there were several tens of thousands of records involved (over 70,000 records). The update process continued until shortly before Noon but the transaction log filled at this point causing the system to freeze. SILS staff were alerted to the issue and emptied the log to get the system working again.

Jan. 25 (~1:00 pm): Rcatgqc did another update of several thousand (around 20,000) bibliographic records.

Jan. 28 (~8:00 am): Rcatgqc did another update – again involving several tens of thousands of records (around 100,000 records). The update process continued until just before 8:50 am but the transaction log filled at that point causing the system to freeze. SILS staff were alerted to the issue and emptied the log to get the system working again.

Jan. 28 (~1:00 pm): SILS staff received an email from Gloria Quinton-Cuddington at RPL (Millennium login rcatgqc) requesting assistance with a planned future update to a large number of bibliographic records. She wants to add a 500 field with the phrase “Publisher, pagination and printing dates vary.” It is later established that this phrase has already been added to 470,000 records.

Jan. 31 (~10:00 am): Rcatgqc did another update of a few thousand bibliographic records.

Ms. Reynish obtained the log-in information from the vendor of the Millennium system in a Excel file which showed approximately 470,000 records sorted by date and time. These show that the Grievor’s computer was the only log-in. Ms. Reynish did not personally access any of the vendor’s records in preparing the Timeline.

22. Ms. Reynish says that in early December, the Grievor’s log-in was observed by SILS to be running a large Create List looking for bibliographic records of material type “Book”. This is the largest review file and Create List. SILS staff was curious and kept an eye on it because of

its need for year-end records; they hoped they would not have to clear it. It went away and SILS did not discuss this with RPL.

23. Ms. Reynish says Millennium software uses a transaction log and due to its technical nature there is a suggested maximum of 35,000 to 40,000 records to be updated in a day. The actual amount depends on the time of day and the demands on the system.

24. According to Ms. Reynish the December 12, 18, 20 and January 23 updates are a normal amount that one would expect to see. The January 24 update in excess of 70,000 records exceeded the limits; the transaction log filled, causing the system to freeze. SILS staff emptied the log in approximately two minutes and got the system working. Ms. Reynish acknowledges that doing multiple batches of 20,000 could fill the transaction log. She cannot say that the recorded 70,000 records means that someone was trying to do 70,000 in bulk.

25. On January 28 at approximately 8:00 am Rcatgqc did an update affecting around 100,000 records filling the transaction log and causing the system to freeze at approximately 8:50. Ms. Reynish's opinion is that because of the short time period involved, this Global update likely involved two or three big processes. SILS staff emptied the log and got the system working within minutes. As the January 28 transaction exceeded the limits, SILS initiated an investigation to identify the problem. When the system froze on January 28 the SILS staff was concerned as this occurred so quickly after the system froze on January 24. These concerns were in relation to "potential hard drive failure due to lack of capacity; a potential equipment failure on the server". Checks, including with the equipment vendor, determined that neither the server or hardware was the problem. SILS did not believe RPL to be the problem as it did not host the server.

26. Gerry Burla, a colleague of Ms. Reynish, showed her the Grievor's January 28 email which noted that she was engaged in a database cleanup and still needed to change approximately 550,000 records. The Grievor enquired as to how many records she could safely change on a day and asked that the people in Saskatoon keep an eye on the transaction log and clear it more often. With this SILS was satisfied that the issue was created by actions with RPL.

27. Ms. Porter was not at work on January 28. On Tuesday, January 29 she learned that SILS had advised that the Millennium system had gone down as a result of actions taken at RPL. Ms. Reynish and Mr. Burla advised Ms. Porter that the Grievor had done a Global update to add a note in the 500 field which affected 500,000 records. Ms. Porter then phoned the Grievor at home asking what she had done; she said she was using Millennium to change records and the system froze.

28. During this call Ms. Porter told the Grievor about the restrictions on the use of Global updates: knowledge and approval of SILS; if considered go through manager/supervisor; not change records of others without prior approval. Ms. Porter told the Grievor "that she should consider her knuckles to have been thoroughly rapped for doing this." When the Grievor returned the following day, Ms. Porter went to the Grievor's office and asked her if she was aware of the severity of what she did; she told the Grievor there would likely be consequences. The Grievor never responded. The Grievor did not have Union representation during either the phone call to her at home or when Ms. Porter came to her office.

29. The issue of these updates was referred to CMG; it concluded that the use of "publisher, printing dates and pagination may vary" language was not appropriate. CMG requested that the edits done by the Grievor be undone; they were not done with CMG approval and they were inserted into inappropriate records (example: microforms, non-fiction and other records that would not be merged as part of the SILS cataloguing guidelines). Ms. Reynish used Global update to perform the undo's of the records. These services were performed on a few hours of overtime at a cost of approximately \$200 to \$300. On February 1 CMG limited access to Global update to a single log-in at the Provincial Library.

30. Jeff Grant, Manager of Human Resources conducted an investigation into this matter and provided a report to senior management prior to disciplinary action. Mr. Grant was advised of the situation involving the SILS system by Ms. Porter who reported that the Grievor had undertaken activity which caused the system to freeze and that what was done was not in accordance with Ms. Porter's directions given to the Grievor based on her direction from CMG.

31. Mr. Grant left Ms. Porter to make some of the investigations as she had the technical knowledge. He understands Ms. Porter spoke to Ms. Reynish, Ms. Arie and Mr. Burla. Mr. Grant conducted a formal interview with the Grievor on February 7. Essentially the Grievor's position was that she was "doing what she was told". She was told at the December 11 meeting that they would be putting the paperback and hardcovers back together and that in so doing, she put a note in the bib records of the books that the publisher, printing dates and number of pages could vary. They were going to combine the bibs of the books; she was told that the note had to go in the records and that Ms. Porter gave her the wording. She was given no specific direction as to the process to use. Her direction was "this will be done" and there was never a question of how she was expected to get it done. The Grievor said "*and I had no idea, umm, that I should have no (sic) that that's not what was intended...*" The Grievor said that she had "never" been given direction regarding the limits of the number of bib records she was authorized to impact using any one of the merge, Rapid or Global update processes. She received no direction concerning the circumstances when Global change was appropriate. The Grievor acknowledged that Global update does have some built-in limits; she saw the process slowing so she sent an email to her friend inquiring as to the limit. From the interview, Mr. Grant concluded that the Grievor gave no indication of understanding the limits for Global update; she did not acknowledge the limits nor did she acknowledge that she had received any training from either Ms. Reynish or Ms. Arie. The Grievor did not take the position that what occurred was a mistake or that someone had logged in under her name.

32. Following the investigation Mr. Grant and senior management had a number of concerns. First, that the Grievor had been given the direction from CMG and that she did not do as directed and what she did was in excess of the system capacity. The Grievor substituted her own discretion for what and how to do the merge; not do it one at a time adding the 500 field. Rather, the Grievor chose to do it differently and not consult Ms. Porter. The Grievor had the technical authority to use Global update but did not have administrative authority. Secondly the Grievor, rather than populate the bibs at the time of merging, undertook to change the 500 field on several 100,000 fiction items and in so doing caused the system to freeze on January 24 and 28. These processes caused SILS to make investigative checks on its hardware and software and ultimately

incurred costs to reverse the Grievor's entries. Thirdly, the Grievor's actions caused the SILS staff to shift its focus from doing what work was required to involving a third party hardware and software vendor. Her actions raised questions as to RPL's ability to maintain the integrity of the cataloguing process and ultimately resulted in SILS removing the authority of all other users of Global update except one at the Provincial Library.

33. It was the consensus of senior management that the Grievor knew the direction she had been given but did not do what she was directed. The Grievor's conduct and performance was not consistent with the expectation of her position in relation to the integrity of the system. The Grievor was the person in RPL with the primary technical understanding and expertise of cataloguing. Her actions in causing the system to freeze occurred when the Grievor was aware of the 20,000 limit and should have understood the consequences of her actions which were caused by either a lack of concern for its effect on the system, or a lack of understanding of what occurred. The Grievor's actions impacted the credibility and the reputation of RPL within SILS and it affected the trust that RPL had to fulfill its catalogue and acquisition functions.

34. Mr. Grant cannot say that it was not a mistake but this does not seem reasonable with the Grievor's experience in cataloguing processing; not reasonable that she could misunderstand the merging of bib records or changing the 500 field as a different process than required. He had no reason to disbelieve Ms. Porter as to what she said to the Grievor and the direction given. Mr. Grant says he took into account what the Grievor told him. His concern was that with all of the Grievor's experience and the direction she had from Ms. Porter, it was concerning that she would take the action she did. Mr. Grant agrees that the first sentence of the Grievor's January 28 email to Mr. Burla is not inconsistent with what she says she was told to do.

35. RPL decided that the Grievor's conduct warranted discipline. The decision was made by Mr. Barber, Library Director and CEO, in consultation with Ms. McKenna, Deputy Library Director, Mr. Grant and legal counsel. Management considered a possible range of discipline and concluded that a 10-day suspension following which a four-month disciplinary demotion was an appropriate discipline.

36. Mr. Grant drafted the disciplinary letter dated February 13, 2013 (Exhibit 16). The letter notes the Grievor's actions as being contrary to Ms. Porter's specific direction that the updating of bibliographic records of fiction items were to be done on a go-forward basis only. On seven occasions between December 12, 2012 and January 28, 2013 she initiated a Global update that created a 500 field statement over 270,000 existing bib records. The letter notes that the consequences of the Grievor's actions were grave in terms of SILS system stability and created a potential risk to the integrity of the system. The letter notes it was reasonable to conclude that the Grievor had misrepresented the truth in relation to limits to her interaction with the catalogue and the number of bib records affected, or other constraints or actions. It notes that this is contrary to Ms. Arie's advice that she had received specific direction that she was not to undertake any activity that would affect more than 20,000 records and that under ordinary circumstances the upper limit of 5,000 would be the norm. RPL also notes what it considers to be dishonesty in respect of the Grievor's February 7, 2014 email to Mr. Burla as a result of the action she had initiated which was slowing down the system "... around noon" when she had initiated the action at approximately 8:00 a.m. and the system was shutting down at approximately 8:50 a.m. The email appeared to be an attempt to misrepresent or mitigate her responsibility in shutting down the system by describing what appeared to be a planned future activity rather than actions that had already been taken and caused the shutdown. She was asking Mr. Burla how many records she could safely change and asking people in Saskatoon to keep an eye on the file. They describe as dissembling that she asked the question after having initiated the action and sent this inquiry directly to SILS staff despite her repeated assertions that she was not authorized to interact with them directly.

37. The discipline letter notes that the Grievor is responsible to ensure and maintain quality control and the integrity of the catalogue data and have awareness of current cataloguing standards and practices. RPL says that the Grievor's actions placed the quality control and the integrity of the catalogue data in jeopardy in that she has shown either a significant lack of awareness of current cataloguing standards and practices, or a callous disregard for the consequences of her actions; she has demonstrated a lack of willingness to assume responsibility for her actions and exercised a lack of judgment in understanding these activities. Her decision to lie to RPL about her activities is not only dishonest but insubordinate. It notes the Grievor's

unacceptable performance and behaviour as having potentially had a significant negative impact on the reputation of RPL to meet the catalogue maintenance expectations of SILS. The actions are noted to be a significant abrogation of the fundamental expectations of her position and the authority entrusted to her.

38. The letter concludes that the Grievor is suspended without pay from February 15, 2013 to March 1, 2013 inclusive (10 consecutive working days). At the end of the suspension, the Grievor is subject to a 4-month disciplinary demotion. On July 1, 2013 she would be reinstated.

Grievor's Training

39. Ms. Reynish says that on January 15, 2012 she provided the Grievor and other RPL staff with training on Millennium. She instructed those present about the limits of 20,000 to 30,000 records and no more than 40,000 records. She advised them that if they exceeded the limits, the entire system for the Province's circulation would be affected. She is satisfied that they understood. If there was an issue they were to communicate with RPL's system and help desk. Part of the training was to describe the reports being returned from third party vendors and what should be done with them and how the reports work within Millennium. She recalls that the Grievor asked a question about which reports the staff should focus on. Ms. Reynish acknowledges that the seminar focused on how the authority works and included a number of different topics including reports from third party vendors; use of Global updates, use of Rapid updates, limits on using; order of handling of reports, tasks SILS office handles and what RPL and Provincial do. If there were questions RPL was expected to go through the SILS Help Desk rather than to contact her.

40. From October 2009 until October 2012 Ms. Julie Arie as Manager of Virtual Services supervised the Grievor. Ms. Arie says she communicated to the Grievor a limit of 20,000 changes in a batch or at a time; anything over this amount required contacting the SILS administrators. These limits were communicated during SILS meeting of system administrators; the Grievor and the cataloguers were to be aware of this limit. The Grievor and her worked together to make any large number of changes or processes.

41. Ms. Arie says she did a lot of one-on-one training with the Grievor with SILS and the modules and projects. This occurred as needed at least one time per week and more frequently at the start. The SILS system administrator also came over and provided training. During these sessions they discussed limits and changes particularly around the Prince of Wales Branch and the Regent Plaza openings. They discussed what work we do in-house and what work would be done with SILS through its help desk. She told the Grievor that anytime there are more than 20,000 changes they must notify SILS; she instructed the Grievor two to three times about the 20,000 limit but told her not to worry as this outside the limits of the Prince of Wales and Regent Plaza projects in the Summer of 2010. The Grievor did not express confusion over the 20,000 limit. They discussed the consequences of exceeding the limits; the file would build up – slow down or stop. There is no indication from the Grievor that she did not understand the consequences. The 20,000 limit was not documented in writing although Ms. Arie says that she did do the writing on the white board with the Grievor.

42. Ms. Arie confirms that Ms. Porter's February 1 email to Jeff Grant (Exhibit 9) is an accurate record of her conversation with Ms. Porter. The Grievor was aware of the differences between Global update and Rapid update through discussions with the Systems Administrator. These occurred during when there was discussions about the differences during implementation, change and log-ins being set up starting in 2009 and going live in early 2010. The Grievor was aware the use of Global update required permission of her supervisor. There was no document to tell the Grievor this and Ms. Arie does not recall a specific conversation. Very few people have access. There is general expectation of SILS that persons don't use access to Global update; the supervisor seeks permission from SILS for specific tasks. This was so for the RPL database cleanup. The Grievor had the technical ability to use Global update but both from SILS and Ms. Arie the Grievor was advised that she doesn't use it. Ms. Arie did not use Global update with the Grievor. The Grievor had never been instructed to use Global update; the instruction was to not use it. Ms. Arie told the Grievor that anytime greater than 20,000 records to be changed, you must contact the SILS help desk regarding the way to change. The Grievor never received permission to use Global update.

43. The Grievor says that when Millennium came to RPL in February 2010 they moved to SILS at the same time. With Millennium it was a hands-on learning process to try to figure it out; she also received some assistance from individuals working for SILS. Ms. Arie did show her little bits around special things such as how to create a list, how to micro or template work-arounds. Ms. Arie typed really fast, did commands and the Grievor tried to follow. She believes that Ms. Reynish came in January 2012 to talk about the database cleanup for 2-3 hours. If things did not work in Millennium she would go to IT and tell them the problem; the RPL help desk would assist. Her experience in working with Millennium in cataloguing was not good. It was constantly breaking down, freezing, things that they could do before they could not now do.

44. The Grievor affirms the information that she gave Mr. Grant during the interview including that she had never been given direction in respect of the number of bib records or limits to changes on the system. She was never given a limit on anything including the 20,000 in relation to Regent Place. No one told her the limits on Millennium. She does not believe that the matter came up as testified to by Ms. Reynish in January 2012; no one was doing Global but her and no one was using Global in the cleanup. She does not recall if Ms. Arie ever put 20,000 on a white board. She would be in her office at least once per week and there would be writing on the white board, but she never heard a limit of 20,000 from Ms. Arie. She acknowledges that in the Timeline logins on December 12, 18, 20 and January 23, 25, there appears to be respect for the limit of 20,000.

Bruce Welch's Evidence

45. Mr. Welch has worked for RPL for approximately 40 years. He currently works in the IT Department on the RPL Help Desk which does not support Millennium and has no access to it. In the past at the Grievor's request, he has given assistance to her in dealing with part of Millennium including doing bib records, a batch file and Global update. His assistance would have been about how the program works; how could she make it do what she wanted.

46. He recalls having a conversation with the Grievor either December 20 or January 23. He approached the Grievor to ask her what she was doing as he suspected that what she was doing was causing the system to slow down; one reason is processing too many records. He connected

the Grievor to this slowdown as she and he were the only two at RPL to process records this way. The Grievor said she was processing a lot of records and he advised her to do so in smaller batches. There were no specific numbers. The transaction log fills as a result of doing large numbers of transactions and the system would slow and halt. He didn't give the Grievor a number, just told her not to do "too many at once" as he had been told this several years ago by Ms. Reynish, but not given a specific number. He didn't know what size would be a problem.

47. In cross-examination Mr. Welch says he has no doubt as to the accuracy of the Timeline created by Ms. Reynish. He recalls the Grievor saying words to the effect that she thought she might be responsible for the freeze because she was putting through so many records.

III. POSITION OF THE PARTIES

The Employer

48. Mr. Tochor, in oral and written submissions reviewed the evidence and applicable law in detail. He submits that the Grievor was made aware of and knew the system's limits. It is undisputed that the Millennium software had limits. These were known to Ms. Reynish and Ms. Arie whose evidence is that these were disclosed and discussed with the Grievor. It is inconceivable that with their knowledge Ms. Reynish and Ms. Arie could not have conveyed the same to the Grievor in her position as Supervisor, Cataloguing and Processing.

49. He notes that during the investigative interview with Mr. Grant, the Grievor acknowledged that Global update "does have built in limits". He submits that the Timeline is evidence that the Grievor was aware of the limits. It shows a pattern where the Grievor respected the limit of 20,000 records on four occasions; he says this shows awareness and respect of the limits. Inexplicably the Grievor pushed the limits on January 24 to 70,000 records causing the entire Province-wide system to freeze. She again respected the limit of 20,000 on January 25. On January 28 she made a curious and final attempt to "push the envelope" when she tried to update about 100,000 records causing the system to freeze at about 8:50 a.m.

50. Mr. Tochor says that the Grievor's knowledge is also evidenced in her January 28 email to Gerry Burla in which she asks how many records could be safely changed in a day. This

email was sent after a conversation with Bruce Welch in which he had approached her because he thought what she was doing might have been slowing down the system and one of the reasons for a slow down would be doing too many records in the system. He advised the Grievor to use smaller batches, but gave no specific numbers. Notwithstanding this advice the Grievor did not ask Ms. Porter or anyone else as to the limits.

51. The Employer says that the Grievor disregarded the specific direction and training in relation to the limits. Her conduct in this regard is deserving of discipline.

Instructions Given to the Grievor by Marguerite Porter

52. RPL says the instructions given by Ms. Porter to the Grievor were very clear. Ms. Porter had received instructions from CMG in relation to the merging of certain limited database records into a single record. Ms. Porter met with the Grievor and instructed her to merge records of a certain specific number of books contained in boxes which had recently been purchased. This would involve between 3,000 and 5,000 titles and would have involved the Grievor or her cataloguers physically taking a book in hand from the box and looking on the system to find out whether a record for the same book already existed. If so, the new record and the existing record were to be merged. This would make it easier for a library patron to request a hold on a certain book. Shortly after the meeting with the Grievor, Ms. Porter emailed her supervisor, Ms. McKenna, advising that she had asked the Grievor to start adding the several trolleys of paperbacks and trades from the Chapters purchase to existing bibs.

53. RPL says that contrary to Ms. Porter's instructions, the Grievor went much further. She attempted to change 470,000 records, including 70,000 on January 24 and 100,000 on January 28. Contrary to Ms. Porter's instructions, the Grievor attempted to update both existing and go-forward materials. The record change the Grievor initiated resulted in an inaccurate entry being placed on certain items. The note that the Grievor placed on hundreds of thousands of records did not apply to every record; they created inaccuracies in the catalogue database. Ultimately, CMG directed that these records be reversed. Costs were incurred and the reputation of RPL within SILS was damaged; RPL and other members of the consortium lost the ability to use the Global update function.

54. RPL says that this conduct by the Grievor was deserving of discipline. It says that it was justified in imposing discipline on the Grievor as a result of her misconduct and poor work performance; her insubordination, her dishonesty. Employees can be disciplined for carelessness or negligence in the performance of their work; there is a distinction between voluntary incompetence (culpable) and involuntary incompetence (non-culpable). Brown & Beatty, *Canadian Labour Arbitration*, paragraph 7:3500 and 7:3510 and the *Radio CJVR Ltd. v. Schutte*, 2009 SKCA 91.

55. RPL says that the Grievor's conduct was culpable; she was capable of meeting the reasonable standard of performance required in her position which standard had been communicated to her; however, she did not follow instructions or adhere to the standards due to her negligence, carelessness and/or lack of diligence on her part. Discipline was properly imposed on the Grievor for her failure to perform her work duties properly and in accordance with the SILS guidelines and her disregard for the instructions of Ms. Porter. The Grievor's misconduct included her failure to adhere to the SILS standard for updating library records in a manner that affected no more than 20,000 records at a time. Secondly, she failed to heed the clear instructions of Ms. Porter when she unilaterally decided to update all library records with the 500 field description instead of updating records for specific new fiction works on a go-forward basis only. *Pacific Forest Products Ltd. (Sooke Logging Division) and International Woodworkers of America, Local 1-118*, 1984 CLB 8027; *Canada Post Corp. and C.U.P.W. (Linklater) (Re)* 2009 CLB 2312; *Calgary Laboratory Services and H.S.A.A.* 2010 CLB 28169; *Royal Victoria Hospital and O.N.A. (Dalton)* 2011 CLB 21229.

56. RPL says the Grievor's conduct was insubordination. She was not mistaken or misled or subject to any misunderstanding about the tasks she was suppose to complete; she knew the rules and what she was required to do. She knew the risk to the library system if she failed to adhere to those rules, however she refused to follow her manager's instructions and instead substituted her own judgment for that of Ms. Porter; she simply did not think she had to follow the rules. Brown and Beatty, *Canadian Labour Arbitration*, paragraph 7:3610; *Re Highland Valley Copper and U.S.W.A.*, 7619 (1999), 82 L.A.C. (4th) 310; *United Food and Commercial*

Workers Union, Local 1118 and Cargill Ltd. (Food Division)(Tran Grievance) [1998] A.G.A.A. No. 8; *Delta Chelsea Hotel v. Hotel Employees Restaurant Employees Union, Local 75*, [2002] O.L.A.A. No. 670; *Canadian General Tower Ltd. and U.S.W.A., Loc. 861 (Schramm) (Re)* (2003), 118 L.A.C. (4th) 193.

57. RPL says that the Grievor's dishonesty during the investigation, in particular not being honest in relation to her communications with Gerry Burla on January 28, is an additional ground of misconduct for which discipline is warranted. Dishonesty in an investigative meeting is a serious act of misconduct for which discipline is justified. Her dishonesty regarding her misconduct and her failure to acknowledge any wrongdoing is a serious employment offence which warrants the discipline given in this matter. Brown and Beatty, *Canadian Labour Arbitration* at 7:3330; *Greater Toronto Airport Authority v. Public Service Alliance of Canada (Fortier)*, [2002] C.L.A.D. No. 201; *Nova Scotia (Department of Justice) v. Nova Scotia Government and General Employees Union*, [2005] N.S.L.A.A. No. 6; *Sooke School District No. 62. v. CUPE, Local 459*, [2002] B.C.C.A.A.A. No. 325.

58. RPL says that the Grievor's failure to make any admission of wrongdoing or exhibit any remorse is a factor that is not viewed favourably when she asks to have the penalty mitigated. The Grievor justifies her deliberate actions by suggesting she was never told what not to do and by deflecting the blame onto the system by saying that it "crashes all the time". *Re: Int'l Chemical Workers, Local 279 and Rexall Drug Co. Ltd.* (1967), 18 L.A.C. 342 (Weatherill); *Re: U.A.W., Local 397 and Brantford Cordage Co.* (1969), 20 L.A.C. 412 (Hanrahan); *Re Canada Safeway Ltd. and U.F.C.W., Loc. 401* (1992), 34 L.A.C. (4th) 401.

Disciplinary Demotion

59. RPL says that in this matter the four-month disciplinary demotion was warranted and reasonable. It is recognized as a legitimate form of discipline where an employee has been shown to be unsuitable, incompetent and unable to do her job. Demotions are generally appropriate discipline where the impugned conduct reflects on the employee's ability to perform the job from which she has been removed and is deemed amenable to corrective response. Brown and Beatty, *Canadian Labour Arbitration*, paragraph 7:4250. I am referred to the

following additional cases in respect of concept of disciplinary demotion: *CUPE, Local 908 v. Regional Health Authority No. 3 (Greer Grievance)*, [2003] N.B.L.A.A. No. 8; *CUPE, Local 63 v. Toronto Board of Education (Young Grievance)*, [1997] O.L.A.A. No. 576; *Vanguard Inc. and United Food and Commercial Workers, Local 1400 (Cudney)*, [2005] S.L.A.A. No. 13.

The Union

60. In her oral and written submissions, Ms. Saxberg provides a comprehensive review of the evidence and the applicable law. She submits that RPL has failed to establish the factual basis on which it relies for its discipline and has failed to prove that the facts necessary to show that the discipline levied was just and reasonable. *Saskatchewan Assn. of Health Organizations* (2011), 203 L.A.C. (4th) 1, 104 C.L.A.S. 265 (Hood). She says that RPL must prove with admissible evidence each element of the alleged misconduct and cannot rely on uncorroborated hearsay evidence. *SGEU (Longman) v. Saskatchewan, unreported* (Wallace). RPL cannot rely solely on a third party investigation report to establish just cause for discipline. *Saskatoon (City) v. Canadian Union of Public Employees (Zapski Grievance)*, [2011] S.L.A.A. No. 14 (QL)(Hood). The Union suggests that in resolving issues of credibility we ought to apply the test set out in *Faryna v. Chorney*, [1952] 2 D.L.R. 352.

61. The Union says that there is no evidence of records being inappropriately changed; no actual bibliographical record has been tendered in evidence. Timeline report and the testimony of Ms. Reynish was hearsay based on data apparently generated by Millennium that was never tendered in evidence. Ms. Reynish's *viva voce* evidence and the documentary evidence was vague and imprecise as to the nature of the records that were changed and the actual number of records changed. The Grievor's testimony was that she executed the changes in batches of 5,000; Ms. Reynish's testimony confirmed that this was possible.

62. The Union says the Employer was confused about or mischaracterized the number of changes and the dates allegedly made by the Grievor. When discipline was imposed, the Employer was under the misapprehension that she had changed half a million records on one morning and brought down the whole system. The evidence is that this is not what happened; the Grievor did not attempt to change more than 20,000 on RPL's evidence or 5,000 on her

evidence at any one time, nor did the entire system go down for several hours on January 28, 2013. An employer is limited to the specific grounds invoked at the time of discipline and is bound by the memorandum of discipline. *United Steelworkers of America v. Aerocide Dispensers* (1965), 15 L.A.C. 41 (Laskin).

63. The Union relies on the evidence of Ms. Reynish that there were no firm limits on Global update. The soft limits were 20,000 to 30,000 but on cross-examination Ms. Reynish said hard limits would be 40,000 or 60,000 records. The Grievor says she changed the records in batches of somewhat less than 5,000. Ms. Reynish says the Timeline is not inconsistent with changes in smaller limits which combine to change around 20,000 records.

64. The Union says that in examining credibility based on *Faryna v. Chorney*, supra, that where there are inconsistencies in the evidence of the Grievor and the evidence of Ms. Porter, Ms. Reynish or Ms. Arie, the evidence of the Grievor should be accepted. The Grievor's evidence was consistent throughout. The evidence of Ms. Porter should be examined having regard to her January 29 phone call to the Grievor at home, during which she indicated that she was out to get the Grievor for what had occurred. She did all that she could to accomplish this end. The Union refers to the various email documents Ms. Porter provided to senior management. It points to a strained relationship between the management witnesses and the Grievor. During the course of the investigation the Grievor answered questions carefully because she was subject to attack both when phoned at home and again when she returned to the office.

Grievor's Conduct Not Culpable

65. The Union says RPL has failed to prove the Grievor had the mental state required to sustain an allegation of disciplinable misconduct. With respect to the changes made to the bibliographic records, there is no proof that the Grievor acted in a manner that was careless, reckless or negligent. A mere error in judgment is not disciplinable without carelessness, recklessness or negligence. *United Brotherhood of Carpenters and Joiners, Local 2106 v. Board of School Trustees of School District No. 57* (1988), 34 L.A.C. (3d) 288 (Dorsey). The Grievor took pains to investigate whether her actions were impacted in the system, sought help from both

the RPL help desk and SILS staff. She was careful, not negligent and did not turn a blind eye to the impact of her work on the RPL catalogue system. To establish dishonesty an employer must prove both the physical elements of the offence and that the grievor had a dishonest or deceitful intent. *Industrial Wood and Allied Workers of Canada, Local 1-85 v. Pacific Forest Products Ltd.*, [1995] B.C.C.A.A.A. No. 220 (QL) (Blasina). RPL has not shown that the Grievor had any dishonest intent with respect to her transactions with RPL during the investigation. There is no allegation that the Grievor understood the direction and deliberately did something different. At best, the Grievor misunderstood the instructions and did the changes the wrong way.

Discipline for Non-Culpable Incompetence

66. The Union says RPL has not made out a case to discipline for non-culpable incompetence; it has not established just and reasonable cause for the corrective action taken. *Industrial Wood and Allied Woodworkers Union of Canada, Local I-3567 v. Weyerhaeuser Co.*, [2004] B.C.C.A.A.A. No. 147 (QL) (Kinzie). RPL has not met the required criteria to discipline for incompetence: a defined performance level; the employee was informed of this performance level; the employee was given reasonable supervision and training and allowed a chance to meet the required standard of performance; the employee is incapable of meeting the standard; the employee was given adequate warning that continued failure to meet the standard of performance could lead to termination. *Edith Cavell Private Hospital v. Hospital Employees Union, Local 180* (1982), 6 L.A.C. (3d) 229 (Hope). Here the Grievor had no prior discipline, received no coaching, was never warned; there was no incompetence.

Insubordination

67. The Union says RPL has failed to prove that it had just cause to discipline the Grievor for insubordination. The required three elements have not been established: clear order which the grievor understood; order given by person of authority; the grievor disobeyed the order. *Lilly Industries Inc. v. United Steelworkers of America, Local 13292-02* (2000), 86 L.A.C. (4th) 397 (Dumoulin). Careless work does not constitute insubordination. *Ford Motor Co. of Canada Ltd.* (1974), 5 L.A.C. (2d) 5 (Palmer).

68. RPL has not proven that anyone gave the Grievor a clear order which she understood nor that she disobeyed any such order. She carried out what she understood to be the direction from Ms. Porter. There is no documentary evidence of any clear order or direction; on the contrary, they are equally consistent with the Grievor's understanding of the direction (that she was to update all merged fiction records to reflect that publisher, year and pagination can vary) as with what Ms. Porter claimed was her direction (that she "may" add the 500 note field while merging a subset of fiction records only). There is no evidence that the Grievor refused or declined to do anything she had been told to do.

69. The Union submits that the documentary evidence is more consistent with what the Grievor understood she was to do. The Grievor understood she was to change all fiction records. The SILS CMG announcement from directors meeting (Exhibit 23) says *All fiction, whether hard cover, trade or mass market paperback will be merged to a single record (some Literature will be the exception)*. Ms. Porter's pre-meeting notes (Exhibit 24) refer to *add ISBN and 500 field *publisher, pagination and printing dates varies*. The evidence is clear that these were discussed; Ms. Porter says limited changes; the Grievor understood all. Ms. Porter's December 11, 2013 email to Ms. McKenna (Exhibit 25) references *Retrospective merging* but makes no reference to the 500 field. This is not inconsistent with the Grievor's understanding that she was to change all the records. The Grievor's notes made at the December 11 meeting with Ms. Porter (Exhibit U-15) are not inconsistent with what the Grievor understood and did. The SILS bibliographic database cleanup and maintenance 2012 (Exhibit 27) is said to be the only evidence as to how the database cleanup was to be carried out. The document refers to bibliographic record merging and the need to:

10. Cut and paste the relevant tags from the records to be deleted to the record that will be retained.

c. Copy any pertinent information:

v. Include the 500 note field indicating there are multiple editions associated with this single record, e.g. "Publisher varies,"; "Pagination varies." or "Edition varies."

70. The Union says the Grievor's understanding was reasonable and consistent with the evidence. It is impossible that she willfully disobeyed the order of Ms. Porter. The Grievor's

evidence is more consistent with the balance of probabilities. Her evidence has been consistent over time and with the documents. As such, the Grievor's evidence is to be preferred as being more credible.

Assessment of Penalty

71. The Union says that in the event it is determined that the Grievor is guilty of some misconduct the same must surely be minor given the lack of evidence of any dishonest or culpable intent. The penalty imposed is harsh and on the severe end of the range of possible disciplinary responses. The concept of just cause requires an employer to take progressive or a corrective approach to discipline before resorting to more severe penalties. *I.U.O.E., Local 721 v. Ocean Paving Ltd.* (1997), 64 L.A.C. (4th) 82 (Cromwell).

72. Here the Grievor had 38 years of discipline free service; there is a lack of any warning, formal coaching or documented counseling with respect to her performance. The penalty assessed is inconsistent with the requirements of progressive discipline. The penalty was unduly harsh and inconsistent with the mitigating factors in the Grievor's circumstances. *U.S.W.A., Local 3257 v. Steel Equipment Co. Ltd.* (1964), 14 L.A.C. 356 (Reville). Mitigating factors are: 38 years of discipline-free service; alleged offence is an isolated incident; penalty imposed has a very significant financial impact; no other employee ever disciplined for similar conduct; no intent to disobey an order – carried out the instructions she thought she had been given; alleged misconduct was not serious and alleged misconduct consistent with the only written guidelines available for the catalogue clean-up project.

73. The Union says the Employer failed to discharge its duty to conduct a fair and unbiased investigation. The Employer's bias against the Grievor was evident throughout the investigation and the arbitration process.

74. The Union asks that I direct that the discipline be reversed and require RPL to remove all mention of the discipline from the Grievor's employment record and to make the Grievor whole for all losses. The Union requests that I retain jurisdiction with respect to the implementation of the award in the event the parties are unable to agree.

IV. ANALYSIS AND DECISION

What instructions did the Grievor receive on December 11, 2012?

75. During the December 11 CMG conference meeting Ms. Porter learned of the SILS Director's announcement that all fiction, whether hardcover, trade or mass market paperback, will be merged to a single record. Ms. Porter made notes of matters which she wished to discuss with the Grievor in connection with the implementation of the CMG direction (Exhibit 24). Shortly thereafter Ms. Porter met with the Grievor.

76. Ms. Porter and the Grievor have each testified as to her recollection of this meeting. There are a number of items on which there is agreement; on others, there are significant differences. Notes made by Ms. Porter in preparation for the meeting and those made by the Grievor at the meeting have many points which are essentially common. First, each set of notes refers to putting hardback, trade and paperback fiction on one record. Secondly, both reference profile or local purchase. Thirdly, each notes to "add ISBN". Fourthly, Ms. Porter's notes record "500 field - *publisher, pagination and printing dates varies" while the Grievor's reads "add note – publisher, pagination and printing dates vary." Fifthly, each references "authors" when merging and to merge titles/records with holds first. The Grievor's notes say "can merge paperback and hard copy records"; Ms. Porter's notes read "when merging paperbacks, if two records will merge".

77. Ms. Porter's notes in relation to the merger of the hardback, trade and paperback fiction on the same record references "go forward basis." The Grievor's notes do not contain any reference to either go forward or retrospective basis. Neither set of notes references the Chapters books; however, the Grievor acknowledges that Ms. Porter directed her attention to these books which were physically present.

78. Where the evidence of Ms. Porter and the Grievor differ as to the instructions given to the Grievor, I must determine which evidence is more credible. In so doing, I adopt and apply the reasoning of Mr. Justice O'Halloran, J.A. in *Faryna*, supra, at p.357:

The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

79. At 1:50 p.m. on December 11, Ms. McKenna, Deputy Library Director, requested Ms. Porter to provide her with an update on the CMG meeting. Ms. Porter responded at 3:33 with an update and referenced her just concluded meeting with the Grievor. In her email Ms. Porter writes, in part:

Paperbacks and trade will be added to the hardback records starting tomorrow. Retrospective merging will be done as we work through our author lists or for titles with multiple holds. (Since we have several trolleys of paperbacks and trades from the Chapters purchase I asked Gloria to start adding them to existing bibs. This is not a problem since they use to do it before SILS. When adding if there are two or more records they will be merged.)

When I get the minutes I will forward them to you.

80. At the time Ms. Porter prepared her notes, she did not have a copy of the CMG minutes. The Grievor's notes were prepared during the meeting. These notes may be considered as part of the existing conditions of the circumstances and of the discussions which occurred. Ms. Porter's email to Ms. McKenna shortly after her meeting with the Grievor is part of the surrounding conditions. It is most probable that a practical informed person would recognize as reasonable that an employee in responding to a supervisor's request for a report would provide accurate information in respect of a meeting with one of her reports and the instructions given to her in the workplace. In my opinion it is most probable that Ms. Porter's report to Ms. McKenna is an accurate recount of the meeting and instructions given to the Grievor to the extent that these are recorded.

81. Ms. Porter confirms that the merging is to begin the next day, December 12. This accords with Ms. Porter's note that the merging would start on Wednesday, December 12 and her evidence that she asked the Grievor to start adding the trolley of paperback and trades from the Chapters purchase to existing bibs.

82. Ms. Porter's email also confirms evidence of both the Grievor and Ms. Porter that such merging of two or more records had previously been done by the Grievor and the cataloguing staff. To this extent the email supports/confirms the evidence of Ms. Porter that she instructed the Grievor not only to start with the Chapters' books but to merge two or more records as they "use to do it before SILS". Such a process is more consistent with that described by Ms. Porter with book-in-hand comparison with other records and the deduping process being used by the cataloguing staff, than it is with the wholesale addition on the 500 field to existing records through the use of Global update.

83. Ms. Porter's email to Ms. McKenna says "retrospective merging will be done as we work our way through author lists with multiple holds...". Neither the evidence of the Grievor or Ms. Porter elaborates on what "retrospective merging" was discussed or when it was to occur. Notes of both the Grievor and Ms. Porter reference "authors" and title/records withhelds from merging. I am satisfied that this reference to "retrospective merging" did not include that undertaken by the Grievor when she used Global update to add the 500 field note to the affected bibs.

84. At the end of the Grievor's December 11 meeting with Ms. Porter and after receiving her instructions, the Grievor said "done this before and doing it again" and that the cataloguers had been merging records for a couple of years so she knew what merging involved: "I didn't need any direction on how to merge records". These words support Ms. Porter's evidence as to the instructions and scope of the requested database work. The process involved book-in-hand – one at a time to merge to one record. At this time neither the Grievor nor the catalogue staff were using Global update to merge bib records.

85. The Grievor expressed confidence in relation to the instructions received from Ms. Porter and had no questions. This would reflect an understanding of the nature and scope of the direction and the manner in which to implement the direction. It seems clear to me that the Grievor was confused as to her instructions. She did not understand the directions that she was to add new titles to and merge them with existing hardcover bibs nor that it was in this limited context that the 500 field note could be added to the record.

86. I am satisfied that Ms. Porter's instructions to the Grievor were as she testified. The Grievor was instructed to merge all hardback, trade or paperback fiction on a go-forward basis starting with the 3,000 to 5,000 Chapters titles. It was understood that the cataloguers would proceed as they had done previously; adding the titles to existing bibs and merging into one record.

The Timeline

87. I accept the Timeline (Exhibit 6) as an accurate account of the Grievor's use of Global update including the dates of use and the number of records affected. Ms. Reynish did not access the original documents; rather, she relied on Excel spreadsheets provided by Millennium, the vendor, at the request of SILS. There is no dispute that the Millennium login "Rcatgqc" was the Grievor's login. The Grievor acknowledges that she accessed the system on a number of occasions consistent with those in the Timeline including January 24 and 28, and altered approximately the number of records reflected in the various dates. In these circumstances there is no basis to reject the document as hearsay and insufficient to establish the access by the Grievor on the dates shown and changes to the number of records.

What did the Grievor do?

88. After unknown disclosures to and discussions with her staff as to what was required and the suggestion by her staff that she could perhaps do it; the Grievor concluded that she could. She decided to use Global update to add the 500 field to the existing bibs. In so doing she altered more than fiction and others unaffected by the addition of trade and mass market paperback to hardcopy editions.

89. The Grievor, through her Create List selection of 'book', chose to affect the largest number of records within the SILS system. With its use the Grievor changed bib records of hardbacks to which no paperback was being attached and changed juvenile non-fiction and microform. Ms. Porter's search disclosed these changes (Exhibit 11). The process used by the Grievor affected bibs other than the bibs that were having a paperback attached to a hardback bib record; the 500 field note did not apply to many of the affected records.

90. Notwithstanding Ms. Porter's directions to start with the addition and merge of the Chapter's books with existing fiction bibs, the Grievor on December 12 used Global update to alter 20,000 records. This was done without consultation with Ms. Porter or advice to Ms. Porter that she decided to use Global update. In this respect the Grievor was careless; she was reckless in not proceeding with the work directed in the manner directed and without regard to any discussions or clarifications with her supervisor as to the changes she was undertaking. She was reckless in her decision to use Global update without first consulting with her supervisor and receiving authority from SILS to use Global update on the SILS system.

91. I am satisfied that the Grievor had received instruction from Ms. Arie and Ms. Reynish on the general nature and limits of Global update. I do not accept that the Grievor was never told of the general limits. I am satisfied that the Grievor was broadly aware of the 5,000 record limit. She knew that it had a limit. On her own evidence she proceeded with batches of slightly less than 5,000 records done multiple times. This can be seen by observing the Timeline entries prior to January 28. In her email to Mr. Burla, she references efficiently changing 5,000 records at a time. She does not say where she learned this number; it was not from Mr. Welch who did not know the number.

92. The evidence of Mr. Welch is that on either December 20 or January 23 he approached the Grievor as he suspected that what she was doing was causing the system to slow down; one of the reasons for this was processing too many records. She was processing a lot of records and Mr. Welch advised her to do so in smaller batches; no specific numbers but there was reference to the transaction log filling as a result of doing large numbers of transactions and that the system would slow and halt.

93. Alternatively, if the Grievor was not aware of the limits, then her use and continued use of it, changing the SILS records without such knowledge, was reckless. This is particularly so in relation to her January 28 activities after her discussions with Mr. Welch and his advice that he believed her activities were causing problems with the Provincial System and this was occurring when she was affecting considerably fewer records.

94. In my opinion the Grievor was reckless in trying to update approximately 70,000 records on January 24 and 100,000 records on January 28. This is so in light of her conversation with Mr. Welch. The Grievor's email to Mr. Burla reflects a knowledge of the efficiency of changing 5,000 records at a time. She expresses that she has no desire to crash the system, but that she still had 550,000 records to update. While she could enter 150,000 records in the system, she was aware that the system could not deal with that many. She sought direction as to how many records could be safely altered and to request that the people in Saskatoon keep an eye on the transaction file and clear it more often.

95. I cannot categorize the Grievor's email to Mr. Burla at 12:59 p.m. on January 28, 2013 as being dishonest. It must be seen with the background of discussions with Mr. Welch. Given those discussions it seems reasonable that with her experience of the system slowing or stopping on the morning of January 28 that she would seek information as to the limits so that she could work within the system and not crash it. Had she not been reckless, she would have sought this information prior to attempting to change 100,000 records on the morning of January 28.

96. I am unable to conclude that the Grievor was insubordinate in this matter. She did not willfully disobey a specific order. Rather, her failure to implement Ms. Porter's direction was failure to comprehend the directions and their nature and scope. Because of these failures she carelessly utilized Global update to improperly alter a very significant number of records. She was reckless in proceeding with Global update without the authorization of her supervisor and of SILS and in failing to recognize and honour the limits of Global update. Her carelessness and unwillingness to seek clarification and direction and in the end result doing what she was neither authorized nor directed to do, was misconduct but not insubordination.

97. RPL had just cause to discipline the Grievor for her carelessness and recklessness: failing to follow Ms. Porter's directions; failing to have the authorization of her supervisor in SILS to use Global update; in continuing to use Global update when she knew or ought to have known that her manner of use was causing the provincial system to slow down or to freeze.

98. As Cataloguing and Processing Supervisor, the Grievor is responsible for: the effective and efficient operation of the unit; supervision of her staff; quality control and integrity of the catalogue data. She is expected to have the most knowledge within RPL in relation to cataloguing and the performance of RPL's cataloguing role in SILS.

Was the discipline excessive?

99. In my opinion the ten consecutive working day suspension followed by a four-month disciplinary demotion was excessive in all of the circumstances. This discipline was imposed by RPL based on its belief: (1) that on January 28 the Grievor's actions affected nearly one-half million records; (2) that she was dishonest and insubordinate during the investigation meeting on February 7; (3) the Grievor was trying to misrepresent or mitigate her responsibility in shutting down the provincial library system by sending her email to Mr. Burla; (4) that her actions were a significant abrogation of the fundamental expectations of her position and the authorities entrusted to her.

100. I am not satisfied that the Grievor was neither dishonest nor insubordinate during the investigation meeting. There is no evidence that she had any dishonest or deceitful intent or that she was defiant of a direct order. While she may not have accepted responsibility for her conduct, I cannot say that she lied or intentionally mislead RPL in any material manner.

Disciplinary Demotion

101. It is now generally accepted that demotion may be a legitimate form of discipline where an employee has been shown to be unsuitable, incompetent and unable to do her job; where the conduct for which discipline is imposed reflects on the employee's ability to perform the job from which she has been removed and she is deemed amenable to corrective response. Brown and Beatty, *Canadian Labour Arbitration*, para 7:4250, supra. Where an employer can demonstrate the grievor's inability to do her job, disciplinary demotion is to be punitive and remedial and bring to the attention of the grievor the employer's view of the gravity of her conduct. *Toronto Board of Education (Young Grievance)*, supra.

102. I am not satisfied that RPL has established that the Grievor was incompetent and unable to do her job such as to warrant a disciplinary demotion. RPL has established that the Grievor was careless and reckless in the performance of her job duties in the manner I have described herein. In my opinion the circumstances were not such as to justify a disciplinary demotion; they do not establish that the grievor was incompetent and unable to perform her job. I note that she never received the retraining RPL said was required prior to returning to her position. This does not support a finding of inability to perform her job.

103. The Grievor had performed her duties as Catalogue and Processing Supervisor for in excess of three years prior to the conduct which is subject to the discipline and this arbitration. Early in her career Ms. Arie had discussions and reviews with the Grievor in respect of the expectations of the job and the next steps to meeting those expectations.

The Appropriate Penalty

104. I have considered all of the circumstances and relevant mitigating factors, including those factors set forth by Arbitrator Weiler in *Wm. Scott & Co. Ltd.* (1977) C.L.R.B.R. 1. I conclude that an unpaid suspension for ten consecutive working days was excessive. Factors mitigating the penalty include that the Grievor has a clean disciplinary record over her 38 years of service; this matter is an isolated incident. I have concluded that it is likely the Grievor misunderstood the nature of the direction given to her. However, as a result of her carelessness and recklessness, the directions were disobeyed. The penalty of a ten-day suspension coupled with a disciplinary demotion created a special economic and personal hardship for the Grievor having regard to her personal circumstances, including being a single income family with a quadriplegic child. There is no evidence of any other employee being disciplined for similar conduct.

105. Factors not mitigating the penalty is the position of responsibility that RPL has within SILS and the impact of it on the SILS operating system and of RPL's reputation among the members of the SILS consortium. Due to the disruptions of service SILS needed to make inquiries of the suppliers of the hardware and software and to investigate the possible causes of the slowdown and shutdown of the system. As a consequence of the Grievor's actions, RPL's authority and the authority of other member libraries to use Global update, was removed.

106. In my opinion a just and reasonable discipline in all of the circumstances would be an unpaid suspension for five (5) consecutive working days. The Grievance is allowed to this extent.

107. By agreement of the parties I will reserve my jurisdiction in the event that they are unable to resolve matters arising from the implementation of this Award.

DATED at Saskatoon, Saskatchewan this 9th day of May, 2014.



Kenneth A. Stevenson, Q.C.,
Sole Arbitrator.