



**LRB File No. 229-18**

In the Matter of an Appeal to an Adjudicator Pursuant to Section 3-53 & 3-54 of *The Saskatchewan Employment Act*, SS. 2013, Chapter S-15.1.

BETWEEN:

**AgraCity Crop & Nutrition Ltd.**

**APPELLANT**

AND:

**Janet Clarke**

**RESPONDENT**

Adjudicator: Perry D. Erhardt, Q.C.

Counsel for the Appellant: Peter Bergbusch, Q.C.

Counsel for the Respondent: Jared McRorie

## **DECISION**

### **Introduction:**

[1] AgraCity Crop & Nutrition Ltd. ("AgraCity") has appealed the decision of Occupational Health Officer, Mike Luciak, dated October 16, 2018 (the "Decision") regarding a complaint of discriminatory action made by Janet Clarke ("Janet"), a former employee of AgraCity, pursuant to sections 3-35 and 3-36 of *The Saskatchewan Employment Act* (the "Act").

[2] In the Decision, Officer Luciak concluded that Janet had been removed from her employment for reporting health and safety concerns contrary to the Act and ordered, among other things, that AgraCity reinstate her to her former position, cease the discriminatory action, and pay her wages she would have earned had she not been wrongfully discriminated against. The Decision indicated that the health and safety concerns were "harassment with respect to behaviour (ostracizing) and statements (intimidating) made to her by co-worker(s) on different occasions in the workplace between April and July of 2018".

[3] AgraCity filed a Notice of Appeal of the Decision pursuant to sections 3-53 and 3-54 of the Act with the Executive Director of the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety, which was dated October 16, 2018 and the matter has come before me as an adjudicator to hear the matter. The Notice of Appeal sets out the grounds of appeal as follows:

- (a) The Occupational Health Officer (the "Officer") erred in concluding that the Appellant's decision to terminate the employment of Janet Clarke was an unlawful discriminatory action contrary to s.35 of *The Saskatchewan Employment Act*.
- (b) The Officer erred in ordering the Appellant to pay to Ms. Clarke wages that she would have earned but for the alleged discriminatory action, to cease the alleged discriminatory action, and to reinstate Ms. Clarke to her former employment.

[4] Following prehearing calls with legal counsel for the parties to address representation, document disclosure, and hearing processes and dates, this appeal proceeded to a hearing

before me on January 14, 15 and 16, 2020, which resumed on July 21, 22 and 23, 2020. Final arguments from counsel were heard on August 24, 2020.

[5] The matter proceeded as a hearing *de novo*.

### **The Hearing**

[6] Counsel for both parties gave opening statements. The Appellant elected to call six witnesses: Jason Mann, April Arseneault, Melissa Murphy, Stevie Yang, Brian Rumberg, and Myrna McIvor; and the Respondent called two witnesses: Dianna Emperingham and Janet Clarke.

[7] The initial context of the employment environment in which the complaint at the heart of this matter arises was described by many witnesses for both the Appellant and the Respondent and is aptly summarised in the Appellant's brief at paragraphs 4 and 5 as follows:

4. AgraCity is a vertically integrated crop inputs supplier. Its customers are farmers located primarily in Western Canada, but also in Ontario and Quebec. AgraCity sells generic versions of crop protection products, such as glyphosate, using a direct-to-farm model. A sister company, MPower Logistics, is the transportation arm that owns and operates semi-trucks to deliver products from AgraCity's warehouse to farms. AgraCity does not operate any retail outlets.

5. AgraCity relies upon a software system, operating on a Microsoft platform, which includes an accounting program known as Microsoft AX ("AX") and an integrated Customer Relations Management ("CRM") database. Among other things, AX is used to "build loads" for shipment by truck. Each load consists of numerous customer orders, which are loaded onto a trailer for delivery. For each customer load, a bill of lading is created in AX. This bill of lading is taken by the truck driver with the loads. The bill of lading is signed by the farmer, and then it is referred to as a proof of delivery ("POD"). PODs are returned to AgraCity's warehouse in Saskatoon, where they are collected by an employee of MPower Logistics. The PODs are then entered into AX.

[8] Janet Clarke began employment as Order Fulfillment Supervisor ("OFS") for AgraCity in November 2017 after being interviewed by Dianna Emperingham, Vice President responsible for Logistics, who would become her direct supervisor. It is within the environment described above that Janet would carry out the work of building loads and related paperwork in pursuit of AgraCity's goal to ensure efficient delivery of product to farms.

A summary of the testimony from each witness follows.

### **Evidence of Jason Mann**

[9] The first witness for the appellant was Jason Mann. He testified that he is President, CEO, and managing director of AgraCity and has been since its inception in 2008. He described AgraCity's work as a supplier of crop inputs through a direct to farm method, which bypassed retail channels and passed along savings to farmers, and as a vertically integrated supply chain from global sources. He further indicated that it held registrations for many products and was a generic competitor to large companies like Bayer Crop Science.

[10] When asked about MPower logistics, he indicated that the company was formed in 2010 and that he was also its CEO, President and managing Director. The company managed the delivery of product to farm and was an operating trucking company. It had a fleet of trucks and a few employees. Its function was to coordinate drivers and goods, and AgraCity was its only customer.

[11] Mr. Mann testified that it was at AgraCity's facilities where loads and routing for shipments were determined and bills of lading prepared. Those were then handed off to MPower for delivery, and, at times, MPower retained third party trucks to supplement its own fleet. Essentially, the planning and building of loads and the work orders were all completed at AgraCity, which then loaded the truck and MPower would deliver the goods. Mr. Mann testified that AgraCity has a sales force within its offices and representatives on the road dealing with farmers directly, but it had no store front.

[12] Mr. Mann indicated that all product sales or orders generated at AgraCity were entered into a customer relations management system created by Microsoft. This information was then pushed into an accounting program called Microsoft AX. The program had both accounting and logistics features. It was from this system that logistics were managed and deliveries determined to farmers. Additionally, entries in the system would indicate whether orders were pre-paid as this was required before delivery would be completed. Once all was determined, loads were then built, understanding geography, roads, roadway restrictions and other factors. He said each load was based on what was paid for and an efficient number of drops and mileage. He stated that "every mile has a cost."

[13] Mr. Mann testified that once a bill of lading was generated for a load, a route was mapped and then a sequence of drops to farms laid out. From there, the bill of lading would go to the warehouse floor where the load was organized as the last drop would be the first on the truck. Mr. Mann described AgraCity's 80,000 square foot warehouse with 6 loading doors. He said this amount of space was required as they often packaged product from bulk. All was sorted by skew numbers and bills of ladings followed pick lines where pallets would eventually be built. He testified that coordinating all of this was done by a logistics coordinator who built the load. He said that anyone at AgraCity could access information the AX software, check the order, payment confirmation, ensure product was in inventory, then generate the necessary paperwork.

[14] Mr. Mann testified that the logistics was a complicated function because building orders in the manner they did was unique in the industry. It required a specific skill set which understood geography, routing, and common sense for each load. It also required an understanding of open orders and payment completion as one mistake in the system could create a domino effect of subsequent errors. He also indicated that, on the other side of AgraCity's business was the importing function. AgraCity could not predict the time of deliveries for certain products, which was a hallmark of vertical integration. He also indicated a different group managed inbound product.

[15] He described AgraCity's work as mainly focused on Western Canada, through from Peace River, Alberta to southern Manitoba. There were also sales in Ontario and Quebec, but these were areas for which a separate delivery system was maintained by a company called Access. Access operates its own warehouse and AgraCity would deliver to it. He described Access as working in Eastern Canada much as MPower does in Western Canada. He noted

that Access provided a building and trucking, but did not build loads or generate bills of lading. These were done at AgraCity in Saskatoon.

[16] Mr. Mann described the organizational structure as top down and indicated that, as President and CEO, all staff ultimately reported or were accountable to him. He indicated that he had headhunted Dianna Emperingham for the position for Vice-President, Supply Chain, to oversee sourcing and to manage the direct-to-farm logistics. She reported directly to him and, in 2018 managed production, which included bulk to packaging as well as logistics of delivery of product to farms. He described Dianna's team as including logistics staff in the warehouse, and that she had hired Janet Clarke to AgraCity. Dianna had been hired in August 2017 and Janet Clarke was hired shortly after in October 2017.

[17] When asked what the Order Fulfilment Supervisor (OFS) role entailed, Mr. Mann indicated it was to build loads and oversee delivery completion within the AX system. This required the OFS to look at AX and create bills of lading using factors that he earlier described. Once a truck driver returned from delivery of a load with a proof of delivery (POD), and provided it to the OFS, the completed POD was to be recorded in the AX system. If this was not done, double delivery could take place resulting in a domino effect and reputational damage. Mr. Mann testified that there was only one person occupying the OFS role in 2017 and 2018, and that was Janet Clarke. Her job required that she understand inventory and her office was located in the warehouse where she could walk downstairs and see what was in physical inventory. The position is required to interact with load builders, warehouse floor staff, MPower staff, accounting staff, and drivers. He testified that the OFS should "close off" PODs by entering information into the AX system or the accounting books could not be closed. When this was not completed, farmers sometimes received product three times. He testified that when farmers had problems with deliveries, they would often come "screaming at us" and phoning with complaints to the sales representatives "whose brains would shut down from selling when they are getting complained about."

[18] He described situations where, during AgraCity's busy season, problems would create chaos where information wasn't entered into the customer relations management system appropriately and the sales representative would return to the OFS for clarification. Sometimes, the sales manager would escalate the issues to Dianna Emperingham. At one point, the crisis escalated to him directly as things had gotten so far behind. He testified that, in order to keep things moving, he physically drove trucks and worked in the warehouse in May and June 2018 for 45 days straight as problems had mounted. Mr. Mann testified that he understood the gravity of the problem in early May 2018 when it was noted that the inoculant supply was too high in the warehouse and he said it should have been delivered two or three weeks earlier. This is when a significant problem in logistics first came to his attention. He advised Dianna Emperingham of changes being required at that point. Mr. Mann also testified as to the role of various other people, who were subsequently called as witnesses in these proceedings.

[19] During his testimony in chief, Mr. Mann was shown a letter, Exhibit A-1, which he described as an employment offer letter to Janet Clarke from AgraCity indicating a November 6, 2017 start date. He testified that Ms. Clarke would have been provided a job description, which Dianna Emperingham would have created and provided to her. He was not involved in the hiring, and indicated that Dianna Emperingham, told him she had hired a "crackerjack logistics person from Univar." His impression from this was that AgraCity had obtained an experienced employee from another company.



[20] Mr. Mann testified that AgraCity sells product year round and that the majority of its deliveries occur from late March through June in each year. When asked about Janet Clarke's hiring in November 2017, Mr. Mann indicated that November to January was the slowest time for AgraCity and was normally a good time for training and learning processes, such as creating bills of lading and proof of delivery process. He noted that it would be 4 or 5 months to train up before the busy season began. He testified that he didn't have much to do with Janet, and that she would just need to learn the AX system to get rolling.

[21] Mr. Mann testified that his first involvement with Janet Clarke was in the warehouse in March 2018. He had noted there was inoculant on the floor that he believed should have been delivered two weeks earlier. As a result, he indicated that he delivered three loads himself one weekend. He further testified that Janet Clarke said "we're getting to it" and had no sense of urgency in early May. When asked whether he had prior interactions with Janet Clarke before this occasion, Mr. Mann indicated that he almost had none. Following the weekend, where he made the deliveries, he told Dianna Emperingham that they needed to talk and Janet Clarke was not right for the position of OFS. Jason Mann indicated that Dianna "was a politician" and told him "it's not that" and "I'll fix this". When asked whether anything changed following the conversation, Mr. Mann testified that "no", his concerns weren't resolved and he became more concerned as he was having to work directly at the warehouse every day because of incomplete loads and deliveries.

[22] Mr. Mann testified that, to compound matters, AgraCity had missed its mark on glyphosate needs. He stated that he had asked Janet Clarke to give him, through Ms. Emperingham, information regarding glyphosate sold in order to forecast upcoming need. He testified that Janet Clarke prepared a map of Canada indicating how much glyphosate 360 and 540 was required for each region, but, he said, the number was off by approximately 1 million litres. He said it had only been based on orders paid for and was not exactly sure how her numbers were arrived at. Mr. Mann testified that this almost put them out of business and that there was a 6 or 7 week wait for glyphosate to be provided from China. Mr. Mann testified that he went to Stevie Yang to get more glyphosate as, at the time, she was in charge of ordering new product. He further stated that the sales representatives were paralysed by farmer's calls looking for glyphosate, and AgraCity couldn't get it in time. This shortage was identified in May of 2018. He testified that when he had requested a breakdown in late March 2018, he also went to Stevie Yang, as it looked then like AgraCity only needed a few loads from the US and some from China. He said that this is when he found out, in early May, that he could only get the glyphosate by July 2018. As glyphosate burns weeds before planting can occur, July was too late for the process. Mr. Mann testified that he had relied on information from Janet Clarke which was wrong. Additionally, her poor load builds and failure to enter proofs of delivery had a domino effect and many failures resulted. He testified that, in 2019, much time was spent repairing the reputational damage created in 2018.

[23] Mr. Mann testified that he would have fired Janet Clarke in early May and he told Dianna Emperingham to do so, but she did not. He testified that he didn't have authority to fire Janet Clarke at the time. He testified that this conversation occurred immediately following the weekend he was required to make deliveries himself. He made the decision at that time to bring Stevie Yang back in to manage logistics for AgraCity's Western Canada operations. He indicated that Stevie was brought back to perform Janet's role as there was so much mess to clean up. Mr. Mann testified that he left the Eastern Operations under Janet's responsibilities to

arrange for logistics as it was less complicated, and they just had to get loads out as product was there and the sale representatives needed to keep selling.

[24] Mr. Mann testified that, in his estimation, AgraCity probably lost 10 million dollars in sales as farmers were continuing saying "where is my glyphosate?" He testified that from 2018 to 2019 sales increased by 15 million dollars.

[25] Mr. Mann testified that he felt he did not have authority to fire Janet Clarke in May as there was an ongoing dispute with his brother that was governed by a Court Order that, under the court's direction, was to remain under seal.

[26] When asked about moving Stevie Yang back into some logistics duties she had done previously, Mr. Mann testified that she was then reporting directly to him as the entire logistics department was incapable, right from Dianna Emperingham down.

[27] When presented with Exhibit A-2, the Occupation Health and Safety decision of October 16, 2018, Mr. Mann described it as laughable that Stevie Yang was accused of bullying as she was a "timid little Chinese girl". When asked about allegations of harassment complaints, Mr. Mann testified that he had received none at all, and would "hope that there was no reason for any harassment response not to come to him". He advised that he had an open door policy about harassment and employees could go to Human Resources and not just their supervisors. In response to the allegation of harassment taken to him and not investigated, Mr. Mann testified that the only time he heard of any such thing was on July 13, 2018, when a letter from Janet Clarke to Diana was presented to him - before that there was nothing.

[28] He stated that on July 11, 2018, he clearly told Dianna Emperingham that Janet Clarke had to go because they were still cleaning up the mess she had created. They had found error after error in May 2018 when Janet was building loads. He considered the July 11<sup>th</sup> date, the drop dead date and testified that he told Dianna Emperingham over and over that Janet Clarke had to be terminated with a payout as they were not going to allege cause.

[29] When shown Exhibit A-3, a two page chain of emails, Mr. Mann explained that there was to have been an order of "540 to Myron Finlay" and that because of the calamity over the ordering previously, they were unable to deliver 540. In its place, 360 had been substituted, but the client wanted 540. In this case, Mr. Mann made the trip to deliver the glyphosate himself. Mr. Finlay was a buyer and was indicated on the priority list to get 540 and not 360. He stated that this incident is cited as one of Ms. Clarke's shortcomings.

[30] After being provided a copy of Exhibit A-4, two pages of emails dated May 19, 2018, Mr. Mann described these as rather odd exchanges as it had been previously indicated that Ms. Yang was to be taking over building loads in the West, and Janet Clarke would be continuing in the East. He said there had been a meeting at the warehouse in the 2<sup>nd</sup> floor office between Dianna Emperingham, Janet Clarke, Stevie Yang and Myrna McIvor, which he described as an accountability session.

[31] In Exhibit A-5, two pages of emails of June 8, 2018, Mr. Mann explained these as emails from an Eastern Canada sales representative asking Ms. Clarke about the timing of when product might be coming. He said the exchange appeared to be strange, and concluded from it that, even though Ms. Clarke's workload had been pared down, she still wasn't getting things right.

[32] Notably, Mr. Mann was not a participant in the email exchange directly and could only speak to the exchange itself not the mindset of the writer. Mr. Mann could only testify as to what was observed in the exchange and draw his own conclusions.

[33] When presented with Exhibit A-6, Mr. Mann described it as a situation where a load to Peace River, Alberta, involving a 12 hour drive, needed to be carefully arranged in the truck. He said that, in spring 2018, there was product on a load that should not have been there. He indicated to the team at the time "this is what happens when you miss something on a load".

[34] Mr. Mann testified that he told Dianna Emperingham on July 11, 2018, to terminate Janet Clarke's employment, and that he had previously told her to do the same thing a number of times. He indicated that work was ongoing on reconciling errors and an email had been sent from Melissa Murphy. He testified that he had used enough of his words and told Dianna "shit is going to hit the fan". He indicated that Diana responded "I'll get it done, I am working on it".

[35] When presented with Exhibit A-7, an email of July 13, 2018 with a medical note attached, Mr. Mann testified that he had no idea of what Janet Clarke's concerns were in respect of the "bullying, defamation and back-stabbing" references. He testified that he had received no complaints from Janet Clarke.

[36] When shown Exhibit A-8, purporting to be the same email as A-7 but with an additional reference, Mr. Mann indicated that he saw the reference to "some people as cancers" had not been included in Exhibit A-7 although it appeared in all other respects to be the same email as Exhibit A-8. Mr. Mann also testified that he did not clue into the differences in the emails at the time because he had already told Dianna to terminate Janet Clarke so it wasn't top of mind for him. He further testified that he was not aware that Janet had any health issues. Mr. Mann testified that he was aware that AgraCity had recently adopted a short-term disability benefits plan in July 2018. He also understood that Dianna was trying to paper a termination, but he didn't pay much attention.

[37] When asked whether he had received any reports from April Arsenault, Human Resources Manager, about Janet Clarke's concerns regarding her employment, he indicated that he had not received anything from April.

[38] When shown Exhibit A-9, the termination letter to Janet Clarke dated July 16, 2018, he testified that Ms. Emperingham was carrying out his direction delivering the termination letter, but he had determined there should be a termination of Ms. Clarke in early May. He testified that "only by ultimatum on July 11" did it finally get completed.

[39] When asked directly whether the harassment and bullying allegation were the reasons behind Mr. Mann causing Ms. Clarke's termination he indicated "no". When further asked why the termination was made on a without cause basis, Mr. Mann testified that it was policy at AgraCity to not terminate for cause, but rather just terminate and payout following statutory guidelines. He testified that Ms. Clarke was to be paid any banked overtime, vacation pay, and one-week additional pay. He had no further dealings with Ms. Clarke following her termination.

[40] When asked whether he was aware of any other complaints of bullying and defamation at AgraCity, Mr. Mann indicated "no" and that, in its history, there were no complaints of bullying at AgraCity.



[41] In cross-examination, Jason Mann testified that from June 2 to 12, 2018, Stevie Yang was responsible for building loads for Western Canada, and that Peace River was in Western Canada. He confirmed that it appeared that Stevie Yang had built the order referenced in Exhibit A-6 as she was managing and inquiring inventory at the time. He qualified his answer to say that her work was subject to correct information given to her, and that there was still a mess being sorted out and product having to be juggled. Mr. Mann confirmed that during this period, Stevie Yang was ultimately in charge of load-building and that it was expensive when product was missed on a load. This was the message he was trying to convey. When asked about chemical spray oil and whether it was Stevie Yang's job to have it in stock, Mr. Mann answered that the manufacturer could not make it in 2018 so there was short supply and, furthermore, environmental policies in China affected supply. He confirmed that it appeared a mistake had been made by Stevie and mentioned that although she rarely makes mistakes, everyone makes mistakes at some point.

[42] When asked about Exhibit A-3, and whether a load had been dispatched there to a Myron Finlay, Mr. Mann indicated that he was unclear about what product was sent and when. It was following up a request for additional product, which was not part of the email exchange. He testified he didn't personally see a specific request for glyphosate 540 nor could he confirm what was ordered on the specific date. He testified that there had been earlier discussions about receiving glyphosate 540 from China. Instead of making one trip to the farm, multiple trips had to be made as pieces of units arrived from China and deliveries were being handled day by day. He testified that Mr. Finlay was on the priority list and was to get two more cases of 540, however, Janet Clarke, was prepared to send him 11 cases of 360. Mr. Mann decided to send him 3 totes of 540.

[43] When asked about how familiar he was with the order fulfillment supervisor role, Mr. Mann indicated he had Stevie Yang and Janet Clarke to do the job, and it was not hands on for him. He had a general idea of the functions, but ultimately did not do the role himself. He was familiar with the CRM and AX systems.

[44] When asked about Exhibit A-5 and the discussion between Pierre and George, two sales representatives, regarding Access, Mr. Mann confirmed that product was housed in Eastern Canada and would be delivered when directed to Access. When using Access it followed the same process as at AgraCity - where they were given a bill of lading and carried it out. When asked whether they completed deliveries on their own time, Mr. Mann indicated "no" that was not the arrangement and "the customer had a lot of power". At times, loads had to be given to a third party to deliver. If Access did not want to make a particular shipment, another trucking firm would be retained. Mr. Mann indicated that it was Janet Clarke's role to control and put trucks on loads and, if deliveries were going to be made late, to take alternate action.

[45] When questioned about Exhibit A-4 and his earlier testimony that Janet Clarke and Dianna Emperingham shut Stevie Yang out, Mr. Mann testified that they did in fact shut her out beginning in November 2017 when they blocked Stevie Yang's access in the AX system. Stevie Yang had previously been allowed to build loads. Mr. Mann indicated that he was not aware at the time that she had been shut out of the system and had no ability to build loads. He did not recall who told him that Stevie Yang's access had been locked out but he believed it was through Dianna Emperingham's direction that it was done. He thought maybe Melissa Murphy or Myrna McIvor told him this as Dianna could not change permissions in the system herself.



[46] When questioned further about Exhibit A-4, Mr. Mann indicated that he never gave Stevie Yang instruction to train Janet Clarke as indicated in the email as this should have happened much earlier - November 2017 through February 2018. He believed it should not have been going on in May 2018. He did recall a meeting between the logistics staff where he explained that Stevie Yang would be helping out to start correcting errors and the mess, and during which Janet Clarke had requested training. Mr. Mann indicated that it was not his instruction for Stevie Yang to train Janet Clarke further, but rather to supervise the load building in Western Canada to get things on track. He stated at that time, AgraCity had no idea who had been delivered to or not, so Stevie came in the following weekend and began cleaning up the mess, getting PODs entered, and understanding the inventory. Mr. Mann testified that "never did I say Stevie should train Janet Clarke."

[47] When asked more specifically about the logistics system and its complexity, Mr. Mann acknowledged that it was a job for someone who was not a junior person, but rather a seasoned senior logistics person. He indicated that not everyone uses the AX system and Janet Clarke had no knowledge of it, but had 4 months to learn it. He believed millions of people used AX, so it "cannot be that complex."

[48] Mr. Mann was unaware of who had access to the AX system. When asked about his knowledge of who within AgraCity had access permission in AX, Mr. Mann was uncertain as to numerous employee's levels of authority but understood that Stevie had the highest authority until it was removed, and he had it later restored. He believed anyone in accounting had the same levels as Stevie Yang although some levels may vary within accounting. He also believed that Gail Fitzsimmons of MPower had low access and could not adjust inventory - simply view and print it. Mr. Mann testified that some people had the ability to change loads, however, sales representatives could not and accounting staff had some limited access. Mr. Mann confirmed that bills of lading could be prepared for filling and that loads may subsequently change, but not from the warehouse floor. He confirmed that handwritten manual changes were sometimes entered onto bills of lading, particularly in 2018 when he advised that there were considerable messes to clean up and, although the practice was not acceptable, it had to be done. Mr. Mann believed the handwritten changes should have been entered into the AX system the following day so that proofs of delivery could be closed following the load.

[49] When asked whether he was aware that Janet Clarke's first job was to resolve a \$200,000.00 inventory debt, Mr. Mann indicated that was not aware of this, but indicated there were always inventory adjustments to resolve. When asked whether he was at the AgraCity warehouse in May 2018, Mr. Mann indicated that "yes, he was" and further, that a new filling line had been made in Saskatchewan a few months previous and a second line was bought in April or May 2018. He was in the warehouse dealing with this a lot in May and was busy with all operations in addition to the filling line.

[50] When presented with Exhibit R-2, an email from Stevie Yang, Mr. Mann had no recollection of seeing it previously or whether Dianna Emperingham and Janet Clarke had brought it to him. He had no memory of it and, when asked if Stevie Yang's behaviour being a problem was conveyed to him, he indicated "no". The red lettering in the email was not perceived by Mr. Mann as "aggressive" and he indicated that "Stevie writes this way a lot". Mr. Mann indicated he never uses red text but may use capital letters from time to time when something is important. When asked whether he considered it reasonable to consider the

message as hostile, Mr. Mann indicated that he did not think so, and it was known in the company that Stevie Yang wrote this way.

[51] Mr. Mann testified that Exhibit A-8, an email from Dianna Emperingham of July 13, 2018, contained red letters about bullying and harassment. When asked whether this had been investigated, Mr. Mann indicated "no" and that there had only been observations in the warehouse. He testified that it was not AgraCity's policy to ignore harassment complaints and that he would be privy to any issues if there were any concerns. He said no investigation was done and had spoken to April Arseneault and Dianna Emperingham about this. In his conversation with April Arseneault he believed he found no merit to the allegations and there was no formal investigation. Mr. Mann further testified that he probably discussed the complaint with Dianna Emperingham on July 13<sup>th</sup>. She indicated it was out there. He directed her to finalize Janet Clarke's termination and said it "should have been done already". When asked whether Dianna Emperingham protested the suggestion, Mr. Mann testified that he would not call it "protest". He said nobody likes doing terminations, but Dianna was going to talk it through with Janet Clarke and everything would be alright. He said she also mentioned something about vacation days. When asked whether Dianna Emperingham had told him at the time that she didn't think it was legal to fire someone on medical leave, Mr. Mann indicated that she may have said that, but he didn't remember. He said he absolutely told her to fire Ms. Clarke anyways.

[52] Mr. Mann testified that around July 11, 2018 he had an interaction with Melissa Murphy, which triggered him to push on Ms. Clarke's termination. He considered it a "last straw" but couldn't recall the communication precisely but that it had something to do with Janet and the mess.

[53] Mr. Mann testified that there was no prior discipline record for Ms. Clarke and she was given no written warnings. She had never been previously suspended or sent home from work. When asked whether there was any other record against Ms. Clarke, Mr. Mann indicated not other than the 60 days, being May 10<sup>th</sup> through July 10<sup>th</sup>. He stated that this is the time when all concerns came to light and crashed down on them.

#### ***Evidence of April Arseneault***

[54] Ms. Arseneault testified that she is the Manager of Human Resources at AgraCity, and had worked with AgraCity since 1999 when she started as a senior accounting technician. She testified that, at the time of Janet Clarke's hiring, she prepared the Employment Offer letter for Dianna Emperingham, but didn't directly participate in Ms. Clarke's hiring. She said that, at the time of Ms. Clarke's termination in 2018, she was serving as a Human Resource Consultant as she was not operating full-time at AgraCity offices.

[55] When asked whether harassment issues were to come to her attention, she said that they definitely should as she was the Human Resources Manager. She believed that other managers understood that those issues should be dealt with through the Human Resources area.

[56] She testified that in 2018, AgraCity had a Human Resources Policy (HRP) manual, and that she was familiar with it. In questioning, she was shown a copy of the HRP manual and identified the harassment policy within it (Exhibit A-20). When describing the procedure to be followed in reporting a harassment complaint, she indicated that you would first tell the alleged harasser of your feelings and ask them to stop. If it is persistent, a supervisor should be

informed and, if more was required, it would have to be investigated. In response to questioning, she described her role as one where she would meet with the employee and supervisor, would have talked to the harasser, and then done an investigation. She testified that she would assist the CEO in the process as "you cannot have harassment in the workplace". When asked whether she had received a harassment complaint from Janet Clarke or Diana Emperingham by July 12, 2018, she indicated that "no", she had not.

[57] When presented with Exhibit A-7, she confirmed that she had received the email, but had not received any complaints about Janet Clarke's treatment previously. She indicated that she received the email on July 12<sup>th</sup>, together with a doctor's note, although could not recall whether she actually received the note on July 13<sup>th</sup>. She further testified that she had met on July 11<sup>th</sup> with Janet Clarke, Dianna Emperingham and Melissa Murphy following work for a drink, and that no discussion of the nature expressed in the email arose at that time.

[58] Ms. Arseneault testified that, on July 12, 2018, during a speakerphone conversation with Melissa Murphy, Dianna Emperingham, and Janet Clarke, she was asked about the short term disability program at AgraCity as it was a brand new program as of July 1, 2018. The call participants asked about the forms and how to make application for the program. She testified that she told the participants that she would look into it. Ms. Arseneault testified that there was also discussion during the call about Janet Clarke using up her banked time of vacation pay as she had a month and half available for this purpose. She further understood that Janet Clarke was going to be going to the lake as she was looking for other employment. She testified that no concerns or harassment complaints were brought up at this time, but she knew that Janet Clarke was not happy with her job.

[59] When asked whether concerns were expressed to her by either Dianna Emperingham or Janet Clarke about Stevie Yang, April indicated that "no", there had been no formal complaints made to her. Ms. Arseneault said that any emails from Stevie Yang about Ms. Clarke's work did not come to her attention prior to July 13<sup>th</sup> and she said "she only learned of them when the letter from OH&S was received at AgraCity". When asked whether she had spent any time reviewing Janet Clarke's emails prior to October 16, 2018, the date of the Occupational Health & Safety letter, Ms. Arseneault, indicated "not at all". She testified that she subsequently forwarded the emails to legal counsel for AgraCity, and spent days reviewing folders containing sent and deleted emails, and that anything she could find was forwarded.

[60] When shown Exhibit R-1, an email of July 11, 2018, Ms. Arseneault said that email had not been located within Janet Clarke's sent emails, but she was able to source it from Stevie Yang's emails. When presented with additional emails, notably at Tab 17 of the Respondent's Book of Exhibits (Exhibit R-5), she said there were at least 6 emails removed from the sent folder of Janet Clarke's AgraCity's email account. Ms. Arseneault indicated that she reviewed a number of emails just prior to her testimony against Janet Clarke's sent and deleted folders on her AgraCity email account, and was unable to locate them.

[61] When asked about whether any harassment claim had been reported to her, Ms. Arseneault testified that the only time she heard anything from Dianna Emperingham or Janet Clarke about harassment was in the email from July 13<sup>th</sup>. She said this was the first she had heard anything about harassment, and was confused when she read it. When asked whether she had any discussion with Dianna Emperingham or Janet Clarke following the July 13<sup>th</sup> email (Exhibit A-8), April said she discussed its content with Dianna Emperingham, and that Ms.



Emperingham expressed worry to her about sending it on to Jason Mann. She confirmed that she understood an edited version of the email was subsequently sent to Mr. Mann.

[62] When presented with Exhibit A-9, being the termination letter, Ms. Arseneault confirmed that she wrote the letter following a meeting between Dianna Emperingham and her. She also stated that, although Brian Rumberg offered to be present at the meeting where the termination letter was to be delivered to Ms. Clarke, Ms. Emperingham refused to have anyone with her.

[63] In cross examination, Ms. Arseneault testified that if someone had a problem at AgraCity it could be reported to their supervisor or any supervisor as they are the liaison between management and the lower level employees. She indicated that discipline and performance reviews were all available at AgraCity, and that Janet Clarke had no disciplinary record. Ms. Arseneault testified that Dianna Emperingham had never asked for one and no one else did either. When asked whether a written warning had been given to Janet Clarke, Ms. Arseneault replied saying "none that she had on file" and stated that she would have expected to receive one if it had been done; however, she stated that Dianna Emperingham sometimes did things on her own. When asked further about performance reviews, Ms. Arseneault indicated that those are usually done after one year with the company and there was not one completed for Janet Clarke as she had not been with the company for a year.

[64] Ms. Arseneault was questioned about Stevie Yang's behaviour and whether concerns about her behaviour had been raised with Ms. Arseneault in the past. She indicated "no". She testified that she had worked with Stevie Yang for a long time and, although people had discussed Stevie with her, this was usually because they found communication difficult with her and a couple of employees considered it a language barrier. There was never any hostility raised by Stevie in this regard, and anything interpreted as rudeness April believed was just people's way of interpreting the way she speaks or emails. She indicated that through email Stevie could be construed as rude, but not verbally.

[65] April Arseneault testified that she had heard through others that Janet Clarke thought Stevie was harsh with her. She said she heard this from Melissa Murphy, but no one else ever brought this to her attention that she recalled. She testified that she knew Dianna Emperingham had difficulty with a couple of people, but not with Stevie Yang. She also said she does not pay attention to gossip and does not take action unless something is formally brought to her attention.

[66] When asked if she was aware of any disputes in the work environment during Janet Clarke's employment, she testified that she could see how emails could be construed as a dispute. When asked if Dianna Emperingham approached and asked her about a process on working on a harassment complaint, Ms. Arseneault indicated that, "no", she did not receive anything like that from Dianna Emperingham. She stated that "Dianna never asked me how to make a harassment complaint." She said she would have definitely remembered that, and this is the first she heard of a harassment complaint.

[67] When presented with Exhibit A-7 and whether the content of the email was concerning, she indicated "yes", it did come across that way.

[68] When questioned about a July 11, 2018 meeting and drinks between herself, Melissa Murphy, Janet Clarke and Dianna Emperingham, Ms. Arseneault indicated she had participated and had one drink at the meeting. She did not recall anything spoken about Stevie Yang's



behaviour, and had no issues with Stevie herself. Nothing had been reported to her about Stevie.

[69] When asked whether Melissa Murphy "had issues" with Myrna McIvor, Ms. Arseneault indicated that the three of them had worked together, but on this occasion during the meeting she simply listened and spoke about dogs. She distinctly remembered just wanting to leave.

[70] In response to a question regarding a subsequent conference call between Ms. Emperingham, Ms. Clarke, and Melissa Murphy, she recalled them asking about leave forms and, in particular, the short term disability program. Ms. Arseneault was unsure about the details and indicated she would have to look for materials. She confirmed that some proof would be required and, in order to get a medical leave, an emailed response could be given as such proof.

[71] When asked about the allegations of Ms. Clarke looking for another job prior to her termination, Ms. Arseneault indicated she had heard this from Janet Clarke on July 11<sup>th</sup> and it was discussed then.

[72] When questioned about emails she reviewed through Janet Clarke's email account at AgraCity, Ms. Arseneault indicated that she holds on to all of her own emails as employees are not supposed to delete the emails. She indicated that she was pretty sure there was a policy in the manual about this, and there was no set process for deleting emails. When asked whether emails could be purged, Ms. Arseneault indicated she was not an IT person, but understood through some processes that emails could be purged. She indicated that her deleted emails were not purged and were saved separately. She indicated that she had checked on Dianna's Emperingham emails through this process.

[73] When presented with Exhibit R-2, Ms. Arsenault indicated that she did not recall seeing this particular email in Dianna Emperingham's email, and she did not go through Stevie Yang's emails to see if it was there. She indicated that Stevie Yang went through her own emails.

[74] In response to questions on cross examination, Ms. Arsenault indicated, in response to a question regarding Exhibit R-2, that she had not checked to see if this email was in Janet's deleted emails and had not seen it there. She did not recall seeing it in Dianna's emails and did not go through Stevie's emails as Stevie went through those on her own.

[75] When questioned about a July 13<sup>th</sup> email (Exhibit A-7) and Diana Emperingham's concerns about sending it onto Jason, April said their conversation occurred on July 13<sup>th</sup> because they had discussed the short term disability program on July 12<sup>th</sup>. When asked whether the request for information about short term disability would have been an alert to her, Ms. Arseneault indicated that she knew Janet Clarke was looking for other employment. She didn't see why harassment would come into play - whether it was a red flag all of the sudden, she indicated "that's what it was to me."

[76] In response to Exhibit A-7, she indicated that she only knew of the issues between Janet and other staff bullying her, and was not aware that it was about Stevie Yang. She thought it was a generalized email and was not aware of the other people who might be involved. When asked whether issues such as these coming to her are concerning, she answered "yes, I knew a red flag came up on medical leave" and this was concerning and the email played into this.

When asked whether the email described a toxic work place she said "yes, it sounds terrible". She indicated that she saw a sick note on July 12<sup>th</sup> and received this email on the 13<sup>th</sup>.

[77] When asked whether Dianna Emperingham had spoken to her about Janet's condition and the sick notes, she indicated "yes, on July 12<sup>th</sup>" but never was it raised before this time. When asked whether she conducted any investigation in response to the complaints. She said "no", not on July 13<sup>th</sup> and only after receiving the email did she speak to Stevie Yang. No investigation report was written and no one else was spoken to. She confirmed that no outside party was hired to investigate, only the OH&S investigation took place.

[78] Ms. Arseneault testified that, by July 13<sup>th</sup>, Janet Clarke was supposed to be fired. She indicated "I knew that and saw this was a way for her to get more income to look for another job". When asked whether Janet Clarke was terminated on July 16<sup>th</sup>, Ms. Arseneault indicated "correct". She said Dianna Emperingham was not in town on the Friday when this first showed up.

[79] When asked about the termination letter, Exhibit A-9, Ms. Arseneault indicated that she wrote it as part of her HR function and Dianna Emperingham signed it. When asked about the "internal reviews" referred to in the letter, Ms. Arseneault indicated it "would've been all the mistakes that happened in Janet Clarke's work". She said she wrote the letter on Dianna Emperingham's behalf, but was aware of it, had heard of the amount of mess, and the people who were brought into fix it. She clarified that she made no personal observation of the mistakes on her own.

[80] When asked questions regarding the AgraCity HR Policy Manual, she confirmed that identified employees are encouraged to report concerns to their supervisor and that Janet's supervisor was Dianna Emperingham.

[81] When presented with Exhibit A-12 on re-examination, Ms. Arseneault indicated that it represented the STD benefit which commenced July 1, 2018. She stated that the benefit pays 66.33% of gross weekly earnings.

### ***Evidence of Melissa Murphy***

[82] Melissa Murphy testified that she has been an employee of AgraCity for 6.5 years, was previously employed for one year at the University of Saskatchewan payroll department, and worked for 5 years at Morris Industries. Her title is accounting technician and she possesses a credential from the Canadian Payroll Association, but no formal degree. Her training had been in payroll accounting, behavioural Occupational Health and Safety, and various Labour Standards matters.

[83] Ms. Murphy testified that she oversaw inventory from the financial side of AX system originations and setup, all of which was deployed in 2015. Because of her early involvement, she was involved in training staff on how to use it. She testified that she would take the software developer information from "technology speak" to step-by-step for staff on how each part of the AX system works. She described that she would use plain English describing steps for each job to show participants the various screens, which on-screen links to click, and what to type in various fields.

[84] When asked whether some tools in AX pertained to Janet Clarke's role, Ms. Murphy confirmed "yes, and others". She said this included building loads, receiving purchase orders, and all that type of stuff. Ms. Murphy described walking employees through a system, and how they should proceed to answer various questions and find information. All of the information was saved on a public drive that was accessible to employees and links would be given so employees could do their job. She testified that in order to do the job one should have "the initial training and walk through - so you know the screens as they become more complicated."

[85] When asked about the levels of access within AX and permissions, Ms. Murphy indicated that each user has unique user name that is linked to their email addresses. Roles and different permissions can be created within AX to do different things. She said, generally, "you don't go too far down the list". Ms. Murphy testified that she and Gail Hoshowsky had access to all levels within AX. She indicated that she reports to Gail Hoshowsky, Vice President of Finance, but in 2018 reported to Myrna McIvor, Controller.

[86] When asked what permissions she understood Janet Clarke had in her role, within AX, she said everything that Stevie Yang had access to including purchase orders, sales orders, shipments, and inventory. She described Janet's duties as to create and finalize shipments, receive on purchase orders, add sales orders to shipments, and get bills of lading to the warehouse. She said Janet could get staff to build loads, mark loads as "delivered" and the bill of lading was returned. Basically, Janet Clarke was responsible for building the loads. Ms. Murphy described that when a bill of lading was signed by a farmer it was returned as a proof of delivery (POD) to AgraCity's staff and she further stressed the importance of marking it as delivered within AX. She said that, in the process, sales orders would be completed, the farmer would now have product, and the purchase contract would be satisfied.

[87] Ms. Murphy testified she worked in the downtown Saskatoon Head Office primarily and sometimes attended at AgraCity's warehouse, but going to the warehouse was not part of her normal duties. She did go there in spring 2018 to catch up on paperwork as that's where it was located - so it made it easier to her to attend there.

[88] When asked about Janet Clarke's hiring and training, she indicated that Janet started in November 2017 at Head Office for awhile and eventually moved into the warehouse as a full-time employee. She believed that Janet's training had happened with Stevie Yang as this should have taken place before building loads. She testified that she had opportunities to help Janet Clarke with questions including invoices. She said invoicing recorded the financial cost of sending delivered items and "we see what's delivered on an invoice" confirming a completed sales.

[89] When shown and asked specifically about Exhibit A-14, an email of December 7, 2017, Ms. Murphy described it as Gail Fitzsimmons asking about a load and that they could not add to the load. She indicated that she explained to Janet as to why, and it looked like the order was invoiced, but appeared to still be in inventory. She indicated that there was handwriting on the bill of lading and it had not been finalized before a second delivery went out to the customer. When asked whose responsibility it was to enter the proof of delivery, Ms. Murphy indicated she believed it was Janet Clarke's.

[90] When asked about Exhibit A-15, Ms. Murphy indicated that, originally, Janet Clarke was asking her procedural questions with AX and she replied with an explanation. When Janet asked why AX showed this, she explained the reasons and gave two options. If product wasn't

delivered, it needed to be either cancelled or delivered. She said this was an example of her explaining something and assisting Janet Clarke.

[91] When presented with Exhibit A-16, Melissa Murphy testified that the busy season at AgraCity begins in April and that they were falling behind in paperwork in 2018. She testified that sales representatives had lots of questions, and when they were having a tough time answering those it appeared to be because of logistics procedures and policies that were being missed. In the original email, it reiterated some of the procedures and there were replies to her from Janet Clarke and Myrna McIvor. She said these matters would have been part of Janet's procedures as the second step in building the loads, and it wasn't getting done. When asked about the risk posed by this dilemma, Ms. Murphy indicated that AgraCity would have no idea what's gone on a shipment and would risk double shipping. They could not do inventory counts because of the lack of updates or tracked sale orders.

[92] Upon being shown the description in the email, marked as Exhibit A-17, Ms. Murphy testified you wouldn't know what product the member got as AX was not updated properly, so they would have no idea. When asked who was to update the information, Ms. Murphy testified that she suspected when the POD arrived back, Janet Clarke was not finalizing the load in AX – and this resulted in extra work as customer accounts could not be reconciled. She said they couldn't arrive at a proper inventory count and had to go back a few months to figure it all out; they needed some sort of paperwork for this as there were discrepancies in the database. This was not easy to reconstruct, she testified, as they relied on the memory of certain customers unless you had an email stream.

[93] When presented with Exhibit A-18, an email of May 24, 2018, Ms. Murphy confirmed that Stevie Yang was assisting with logistics at that time as she started assisting in the middle of May 2018. She said the problem discussed in the email was that they had double shipped an order to a customer. She said the proof of delivery and the steps that logistics should have taken would have stopped the double delivery, and it wouldn't have been possible if the proper procedure had been followed. When asked about the first shipment and if it would have been Janet Clarke's responsibility, Ms. Murphy said she suspected so as there may have been some delay as some shipments were from late April and early May.

[94] Ms. Murphy indicated that for the whole month of April 2018 they were behind and trying to figure which customers got what. She said they didn't know inventory quantities and a lot of PODs were not posted properly. She indicated she had to step in and offered to take over the entry of PODs into AX. She said she went to the warehouse after mid-May for about a week to sort out the paperwork, to see why the proofs of delivery had not been posted, and to get them posted in the AX system. When asked to describe whose job she was helping with and the state of affairs, she replied that she was helping Janet Clarke and that there was paper everywhere. She said there was quite a mess with many handwritten notes to decipher about what had been delivered, and she spent about a week working through this in the same room as Janet Clarke. Ms. Murphy testified that, at that point, Stevie Yang was doing anything new that came up, including preparing bills of lading. Ms. Murphy said that because they were so far behind, they needed AX updated to know what they had and could ship. She said they "needed all hands on deck and someone to take over the future stuff" in order to deal with stuff from the last couple of months.



[95] When asked whether she had any discussion with Ms. Clarke about how her job was going, Ms. Murphy indicated "yes". She said Janet Clarke was unhappy with the mess, how far behind everything was, and how it was making her feel. "We were driving at one point, discussing the office, and she was stressed out because of the state of the office". She said Janet Clarke told her she wanted to find other work, but it was hard to find something that paid as good as AgraCity. She believed that conversation took place in May, when Stevie Yang was building the loads.

[96] When asked whether Janet Clarke complained to her about Stevie Yang and any bullying, Ms. Murphy testified that she did not complain to her. When asked whether Janet Clarke expressed concern about Ms. Murphy doing part of her job, Ms. Murphy testified "no", but "Janet was upset that Stevie was doing part of her job." Ms. Murphy testified that she understood why Stevie was building loads as they were very far behind and "we needed someone who had done this before to catch up and get through the busy season as we were already too far behind."

[97] When asked whether she recalled a meeting on July 11<sup>th</sup> with a group of employees, she indicated that she met with April Arseneault, Dianna Emperingham and Janet Clarke. When asked whether she recalled comments made by Janet about her work, she indicated that she was sure this was discussed, but didn't recall any details.

[98] When asked about July 12<sup>th</sup> and her attendance in the warehouse, she indicated that she was there and was working at the warehouse still catching things up. She said Janet Clarke arrived late having come from a doctor's appointment. She recalled Janet coming with a note saying she needed time off for her health. She testified that she couldn't remember if Dianna Emperingham suggested short-term disability or if it was just a general suggestion. She didn't know all the details of the short term disability program, and testified that it was a new program at AgraCity. She recalled Dianna Emperingham indicating that Janet Clarke should get short-term disability started right away so she could not be fired in the meantime. She testified that she was not sure if short-term disability was the right route, but it sounded like Dianna Emperingham was pushing for it. She said it was Dianna Emperingham that made comments about getting it started. After the discussion, Ms. Murphy stated that she suggested they meet with April and they went on a conference call with her. She testified that April mentioned banked time that Janet Clarke might take to have time off, and she believed that there was further conversation about forms to fill out. When asked whether there was any discussion of Stevie Yang during the call, Ms. Murphy testified "no". When asked if there was any discussion of harassment, Ms. Murphy said "no, not that I remember."

[99] When presented with Exhibit A-7, an email of Janet Clarke's referencing bullying and defamation and lies, Ms. Murphy was asked about who the "many people" might refer to. Ms. Murphy testified "maybe she is referring to me". When asked whether she shared the views of the workplace set out in the email, Ms. Murphy said "no". Ms. Murphy testified that, given her observations of Janet Clarke's job performance, she wasn't satisfied with her performance. Janet was overwhelmed and could not meet the demand of the busy season.

[100] On cross examination, and upon presentation of Exhibits A-14 and A-18, both of which identified mistakes, Ms. Murphy testified that there may have been others making mistakes, but if they occurred before May 17<sup>th</sup> they were Janet's mistakes.

[101] Ms. Murphy confirmed that, at the relevant time, Stevie Yang, Janet Clarke, Gail Fitzsimmons, and she had permission access to build loads in AX. She said Dianna Emperingham may also have had access, but she was rarely in AX. She testified that all names were attached in AX and that you could track the builder of the load. She agreed that any of the five people she listed as having permission could have entered information into AX. She said that once product was shipped, the bill of lading was returned as signed and was then a POD. She testified that Gail Fitzsimmons would receive a signed POD from a truck driver, and send a confirming email for the responsible person to enter it into AX. In response to whether any of the five people with AX permission could have entered into AX, she said "yes". She said a truck driver might give a POD to the warehouse floor staff, but almost always gave them to Gail.

[102] When asked about Exhibit A-17, and when she suspected a POD came back, but wasn't finalized in AX, Ms. Murphy confirmed that she would ask what the farmer got if it is not entered in AX. She couldn't think of anything else that would raise the question as to what the farmer got.

[103] When asked whether anyone else handled entering PODs besides Janet Clarke, Ms. Murphy said "no, until I did". She said Stevie Yang would have done them once she took over the new loads in mid-May. She said Stevie was the most capable person in logistics even though it was Janet Clarke's job.

[104] When presented with Exhibit A-16, Ms. Murphy indicated that it did indicate Janet Clarke taking responsibility for a mistake and this was a reasonable way to deal with it. She indicated she worked well with Janet Clarke. She further indicated she didn't know how to build their loads and knew nothing of the meeting that was mentioned in the email. Ms. Murphy described that, in her first email in the chain, she outlined initial loads, the building steps, and some were not done prior to Janet Clarke's employment. She said this was news to her and they introduced it as it wouldn't create a problem if they could get the PODs entered right away; if PODs weren't entered it would give them no idea as to what was shipped. She testified that when Stevie was doing the job before Janet Clarke was hired, she was not doing the first step properly - and it was not needed as PODs just got done as they came in. She testified that Janet Clarke appeared to have not done the first step either just as Stevie had not been doing it from 2015 to 2017.

### ***Evidence of Stevie Yang***

[105] Ms. Yang testified about her time with AgraCity in a variety of logistics roles. She preceded Janet Clarke in the role of Order Fulfillment Supervisor, and had performed the role under different titles in earlier years. Ms. Yang is now responsible for procurement at AgraCity and has both education and experience in supply chain management. Ms. Yang is originally from and grew up in China. She speaks English as a second language.

[106] Ms. Yang testified about her history with AgraCity and her work in the role that was later assumed by Janet Clarke. She was able to describe, in detail, the steps in load-building and entry in the AX system including the arranging of loads for orderly drop offs as well as accounting for load weights. She testified that on completion of a build, Gail Fitzsimmons would need to know the number of farms being delivered to and the weights involved. She said that her job would continue once Gail mapped the route and put drop numbers into a bill of lading. One copy of the bill of lading would go to the warehouse and two copies sent with the truck driver.

[107] When asked what truckers did with the paperwork, Ms. Yang stated that the farmers sign for the product being delivered and a copy was left with them while the POD was brought back by the driver to Gail's office. She indicated that Gail was to check everything to make sure all was there and she further checked for notes on the back of any POD. If there were no notes, Gail was to scan the POD and enter it into the public drive thereafter emailing Ms. Yang. Ms. Yang testified that she would then open and compare the information against the system and, if changes were made, she would enter those in AX. She said all of this was done on the same day that Gail scanned the POD into the public drive. She said that after it was indicated in AX as having been delivered, the accounting function would follow and if they did not update their system it would affect inventory. She said that she liked to keep an eye on the whole process because if accounting didn't enter information, it would come back to logistics or if Gail didn't enter the POD there would be a problem.

[108] When asked about handwritten changes on bills of lading, Ms. Yang indicated she did not do such handwriting herself but the warehouse team may do it. She said that if she ever saw it, she would update it in the system as she was always updating in AX. She said that after she moved away from her position, she doesn't know how those issues were handled.

[109] When asked whether PODs came back with handwriting on them, Ms. Yang indicated that "yes" and that sometimes the warehouse would load an extra barrel in error. She indicated she would inform the sales rep of this development and change it in AX. When asked whether she explained all of these things to Janet Clarke while training her, Ms. Yang testified that "yes, it's logistics load building."

[110] She said there were also steps in pre-delivery including calls to farm to make sure someone would be there when the truck arrived. She said that the CRM system showed notes of conversations with farmers and she had access to it. She would call farmers herself when building loads if she was unsure, or Gail may sometimes call farmers. She testified that another person, Justyne, also made pre-delivery calls to farmers.

[111] When asked whether Janet Clarke had many questions during the training session, Ms. Yang indicated "no, but she took notes while I showed her things." She stated that the training took place in Janet Clarke's office with Gail, and that Gail did most of the talking while she did "the computer thing".

[112] When referred to Exhibit A-21, an email of November 3, 2017, Ms. Yang explained that during Janet Clarke's training, she agreed she would continue helping until the training was complete. She said this continued but logistics was slow at the time and Gail built whatever loads were required. She couldn't recall whether anything needed to be built during the training.

[113] Ms. Yang testified that she did not build loads from November 2017 through April 30, 2018 as it was not part of her job. She was focused on her procurement position. She said that from 2017 to 2018, AgraCity launched three times more products than in the past and she went from talking to four or five suppliers to twenty suppliers in 2018. She said her focus was not on logistics. She answered questions from Gail and Janet Clarke, but did not do the in job during that time frame. Ms. Yang testified that she travelled to China and the US on business trips to various manufacturers and was busy in procurement from November 2017 through April 2018 confirming supply agreements and new products.



[114] When presented with Exhibit A-22, an email chain from December 2017, Ms. Yang noted that it originated from Janet Clarke and included the logistics team in its recipients, but that she wasn't copied as she wasn't in logistics. In questioning, she agreed that Dianna Emperingham made a request of her in the email chain, and described Albaugh as a supplier from St. Joseph, Missouri. She said Dianna wanted to know what the truck was picking up from Albaugh. When asked whether that was a normal conversation, Ms. Yang said "yes, it's how we communicated to know when a product was coming." She said that usually she would give the information to logistics about what's coming and this request came much earlier than normal. She said she would usually tell logistics when she had a confirmed arrival time, but if they asked, she would answer earlier. When asked why she replied to others when the email came from Dianna, Ms. Yang said that the information would be important to all recipients of the email. She said that she did not randomly choose who to copy because the information was useful to all of them and if there were changes later it could impact them.

[115] When asked whether she had received complaints or concerns from either Janet Clarke or Dianna Emperingham about adding recipients to emails, Ms. Yang indicated "no, but if they had a concern they should have come to me". She said "I don't want people to be uncomfortable". She said she had worked with Gail Hoshowsky and Gail Fitzsimmons a long time and they often wanted more information.

[116] When presented with Exhibit A-23, Ms. Yang described it as an email where Janet Clarke was asking for the fact sheet regarding a new product. She responded with an answer to the questions and confirmed that was a fairly typical response. It was a polite email exchange. When asked whether Exhibit A-24 represented a similar exchange between Janet Clarke and herself as had been in Exhibit A-23, Ms. Yang agreed it did. In questioning, yellow highlighting and red print was pointed out to Ms. Yang and she was asked how it affected her. She indicated that it made things easier to look at and highlighted a point. She said the most important part is highlighted and she likes it when the people highlighted the points she wanted her to get to. When asked whether it bothered her, she said "no, why? It helped me and there was less risk of mistake." When questioned about using the phrase "kind regards" on other emails, Ms. Yang said it wasn't always used and "sometimes, I change, sometimes thank you, unless I have nothing to thank for. Not automatic, I put on".

[117] Ms. Yang testified that at times she would use bold lettering to highlight product names in order to avoid mistakes because there were many similar names on the same product. She would also highlight the product name. She said that at other times she would copy from excel word sheets and the bold lettering would appear as it had been on the worksheet. When asked if it was used to express anger at the recipient, Ms. Yang said "no" and that she had received no complaints about using the large bold print.

[118] When asked whether Janet Clarke's email pointing out Ms. Yang's mistake concerned her, she said there was a mistake in her reply as it was a typing mistake made earlier in the excel spreadsheet. She believed it was good that Janet Clarke raised this with her as she found out right away and helped her save additional mistakes. If she had continued to send it out wrong, it could create a problem.

[119] When shown Exhibit A-27, an email to Janet Clarke and Gail Fitzsimmons, she was referred to the bold underlining and asked to explain why it was there. She said it was not because she was angry with them, but she was helping Gail to catch, in one reading, the



product she was talking about. She said no one ever said to her that they were uncomfortable with the bold print.

[120] When presented with Exhibit A-28, an email containing attached spreadsheet information, Ms. Yang was questioned about the use of red print and highlighting. She explained that she had exported information from the spread sheet and made notes within it. The red print meant the estimated arrival date at the warehouse and that it was coming from Albaugh. She further explained the highlighting of dates and the relevance from orders of Ontario and Quebec farmers. The key information identified where the product would come from in order to satisfy the orders. When asked whether there was a problem at AgraCity when the email was initiated by Mr. Mann, and sent to numerous recipients, Ms. Yang indicated that "yes", she believed there was a problem and looked into the system to see what was going on. She said she looked at sale orders and requested ship dates on a region by region basis because it was mid-May 2018 and seeding should be half done or at least 40% complete. She said in Manitoba it should be started, and using her own knowledge, she looked at orders to see what was needed before seeding. She said she knew that glyphosate was needed early and before seeding, and Saskatchewan farmers would require it just after Alberta depending on product needs. She testified that she found out in the middle of May that things were late and timelines were getting too tight as farmers needed to spray the glyphosate - it being a main item for them.

[121] When asked what loads "closed and reconciled" means, Ms. Yang testified that you needed to close loads on the system and subtract the quantity from inventory - and the whole team then could know how much product there is to fill orders and how much more she would need to buy from Albaugh. She said they did not want to buy too much from Albaugh if they already had enough as their charges were 30% higher when purchases were from Albaugh. There were also extra freight charges as trucks required two drivers. She said AgraCity needed to know what product it had in its warehouse and when it would be getting product from Vancouver as there was a cost differential.

[122] Ms. Yang testified that by May 14, 2018, she was trying to find out what happened with a lot of product. There had been loads created in the system but they were unable to know what was delivered, what was being picked up in the warehouse, and what was still being built. She said they needed to know the number of totes available for loading in order to plan for the week. She confirmed that Myrna McIvor was involved as accounting needed to update their system based on the PODs and a page-by-page check had to be carried out so they could close things on the system. She said that after she looked into the system, she realized lots of orders were not closed. She testified that she had never had such a long list of loads showing not completed in the system. She testified that the logistics and fulfillment position was responsible to close loads and the person responsible to build the loads should be closing them. She said Janet Clarke was in that position.

[123] Ms. Yang testified at length regarding difficulties in timing and sourcing of product because of the uncertainty regarding inventories at AgraCity. In particular, she testified about the need to have a truckload picked up from a warehouse in Calgary on an expedited basis, so that glyphosate could be brought to Saskatoon. In the process, she was drawn into further load building around May 18, 2018. When asked where Janet Clarke was when she was completing this, Stevie said that Janet came to her and said thank you to her for help building the loads, and that she was going to pick up her daughter. She stated that it became a long Friday evening, and she helped Terry with the load on Saturday where she ended up staying most of

the day despite expecting to remain there only a short period of time. When asked whether loads had been built before this weekend, Ms. Yang indicated she was not sure about other bills of lading as she looked at some loads and they were missing glyphosate. She said that loads were being built differently than she had been building them in the past. She said Janet Clarke was building 20 loads at one time.

[124] Ms. Yang said that, when building a load, she talked to Gail Fitzsimmons to map the load and its route. Her practice had included following up with truck drivers, and when they needed another load. When asked whether there was a follow up on the bills of lading, Ms. Yang stated that she did not know and did not really look at that issue. She said we were to build loads to do urgent glyphosate deliveries, but found loads that had been built with other product. When asked how much time she spent at the warehouse that particular weekend, Ms. Yang stated she had gone back that Sunday because the trucks needed more loads. When asked about what work she was able to do on May 21<sup>st</sup>, Ms. Yang stated that she went back to the warehouse to explain the weekend events to Gail and update her as she expected they would take over from there and continue with deliveries, however, they needed more loads on Monday so she put together more loads as the customers needed the product. Ms. Yang described the frantic situation of building loads as some had not been dispatched or were not in a position to be able to be dispatched. She could not recall whether she spoke to Janet Clarke on May 21<sup>st</sup>, just that she remembered building more loads because of the urgency.

[125] When asked about Exhibit A-29, an email exchange between Janet Clarke and herself, Ms. Yang explained it as requiring a truck with one or two drops to get to Calgary as part of a further arrangement so its entire load should not have been changed in order to facilitate the plan. She said she must have asked Janet Clarke to make changes to ensure that there was an empty truck, however, Janet changed the entire load which affected the entire booking.

[126] When asked about Exhibit A-30, Janet Clarke's email to her about training, Ms. Yang indicated that she did not have time to train Janet on May 22<sup>nd</sup> as it was so busy. She was focused on getting loads together and products to farmers so that they could be spraying.

[127] When asked about Exhibit R-2 an email exchange between her, Janet Clarke, and others, Ms. Yang testified that Gerrit Baan had expressed concerns about farmer complaints. She described the customer on a farm in Southern Saskatchewan. She said that she had asked Janet if Saskatchewan members had needed product on the weekend and had understood that the answer was no, so she chose to send product to Alberta farms and had removed the complainant farm from the load. Her email simply set out what Janet Clarke had told her and she used red ink and large print to highlight and respond to Gerrit's very urgent email. She said she put Gerrit as a recipient on the email so he would know that they were working to solve his problem and get a product to the farm. Although she did not specifically recall the response email from Janet Clarke, she indicated she probably received it and likely read it. She said she was not trying to be rude in the email and was hoping with one reply all would understand. She said that she had no conversation subsequently with Janet Clarke about the email.

[128] When asked how her duties were impacted from May 22, 2018 going forward, Ms. Yang indicated that she continued her work with suppliers and also helped logistics move product from the warehouse to the farm. She said she would help with responses to questions from sale representatives and management, and continued to do her procurement role as there was

nobody else to do her job. When asked whether she wanted to do Janet Clarke's job at the time, she said "no". She did not want to as it was extra work and she did not need to take on an extra job.

[129] When asked about Exhibit A-31, Ms. Yang explained that there were occasions where sales representatives would pick up product, but a load was already on its way to a farm with the same product. She said she would stop the truck to see if it had been to the farm already and, if not, the driver could be told to keep the product on the truck. She would then withdraw the order from the load, create a new load, and indicate that the sale representative was picking up the product. She said this was part of the sale reps job to sell product, but not necessarily to deliver it - although this happened often in 2018 because of late deliveries. When asked why she used red ink and underline on the email, Ms. Yang said she was trying to point out the message to avoid duplicated delivery as it was becoming a problem. Duplicated delivery was caused by removing product from sales orders. When asked about the happy face appearing in the reply from Janet Clarke, Ms. Yang thought that it indicated that it meant Ms. Clarke was happy with her reply.

[130] When asked about Exhibit R-3, Ms. Yang testified that it arose because she was uncertain as to why a line had been added in the system as it affected other numbers and she wanted to understand why it had been inserted. She said that Melissa indicated that it was reverse receiving, but that this was not making sense to her. She indicated that cross checking should have been done respecting what was purchased, shipped, and received, and everything entered into AX for inventory purposes. When asked why she was reviewing this information, Ms. Yang indicated that the glyphosate season had wrapped up and she spent many hours going through receiving documents since Janet had started entering receiving product into the system. She said that many mistakes were discovered with the entries and she couldn't figure it all out by herself on the weekend. She said she worked on it from Saturday - Tuesday as she had received the paperwork from Janet on the Friday previous. She had to compare what was received to the purchase orders and, when she saw the additional line, she believed she should raise it with accounting.

[131] When asked about how the AX system and its levels of permission work, Ms. Yang confirmed that access varied by position. She indicated that she had access within AX in November 2017 to sales orders, building loads, load status, and closing loads. She could create purchase orders and receiving orders as well as enter invoices against purchase orders. She testified that after November 2017 her permission changed, but she didn't know it had changed until she tried to look into load statuses and realized she didn't have access. She said if you don't use the system, you don't know that your access is denied. She testified that her access was granted again in May 2018 after she asked for it back.

[132] In questioning, Ms. Yang was directed to certain passages in the Decision and refuted certain passages in it. She testified that she never refused to communicate with anyone at work, including Janet Clarke, and that she had not taken over the building of all loads after May 22, 2018 as Janet Clarke was still responsible for some load building including customer pickups. Ms. Yang stated she did no load builds for Ontario and Quebec. She stated that she never blamed Janet Clarke for mistakes despite the indications in the letter. She also denied speaking harshly to Janet Clarke or other people. When asked whether she spoke harshly about Janet Clarke in the workplace, she said that she did not talk to other employees about anything and certainly not to other employees about fellow employees in the workplace. She further denied



creating "information roadblocks" for Janet Clarke and that there was nothing she could have done to block people from going into the system to look for information. When asked whether she brought negative attention to Janet Clarke with AgraCity owners, Ms. Yang testified she did not talk to AgraCity owners about staff and that she only told them what she did, how much she accomplished, and how close they were to reaching delivery goals.

[133] In cross-examination, Ms. Yang was questioned about the availability of product, primarily glyphosate, for delivery by AgraCity and confirmed it was her responsibility to acquire product in the first instance. She acknowledged that product could be obtained from Albaugh, if needed, but that she required to know what was required earlier than when she was told.

[134] When questioned about the operations in Eastern Canada, Ms. Yang testified that she wasn't entirely sure how things were set up there, but that Access was a service provider to them. She said that since 2017, AgraCity owned a warehouse in Eastern Canada. When asked whether AgraCity sent its own trucks to Ontario in 2018, Ms. Yang indicated that she could not recall.

[135] When asked specifically about events on May 18, 2018, and whether she had told Janet Clarke about a truck being organized to go to Calgary, Ms. Yang testified that she told the logistics team we needed product to Calgary. She said Janet Clarke was the load builder and she should tell Gail. When questioned about her arrival on May 18<sup>th</sup> at the warehouse, Ms. Yang confirmed that she saw bills of lading on the table and was trying to figure out the status of them. She confirmed that Terry, from MPower, had come to her and that she began to build loads for him, but only after she resolved the Calgary project. She said she had not planned to come in on that particular weekend, but agreed to do so. She had not communicated this with Janet Clarke. She said she believed Terry, from MPower, and Janet had a conversation earlier.

[136] Ms. Yang testified that she had performed the logistics role longer than Janet Clarke and that the AX system was relatively new having been implemented in 2015. She worked with it in 2016 and 2017. In response to a question as to whether Gail Fitzsimmons asked Ms. Yang to do more loads when she attended at the warehouse on May 21<sup>st</sup>, Ms. Yang indicated "yes" and that she did not remember whether she communicated the information to Janet Clarke. She confirmed that she made the decision then to build loads and she helped fill the trucks to send product to the farm.

[137] In response to questions about training, Ms. Yang confirmed that she and Gail Fitzsimmons had conducted the training on Janet Clarke's computer. She was orientating to AX and the logistics function. When asked how long it took, Ms. Yang said she didn't remember but that it could be longer than 3 hours. There were no other days where she sat down to train Janet Clarke formally, but would explain things when asked questions about load building. When asked about the order fulfillment position, Ms. Yang testified that both she and Gail Fitzsimmons could do it and Gail would do it when she was away. She said Melissa understood the AX system. She stated that Gail would only change loads when Stevie told her to do it and, when this occurred, she would review the loads afterwards to see what's happening in the system.

[138] On further questioning regarding the use of highlighting and red ink in emails, Ms. Yang reiterated much of the examination she gave in examination-in-chief - that it was used to highlight points and bring attention to important information.

[139] When questioned about Exhibit R-3 and asked to describe what was happening around the time of those emails, Ms. Yang testified that she had identified a receiving issue as there were many purchase orders to reconcile. When asked whether that was part of the procurements job, Ms. Yang testified that it had been taken by Dianna Emperingham in her position and given to Janet Clarke to do. She found that acceptable because Dianna had the warehouse team and could get the paperwork as Ms. Yang had in the past; however, they did not discuss it with as she assumed all would have been done as it had been done in the past.

[140] Ms. Yang confirmed in questioning that the business lines had grown considerably since she first joined AgraCity, and that there was a new logistics team installed in 2017. She stated that her previous role was not called Order Fulfillment Supervisor, but it was the same function she completed in 2015.

[141] Ms. Yang testified that spring was a busy season in the agriculture industry and, when asked whether employees at AgraCity (including herself) were more stressed during that time, she said "not really", and that she understood the situation and tried to help where she could.

[142] When questioned about the "register" and "activate" functions in AX, Ms. Yang testified that the system was built to update itself from register to activate and if that status doesn't change, she would take the issue to Melissa Murphy to resolve. She said this had happened in the past, but only a few times.

[143] Ms. Yang was asked questions about whether she handwritten on bills of lading. She denied that she did so as she used computers to create them. She confirmed that many others did handwrite on bills of lading. When asked whether that caused problems, she said that the handwriting did not cause problems as there was usually a reason for it. If something was written about what was going on with the product, it was AgraCity's responsibility to record the inventory. She said it was not the truck driver's problem if there was extra product on the truck. She said it was the logistics team responsibility for keeping the record systems up to date on what was happening with product.

[144] When further asked about permission within AX, Ms. Yang confirmed that her logistics function "greyed out" and was not active. She said that as one added to loads, the load statuses would update. All she had was access to an open shipment screen, but it was faded grey and she couldn't click on it. As a result, she could not build or change loads or do anything with shipments until her permission was restored.

[145] When asked whether in 2018 there were inventory issues and trouble getting product into the warehouse, Ms. Yang responded that they were always negotiating different supply terms and those were fulfilled so they were in good shape. When asked specifically whether there was any trouble getting enough glyphosate to the warehouse with resulting shortages to farmers, Ms. Yang testified that AgraCity supplied farmers according to sale orders and supply was shipped according to purchase orders as they wanted.

### ***Evidence of Brian Rumberg***

[146] Brian Rumberg testified that he was National Sales Manager at AgraCity and started in the role on April 10, 2017. He possesses a Bachelor of Science from the University of Lethbridge and had 12 years of experience in the agriculture chemical industry in research and

development this was followed by 12 years of service with Cargill in various roles the last being in Senior Management for Northern Saskatchewan Sales and Consulting Group.

[147] He testified that at AgraCity he has always been the National Sales Manager and was responsible for the sales team and all top line revenue. He said he wore multiple hats and was involved in production and logistics from time to time. He was responsible for the entire staff team of about 40, although not all of them were direct reports. Their roles included sales, sales management, digital agronomy, marketing, and tech lead. They have 35 sales staff. In 2017, they only had 13 sales staff.

[148] When describing the spring season in 2017, Mr. Rumberg testified he had been in the industry a long time and that the spring season in the agriculture industry is always busy. At AgraCity customer satisfaction was good in 2017 as deliveries were generally on time.

[149] Mr. Rumberg testified that he was familiar with the CRM system and AX software, but did not use AX directly. He testified that the CRM components were built for the sales team and tracked all customer interaction, invoice reports, and could generate business management reports.

[150] He stated that, in 2018, AgraCity's farm sales marked continued growth. He testified that there were significant issues on delivery as product was not arriving on the farm, multiple drops of the same orders were made to farms, incomplete orders were going to some farms, and one customer indicated "we had been there six times and become a nuisance".

[151] Mr. Rumberg stated that glyphosate was their primary problem. He believed the problem started with a misallocation as AgraCity had shipped significant product to Eastern Canada where it was required later than in Western Canada thus creating challenges. He said that "we were short and it wasn't getting to farm." When asked about the misallocation to Eastern Canada, Mr. Rumberg stated that it went to a third party warehouse and was contracted with a third party carrier. Once there, it wasn't getting delivered out of the warehouse and wasn't getting to the farm creating significant farm complaints. He believed AgraCity was just not organizing loads or holding the third party accountable for getting things done. When asked whose responsibility it was to look at the total orders and figure these things out, he stated that he understood it was Janet Clarke's.

[152] He stated that he tracked orders daily as, if it wasn't tracked, an order might be delivered multiple times. He said there was a lack of closing out orders as deliveries occurred, and it wasn't being organized to get the paperwork done. He said this was Janet Clarke's responsibility to get things caught up and resolved.

[153] Mr. Rumberg testified that problems came to his attention once they started logging customer complaints and noted a lack of product and delivery. This filtered through to the sales team and himself. He took whatever actions he could to mitigate it and was probably at the warehouse daily - even multiple times daily, to get product to as many farmers as possible. He said he was fielding complaints at an astronomical rate; being 5 or 10 complaints per day being dealt with by himself. He testified that he was able to track the sales team through the cellphone usage and while he normally logged about 2500 minutes per month, during this period he hit 4700 minutes in May and June 2018. The sales team were starting to firefight and began personally delivering smaller packaged goods. He said that over a third of the product went out this way and that, at times, they might drive 5 hours to get to the farm. He said this



was not part of the business model for sales and delivery to farms as it should've comprised perhaps 5%, rather than 30%, of deliveries as it was.

[154] He testified that he was at the warehouse working with Janet Clarke and to understand what was going on and to keep customers happy. When asked about the observations at the warehouse, Mr. Rumberg said it appeared extremely disorganized and did not have a sense of what had happened. He said this put the company in a bad light in the eyes of the customers when they were showing up 3 times with the same product order. He said some customers may not have called and simply kept product. AgraCity would have no record of that.

[155] He said he spoke to Janet Clarke daily about what was going on as deliveries might be 4 days late, drops were missed, and partial orders were sent even though sufficient product might have been in inventory. He was constantly dealing with sales representatives to keep it going as much as possible. When asked about whether there was handwriting on bills of lading, Mr. Rumberg said that he saw it done all the time and it's a terrible practice. He said it means you don't know exactly what's happening with certain sales and deliveries. When asked who in particular handwrote changes, he said it was done by Janet Clarke and other people on the floor of the warehouse.

[156] When asked about conversations he had with Dianna Emperingham, he said there were multiple discussions regarding the performance of her team and that it was not meeting customer expectations. This occurred several times throughout the spring season and he became aware that Jason had spoken to Dianna to terminate Janet Clarke's employment. On questioning as to when this occurred, Mr. Rumberg indicated that it was between the middle to the end of June 2018, although he did not know a specific date. He understood this was a concern in all conversations he had with Dianna Emperingham.

[157] When asked about whether there were concerns expressed by others about Stevie Yang, Mr. Rumberg indicated there was a language challenge but there were no other concerns expressed regarding Ms. Yang's treatment of other employees. When asked whether Dianna Emperingham raised concerns about Stevie Yang with him "no". When asked whether Janet Clarke had raised concerns with him about other employees and their treatment, he also replied "no."

[158] He said that he worked at a Cargill for 12 years and that company was known as very straight laced. He said in the indication of employee mistreatment was brought to management and taken very seriously. He testified that if something had been said to him about mistreatment of employees, he would have addressed that.

[159] said that at Cargill there was a defined process that would take a few minutes. Essentially, that the company makes a decision and your employment is terminated. He said at all times they would have someone with them when terminating an employee as it was a high stressed event and you could expect to receive all range of reactions from people, whether violent, or potential allegations of mistreatment. When asked about the process of termination at AgraCity, Mr. Rumberg said he would follow virtually the same process as at Cargill.

[160] On cross examination, Mr. Rumberg was asked what the bulk of other concerns were besides glyphosate. He indicated that, in the normal course of the agriculture business, there was always a challenge at seeding time and other things. There were always some missed or

late deliveries in any company, and his recollection was that this comprised most of the problem.

[161] When asked about concerns around shipping glyphosate in Eastern Canada, Mr. Rumberg indicated he knew it was a concern out there, but could only guess about how much was in play. He understood there was some trouble getting glyphosate to the warehouse and they understood that 90% of glyphosate that AgraCity purchased came from China.

[162] When asked about whether there was trouble getting glyphosate in 2018, Mr. Rumberg indicated that AgraCity did have a problem and his understanding was that a big part of it arose because they had not ordered enough. He recalled that they had half of what they required in the right timeline, but eventually did acquire all that they needed. He said that the shipping schedule for glyphosate was throughout the year and they were always shipping it.

[163] When asked whether they had enough in March 2018, he indicated "no. absolutely not." He said they would normally fill pre-orders before mid-March as they are selling every day and always behind because they would have open orders to complete. When asked about who was responsible for ordering glyphosate in 2018, Mr. Rumberg said that Stevie Yang orders the product. He said Stevie Yang based orders on what she was told by Dianna Emperingham's team and that her access to the AX system had been shut down.

[164] When asked when glyphosate became a big problem, Mr. Rumberg replied that it was April 2018 and it got worse by May and by then "the entire country was in the field." When asked about responsibility among Dianna's group, Brian Rumberg indicated that it was he and Janet Clarke that were primarily involved, as he didn't think anyone else on the team reported product sales or levels and the warehouse people were not really involved. He did agree that warehouse tasks could impact Dianna Emperingham's team and that the team was loading trucks daily.

[165] When questioned about his direct knowledge of order problems, Mr. Rumberg indicated he became involved when things started to wrong. When he heard product was coming in, he realized there was not enough and there were only product for orders that were paid. He said that if product had not been ordered it created a domino effect. He said that there had been 2 million dollars of product identified as unpaid in the system that could be sold and it existed. It was just not paid for yet. When asked about whether wrong information in the system created problems, Mr. Rumberg indicated yes that was a big part of it. He agreed that there were many points in charge of getting product to the farm and that at any of those points or other factors could be impacted. He agreed that, in 2018, there were errors being made at every stage.

[166] When asked about the number of people hired in 2017 at AgraCity, Mr. Rumberg indicated that AgraCity was growing at a shocking rate and there were always new people being hired. He said it was rather static before his arrival and, as with any company and business evolving tremendously over a 3 year period, there would be some turnover. When asked how many employees came and went through 2017 to 2018, Mr. Rumberg replied "20 ish".

[167] When asked about handwriting on bills of lading, Mr. Rumberg confirmed it was a common practice and was problematic. He said he never saw it done in 2017. He said he dealt with parts of the business out of his scope when things weren't going well, but if they were going well, he wouldn't need to be involved.

[168] When asked about how terminations were handled in his experience and specifically how quickly the decision to terminate came prior to the actual termination, Mr. Rumberg indicated 7 days. He said that once a decision is made to terminate, unless there is logistics concerns, it happens pretty quickly. When asked whether "the less time the better", he indicated "yes".

*The following evidence of Jason Mann was heard on July 21, 2020.*

***Evidence of Jason Mann – regarding Court Order***

*Questioning resumed with Mr. Mann specifically regarding a Queen's Bench Court Order that had been referred to in his testimony. Since the earlier dates of the Hearing, permission had been obtained by Appellant's counsel to release the Court Order for these proceedings as it was originally ordered to be sealed.*

[169] Mr. Mann testified that he recognized the Court Order shown to him and dated July 15, 2017 in Queen's Bench Action No. 948 of 2017 as an Order of Justice Danyliuk. He indicated that the Order remained in force to the date of his testimony, and that it was reviewed by the Court from time to time and continued.

[170] Mr. Mann's attention was directed to paragraph 2 of the Order and he was asked to provide his understanding of his authority under the Order. He stated "I am not allowed to demote, promote or discipline employees." When asked whether he felt constrained by the Order in dealing with Janet Clarke, he said "yes", he felt like he didn't have the ability to terminate her or instruct her supervisor to, but eventually did terminate her as he felt he had to in the appropriate circumstances. He confirmed that it was his understanding that the Court Order was disclosed for the purposes of the hearing, and he couldn't disclose other aspects of the litigation in his testimony here.

[171] In cross examination and on being asked whether he had terminated Janet Clarke in defiance of the Court Order, Mr. Mann replied "yes".

[172] When questioned about the last sentence of paragraph 2 of the Order and what it meant, Mr. Mann replied that, at the time, he thought it was full stop and that no discipline of anyone was allowed. He now would say he has latitude in the "ordinary course" of the business; however, he felt otherwise in 2018. When further questioned about what the sentence meant, he said it meant nothing at the time as he was always under the impression he couldn't do anything, and that only much later, when the Order was reviewed again, did things change. He stated he is still not comfortable with firing employees. He said that in 2018 he felt he was acting outside of the Court Order.

[173] When asked about other changes in AgraCity's work force in 2018, Mr. Mann indicated that it was just normal and there were no other dismissals. When asked specifically of the termination of Steven Semchyshen, Mr. Mann indicated that he did not terminate him, but believed that Mr. Semchyshen's supervisor had. When asked whether Brad Pelletier had been terminated, Mr. Mann indicated that he had not been terminated. When asked about Diana Emperingham being terminated, Mr. Mann said "no, she was sent a letter with a settlement after she had approached him." Mr. Mann indicated that there were other terminations in 2018 but he didn't know about them or at least they were not done by him.



[174] Mr. Mann indicated this was the first Court Order imposing conditions like this, and that it was in place one year prior to Janet Clarke's termination.

***Evidence of Myrna Mclvor***

[175] Ms. Mclvor testified that she held a certified General Accountant designation and Business Administration diploma. Much of her earlier career was in public practice and, in 2009, she went into private industry practice. She served as Corporate Controller for Legumex Walker until the company went public. She was Controller for AgraCity for two years ending in November 2018. She indicated that she is currently doing consulting work.

[176] Ms. Mclvor testified that she was at AgraCity when Janet Clarke was there and that her duties were to oversee all accounting functions, work with outside accountants, and act as internal controller primarily with monthly financial reporting and other duties.

[177] She testified she understood Janet Clarke's job as Order Fulfillment Supervisor and its duties included identifying items on a pick list to be shipped. The OFS would take items, build loads and ensure loads were delivered to customers. When asked who the position interacted with, she testified that it was primarily sale representatives, her supervisor, Dianna Emperingham, warehouse staff, and accounts receivable staff. In describing the order of events, Ms. Mclvor indicated that sales staff would enter orders, orders would get processed for payment, once a payment was processed product would go to a pick list, which was created by accounting staff, and then order fulfillment would take over. Order fulfillment would indicate what inventory was used and that information would go back to accounting. Once order fulfillment would indicate product as shipped, accounting would close out a transaction. She testified that she had not built loads herself, but understood it to be done geographically and trucks would go out that way.

[178] When asked who was involved in Janet Clarke's training upon her hiring, Ms. Mclvor testified that she and Melissa Murphy reviewed with Janet Clarke and Dianna Emperingham various steps in the process and what happened if steps were missed. They had documents showing the flow of information and, at that point in their discussions, Melissa Murphy took over the bulk of the direct training.

[179] When referred to Exhibit A-19 and whether she recalled providing training to Janet Clarke on the system, Ms. Mclvor said "yes". Shortly after, there was training given to Janet Clarke on the AX Accounting System and on the CRM Sales platform system as it was used by the Order Fulfillment Supervisor position. She said a group of them had walked through documentation that Melissa Murphy went through as well as the hands on procedures with Janet Clarke.

[180] When presented with Exhibit A-14, and the problem it identified, Ms. Mclvor recalled receiving the email and that it described an item that went on an original load, which was not marked as delivered, thereby creating a duplicate load. When asked about the effect of this on inventory, she said that there were two shipments and one charge. AgraCity was out the payment for this product. When asked whose job it was to mark product as delivered in the AX system, Ms. Mclvor said it was Janet Clarke's job.

[181] When questioned about Exhibit A-15, Ms. Mclvor said that she questioned what had been delivered so that they would understand whether there was more to deliver. She said

such communication wasn't uncommon at AgraCity, but usually there was documentation to show what had gone out. She said there were indications that not all of the load was delivered but they were unsure if there was more to go out. She indicated that it was Janet Clarke's responsibility to confirm what was delivered or not and, based on the information they had, that couldn't be determined in this case.

[182] When asked to explain the process in Melissa Murphy's description in Exhibit A-16, Ms. Mclvor said that this is the part they had gone over in the meeting with Janet Clarke and Dianna Emperingham stressing the importance of the order of steps and what can go wrong. She said that, without doing the steps, things get shipped out and they have no idea what went out. She further said that, within the email, Janet Clarke's responsibilities were identified. Ms. Mclvor stated that a signed proof of delivery is what the customer receives and signs to indicate receipt of product once it is delivered. Janet Clarke was then to go into the AX system to show it as delivered so it wouldn't be delivered again.

[183] When asked specifically whether it was Janet Clarke's responsibility to enter information such as this into the AX system, Ms. Mclvor said originally, yes, it was, but because they had gotten so far behind, "we took it over". At the time of the email, Ms. Clarke was still doing it. Ms. Mclvor stated that PODs were to be entered as soon as documents were received back from drivers. When asked who subsequently entered PODs into the system, Ms. Mclvor said it was split between Melissa Murphy and Janelle, from accounts payable.

[184] Ms. Mclvor indicated that the May 8<sup>th</sup> email raised with Janet Clarke that, as per her training, steps were not followed - everything got out of line and they could not confirm what was shipped and the customers were getting duplicate deliveries. She said in the initial training they had explained steps and the necessity to be efficient. She said not following the steps could be catastrophic and resulted in duplicate shipments or missed deliveries as it also doesn't align the inventory and deliveries. Her team was making sure all deliveries were entered.

[185] When questioned about Exhibit A-28, Ms. Mclvor indicated there was discussion about several loads that were not closed in the system. In order to properly allocate the glyphosate coming in, they needed to have closed transactions in the system. They determined that some inventory wasn't there as PODs weren't closed. When asked who was to get PODs and communicate to her team, Ms. Mclvor indicated that Gail Fitzsimmons and Janet Clarke had a shared role in that she thought.

[186] When asked about her recollection of Exhibit A-33, an email of May 18, she said she did recall it as a pick list had been created and you could tell who had put it on. She said "we knew product wasn't paid for and that Janet Clarke put it on the pick list and it would have gone before it was paid for". When asked about who created a pick list, Ms. Mclvor said it was not Janet Clarke's responsibility to put items on the pick list but that it was done once in a while when she wanted to build a load.

[187] When asked why Stevie Yang became involved in the process, Ms. Mclvor said they were trying to reconcile the inventory available to them and Stevie Yang had taken that on. She said Stevie had more experience than Janet Clarke and AgraCity needed answers.

[188] Ms. Mclvor reviewed Exhibit A-18 and confirmed it was a sales order where a customer received a double shipment, told AgraCity about it, and agreed to pay for it. She indicated that

the floor had not reported it properly thus resulting in it being shipped again. When asked who was responsible for recording the floor properly, she said Janet Clarke.

[189] When asked for a description of the events described in Exhibit A-31, Ms. McIvor said that Warren was probably going to a customer. If the inventory was on a load, without a removal being indicated, it would create a duplicate delivery. She said before the product went to Warren, it should have been removed from a load and the new load created reflecting the product removal. She said this would have been Janet Clarke's responsibility.

[190] When presented with Exhibit R-2, Ms. McIvor explained that when AgraCity received glyphosate, the amounts that were recorded did not match what was received so it did not line up with what was in the warehouse and what was showing up in their systems. She said that it was Janet Clarke's responsibility to process the paperwork when inventory was received in the warehouse. In this particular case, she said she did not know how much glyphosate they had because of the mismatch and they had to make sure what was in the warehouse or the accounting system would be wrong. It turned out that the accounting system did have it wrong. She said that often product came in large containers, which each had to be reviewed and matched up into the system. This was a time consuming process particularly given the large volumes. When asked whether this remained a problem in July 2018 she said "yes" as glyphosate was seasonal and only comes in a couple of times each year.

[191] When asked whether during her time at AgraCity there had been frequent firings of employees, Ms. McIvor stated that it did not happen very often. When asked why, she said "Jason gave a lot of chances."

[192] When asked to explain the December 2017 email exchange regarding yearend inventory, Ms. McIvor indicated that it was not about inventory, but the count numbers required to do the inventory. She said that if the inventory count is given, the numbers would be there to simply give back and they preferred that a blind count be done. When asked whether it was not the best practice to do a blind inventory, Ms. McIvor said that is correct, but in this case numbers were given in advance of the count. When asked why Jason Mann would've asked her about this, she stated that he wanted to be comfortable because this was departure from the usual process.

[193] When asked about accounting department's interaction with logistics from summer 2017 to summer 2018, Ms. McIvor said that they had good interaction as accounting is support for them. She said that Melissa helped out and took on some responsibility and all generally went well.

[194] When asked whether she formed an opinion on Janet Clarke's performance as OFS, she said "yes" as in her email exchange she noted that she was not following process, which created a burden on us to get loads out and loads entered properly. She said there were not enough PODs to make sure all was sent correctly and there could've been duplicates by not following the process. She said loss resulted to AgraCity.

[195] In cross-examination, Ms. McIvor confirmed that she had never worked as OFS or even in a similar role. She agreed that as Controller her job was mostly accounting.

[196] When asked about her knowledge regarding Stevie Yang training Ms. Clarke, Ms. McIvor said she couldn't answer because there were 4 people involved in the training - herself,



Janet Clarke, Dianna Emperingham and Melissa Murphy. In describing her specific role, she said they walked through Word documents, outlining the steps and the consequences of missed steps. She said that Melissa worked directly and set up a test system that she and Janet Clarke worked through. She said at that time of year, time was available to get your feet wet and ask questions. When asked when this took place, Ms. McIvor said shortly after Janet Clarke started in the office across - with ready access to Melissa for questions.

[197] When asked about Exhibit A-14 an email from Melissa Murphy to herself she was pointed to the words "they added" and wondered who it was referring to. Ms. McIvor said she believed it was whoever was loading the trucks but really had no idea. She said inventory errors did occur in the warehouse and could be a result of many causes.

[198] When asked who was to order product, she said a number of people and the steps in AX will say whether it is in the warehouse or not. When asked whether ordering errors may have occurred, she said "sure". When asked whether AgraCity had supply issues she said yes and it depended on the product and time of year. Glyphosate was a problem at one point. When asked whether she was familiar with the glyphosate issues in 2018, she indicated that she left AgraCity in November 2018 but was familiar with earlier occurrences.

[199] When asked whether handwriting was on PODs, Ms. McIvor said "yes" and it would be rectified if it came back so it could be added and accounted for in AX. When asked who wrote on bills of lading, she said very few people but typically salesman might put in an order that a customer wanted on a truck. The proper procedure was then to rectify the entry in AX.

[200] When asked whether, once a load is built and packaged, a sales rep wanting product could have it taken off a load, she said "yes" but then the load should be edited so it would match the inventory. When asked who should be notified if something was taken off a load, she said sales reps should not be taking product off a load and agreed that the warehouse staff should do it and identify it so it was corrected in the system. Ms. McIvor agreed and said the OFS should be told. Her testimony was that she had no idea how often salesmen or warehouse staff took product off the load, and only had a general knowledge and familiarity with the warehouse.

[201] When asked who was responsible for building loads on December 7, 2017, Ms. McIvor said she believed it was Janet Clarke as once Janet was building loads, no one else was able to build them. She said no one else had access to the AX system to build loads. When asked whether Stevie Yang would get involved, she stated that Stevie Yang had her access removed when Janet Clarke started. Melissa Murphy removed the access but did restore it later.

[202] When shown various emails, and asked who would have made mistakes identified in the emails, Ms. McIvor said she couldn't tell from emails, she only knew that because if only one person was authorized in the AX system to build loads, they would be responsible. She said that Gail Fitzsimmons had no authorization to build loads. She said she could change authorizations, but didn't. She said that Melissa had indicated that she had changed authorizations, but was not sure when that was done.

[203] When asked whether she was familiar with the term "Agricultural Chemical Warehouse Standards Association", Ms. McIvor indicated "no" and did not recall receiving any packages of procedures regarding logistics. When asked whether Dianna Emperingham had provided such

documents from ACWSA, Ms. McIvor said "no". If it had related to logistics she said she would not have reviewed it in any event.

[204] When asked who would update procedures in the Warehouse, Ms. McIvor said Dianna Emperingham would because she was in charge of the warehouse. When asked whether it would have mattered to her about those procedures being recommended, she indicated "yes and no". She said as long as there were procedures being followed and nothing accounting-related, she wouldn't need to know the extent of the changes. She would only be concerned if it was affecting the process and causing problems. She didn't recall receiving anything in this regard. When asked whether she received some policies and procedures from Dianna Emperingham, Ms. McIvor said she went over some recommendations but does not remember what they were. She said she did not implement any warehouse recommendations.

[205] When asked about PODs and the process for them, Ms. McIvor said it is a bill of lading for each client that is assigned by the recipient. She said the bills of lading are sent with the client and the client signs the bill of lading on receipt of the product. These are then a POD and given to the driver, and the driver gives them to warehouse staff on return. She said they give them to Gail, Justyne or Janet depending on who was scanning them in. When asked about Gail Fitzsimmons, Ms. McIvor said she works for MPower logistics and coordinates drivers. She said that Terry Lay was in charge of MPower logistics.

[206] When asked where PODs went after they were signed and whether they went to Gail Fitzsimmons, Ms. McIvor said that PODs were to be scanned and saved to the public drive. She said then you could go on to AX and see what was delivered. She confirmed that they relied on PODs to keep the system accurate. She indicated that changes were written on and initialed by both the driver and customer on the bill of lading - and it was coming back as a POD.

[207] When specifically asked about Exhibit A-28 and whether she was familiar with the term "activate" in the system, she said she was not familiar with steps but was familiar with the term. When asked whether the system could be changed from activated if there was not enough product, she said "no" it could not. She indicated that you then could not confirm whether an order was completed. She said that without the POD you cannot confirm what was delivered nor closed in the system. When specifically asked if one had not seen the POD or marked it as completed within the system, the system would be inaccurate. Ms. McIvor agreed with that.

[208] Upon review and questioning of Exhibit A-17, and whether she could identify why an error occurred, Ms. McIvor said she could identify what occurred but not why. She indicated 640 litre totes were to be shipped, but 1000 litre totes were shipped - and agreed that it was possible that warehouse staff sent the wrong product. She also agreed that shipment mistakes could result in errors within the next steps in AX. She was uncertain as to how that error occurred and could only speculate that accounting reconciled it after someone identified the mix up. She also confirmed that within the AX system you could track who made changes as there is a footprint on whoever is logged in. She said that a person needed to be a super user to see that information and only she, Melissa Murphy, and Lindsay Puck from the technology group had such access. She did on occasion look through that information. She agreed that she could identify where a mistake was made in the chain based on what staff was working and who entered things into the system.

[209] She indicated there were a number of people that could take product from loads, including Jason Mann, Terry Lay, or warehouse people. She also agreed that a bill of lading

could be lost by a driver and that sometimes drivers were not expeditious in getting PODs back. She agreed that drivers may travel for days and even perhaps a week, although she indicated she would only assume so as she was not a logistics person.

### ***Evidence of Dianna Emperingham***

[210] Dianna Emperingham testified that she is currently employed as the Executive Director of Crops and Irrigation at the Ministry of Agriculture in Saskatchewan and has been in that position for 10 months. Previously, she worked at 3s Health and, prior to that, at AgraCity from June 2017 to October 2018. Prior to AgraCity, she had worked primarily in the Agriculture sector. She spent 28 years at Hoechst Chemical, which became Bayer Crop Science.

[211] She testified she also served on a number of Boards, including the Agriculture Chemical Warehouse Standards Association. When asked what ACWSA did, she indicated it was a group that developed how agricultural chemicals should be stored across Canada. She testified that AgraCity was not certified by ACWSA as AgraCity believed that since they delivered directly to customers they did not believe that the Act applied to them.

[212] Ms. Emperingham testified that she served as Vice-President, Supply Chain, and her duties included accountability for the supply chain - customer placement, order delivery, and development of systems. She indicated she did not get involved in buying product, and Stevie Yang was responsible for that role. She indicated that she reported to Jason Mann and no one else at AgraCity. Those reporting to her were Janet Clarke and Brad Pelletier in the warehouse. The logistics team was comprised of her, Janet Clarke, Brad Pelletier and one other.

[213] She confirmed that she hired Janet Clarke, and that Myrna McIvor was involved in the hiring process. She said that Janet Clarke's first job was to fix inventory discrepancies from the prior year. She said that she reconciled over \$200,000.00 in inventory deficits. She also said that the state of the inventory was fairly inaccurate because of the deficit.

[214] Ms. Emperingham indicated that in 2017 and 2018 there was a big change at AgraCity in the logistics area, which moved to the new warehouse. She said they had to work from scratch and worked with suppliers to set things up as all inventory had to be transferred from the old location. She said that as the move transpired they took the opportunity to do reconciliations on inventory during the move and noted several discrepancies; however, she said they didn't reconcile all of them. They believed that they had reconciled what they were able to find.

[215] When asked who trained Janet Clarke, Dianna said originally they had asked Stevie Yang and that Janet Clarke did a lot of her own digging to learn. She said that Melissa Murphy was very helpful on getting Janet up on the AX system, and how to use it and maneuver in it. In the inventory reconciliation and management within the system, she said Janet Clarke did this on her own. She testified that Stevie Yang did very little training, but they had gone to her because she was previously responsible for the position. She indicated that Jason and she had discussed Stevie Yang further training Janet Clarke but, to "sum it up, Stevie Yang was reluctant to offer Janet any assistance".

[216] When asked about staging loads, Ms. Emperingham indicated that the process of staging in the industry meant when a day's orders came in, you would create bills of lading, know when you had trucks in to load, and then load them front to back with a route map. When asked whether this was the process followed with Bayer, she said "absolutely". When asked



about the importance of the staging, she said it was done 24 hours. They could stage so that trucks were constantly moving there. They would load between 30 and 50 trucks per day at Bayer.

[217] When asked whether AgraCity followed staging, she said they tried for a period, but it wasn't at all successful. She said the number of trucks were not known each day and the orders constantly changed. She said with MPower, a related company to AgraCity, it became difficult at times because trucks may not show up or there were not enough drivers. She also said that sometimes they came in the middle of the night. She testified that loads would change. She said if a load was staged with 10 stops to leave at 2:00 p.m., if no driver showed and there was a rush product, a sales person may remove the product from the load and they would be required to start staging the load again. When asked how often sales reps changed loads, she said in the heat of the season that it occurred daily, that others changed loads, and MPower changed routes. When asked how one kept track of the changes, she said it was difficult and they were not always able to track it. They relied on MPower's bills of lading as they were the last guys to touch the product. Logistics was not always made aware of the changes.

[218] When asked about trucks coming in the middle of the night, she said there were no staff there past 7:00 p.m., unless they were on overtime, so Jason Mann and Terry Lay would handle it. These loads caused confusion she said as they weren't sure in the morning what went or what needed to be loaded. They also wouldn't know what had come in. She said that Janet Clarke would work with Gail at MPower to try and reconcile things to deal with the uncertainties, but there was always a daily question of what had happened.

[219] When asked who interfered with staging, she said orders could be changed by anyone, but it was mostly MPower. There were quite a number of people involved in moving things. When asked who received product at AgraCity, she indicated Brad Pelletier and his team at the warehouse, and further that they loaded the trucks. There was one person on Brad's team plus two seasonal employees. She was given the name of Stephan Semchyshen and confirmed that this was the employee who worked with Brad. Brad and Stephan trained the seasonal employees.

[220] She also described that Logistics was concerned with incoming and outgoing goods, and they were responsible for staging and loading on outgoing trucks. There was also a filling process where employees filled and loaded jugs on the line and these went from packaging to cardboard labelling - creating more of a "manufacturing" side.

[221] When asked about load changes and who was responsible for paperwork, Dianna said it depends on who changes the load. If it was changed by Logistics, Janet Clarke looked after it and entered it into the system. They were not always aware of changes if handwritten notes were made on the BOLs. She said often these were not available or given back to them in logical order. She said Janet Clarke needed to confirm everything in the system to allow for billing. She herself did not handle particular transactions. She agreed that if paperwork wasn't entered timely into the system, it created misinformation as inventory didn't match what was available. She said these mismatches occurred on a regular basis in the high season. In May, June, and July as everyone was in a rush to get the product to the users. She also stated that sometimes product was added to the loads and that occurred where product had not been available, arrived last minute, and there was a truck going out. This would require bills of lading to be done and the product added to a bill of lading. This would allow correction within the

system. Ms. Emperingham testified that inoculant was a product shipped early in the season ahead of herbicides and fungicides.

[222] In describing the product supply at AgraCity, she indicated that sometimes it came to them as finished product, but AgraCity was going to set up a new packaging line within the new facility where they would get product in bulk and repackage it. She said the volume of handling increased a lot. She said that there were 23 new configurations and lines being considered at the beginning, although not that many proceeded; and she wasn't certain as to how many lines were there previously. She said it became extremely hectic when they were adding product lines and filling packaging as they weren't always sure what was coming in and when - so they had to be flexible with the changing schedule.

[223] When asked about double shipping, she indicated that if a grower signed twice you could tell whether a product was double shipped and needed to do a proper reconciliation as the inventory count would be out. She said normally inventory was reconciled on an ongoing basis except if the product was ready and the truck came late a representative might take product from the warehouse and take it direct to the grower. If they were not notified, each load that had been prepared may have the same product delivered. She stated that it was extremely important to have accurate inventory given the materials they were required on hand. Janet needed to know what was coming in and out on a timely basis as it affected how they could operate.

[224] When asked about the new product additions in 2018 over 2017 at AgraCity, Ms. Emperingham said that there were a number of products added as there was no filling line in 2017. The process for filling was that they would bring in totes and fill jugs from them converting it from bulk to finished distribution product. She said there was no capability within AX to operate a manufacturing environment so they set up manual sheets to address this issue. As an example, she indicated 10,000 would become 1,000 10 litre jugs with labels and cartons required. She said it was completely manual as they would put together product orders and then send the information to accounting. She indicated that she was not in charge of manufacturing but made sure it was taking place. There were team members on this on a daily basis based on availability. She said some good people acted as foremen on the line. She also said that worker availability affected productivity and any given day she said they might run jugs on the line and fill 100 litre jugs. One of the men was particularly consistent on the bulk side for a while and this remained a manual process while she was there. She thought at first they could manage small numbers of products, but it was really unreliable especially when things were repackaged on a weekend as the whole system was a faulty process.

[225] She testified that there were discussions about changing the system, particularly between herself, Myrna McIvor, and Jason Mann. She said there was not a lot of discussion as it was most concerning that product get to growers and there was a lot of frustration at the time because of the variables. The directive was to get the product out.

[226] When asked who had access within AX to build loads, she stated that Stevie Yang and Janet Clarke did, and she assumed that MPower also did. She said that Janet Clarke was only responsible for building loads until mid-May 2018. When asked what happened to cause this change, she indicated that Jason said Stevie was coming into assist because Janet was struggling to keep up. She said Stevie was to train and help Janet. She said Stevie was to take over load builds from May 22 and, from then on, Janet Clarke didn't build a load.

[227] In response to a question about workplace environment, she said it was not cooperative or collaborative and was often difficult and uncomfortable. She said that communication only went through Jason Mann and there was not a lot of teamwork among groups. She said it was not a great atmosphere to be part of. She said there was no attempt at teamwork and when mistakes occurred everyone hurried to find a person to blame. She recalled hearing people say "do you even know what you're doing" and someone "is sabotaging our paperwork". She said this was the most difficult working environment she had seen in her career of 30 years in the area.

[228] When asked who was primarily blamed for errors, she said it was Janet Clarke and the shipping team. She was told there was one too many people in logistics. But never had a discussion on what was the driver of the problem. She said Janet Clarke was blamed even after she was no longer building loads. She said it never seemed to matter what happened, if there was an error, it was Janet Clarke and the logistics team's fault. Even after May 22<sup>nd</sup>, she said Janet Clarke had nothing to do with those loads, and every error on those loads came back to her. She agreed that Janet Clarke was blamed for errors before May 22<sup>nd</sup> but said they were not always her fault because there were multiple factors involved. She said she and Janet had discussed how to better improve processes and better work with MPower. She said MPower told them you build and we will have the drivers, but they did not always have drivers.

[229] She testified that as the logistics team did, she moved to the warehouse to be with the team to create a collaborative and supportive environment with the team - and this worked well. Whenever they worked outside of their own group, there were still difficulties.

[230] When asked who the non-collaborative people were causing problems for Janet Clarke, she replied Myrna McIvor and Stevie Yang. She said that when Janet Clarke indicated she was upset at the warehouse, Myrna McIvor would say "I feel bad for you" and then go to Jason Mann and say Janet Clarke can't do her job. (Counsel for the Respondent objected to this evidence on the basis that it was hearsay. This was considered and the evidence was given limited weight.)

[231] When asked about difficulties Janet Clarke had with other people, mainly Stevie Yang, Ms. Emperingham testified that Stevie Yang was brought in to assist Janet Clarke and they had discussed this. She said they hadn't had a good relationship in the past, and wanted to start on the right foot. She said Janet sent an email welcoming Stevie to come sit and work through things together. She said Stevie Yang said she was coming to look after things, not to support Janet Clarke.

[232] She testified that Stevie Yang's general treatment of her and Janet Clarke was not good. She said Stevie would not communicate with anyone without Jason Mann in the room, and it was hard to learn from her as she was very uncooperative.

[233] When asked why it was Stevie Yang she wanted, Ms. Emperingham said that Jason Mann had assigned her to the warehouse to assist Janet Clarke to build loads. Our goal was to get us out of the situation and have a cooperative relationship to get the product out to growers. A cooperative relationship did not develop with Stevie Yang. Ms. Emperingham said Jason had put her in to do the work and she dropped Janet Clarke and Dianna Emperingham from communications and didn't communicate with them after that.

[234] Ms. Emperingham testified that she had some discussion with Jason Mann about Stevie Yang's behaviour and that she was extremely difficult to take. She said Jason's response was



"yes, that's the way she is" and laughed. She was not aware of any investigation about complaints regarding Stevie Yang, and she was never questioned in the workplace about her.

[235] She also stated that MPower logistics was uncooperative and there was a lack of collaboration with them. They suffered a lack of information about what was delivered and where trucks were. She described it as pulling teeth to get any information at all from MPower.

[236] When asked the about the next steps following Janet Clarke's building of loads, Ms. Emperingham said that she believed Janet took paperwork to the floor so that Brad Pelletier, Stephan, and their team could start building and staging their loads. Ms. Emperingham testified that when she first started at AgraCity she didn't believe there was a complete OH&S plan in place. She said that she could only think of one complaint which was addressed by Jason directly. It was an occurrence where Jason's son spilled product on himself when pouring 1000 litre totes of chemical to a drum.

[237] When asked what processes were followed if harassment occurred, she testified that she went to discuss with April Arseneault with how to proceed if a complaint was received. She said there was no formal process in place and was advised to take it to Jason. She said that she always spoke to Jason about Stevie's behaviour, and it wasn't worth following up because he just laughed. When asked what she would do if she received a harassment complaint, she said she would only sit with Jason as nothing was in her control.

[238] When asked about Exhibit R-2 and the numerous recipients on it, after confirming each as sales representatives, she stated that she just accepted that this as how Stevie Yang was allowed to behave, and an indication on how she generally treated Janet Clarke. She said Stevie Yang was always right and Janet was to be blamed. They were never able to sit down for a discussion and just sent emails like this.

[239] On review of Exhibit R-3, Ms. Emperingham confirmed that Melissa Murphy was helpful in assisting Janet Clarke and offered to come to the warehouse to work through documents and ensure receiving's were done. She said Melissa was supportive of Janet Clarke and they also discussed concerns of Stevie's treatment of Janet.

[240] When asked about the adequacy of training given to Janet Clarke, Ms. Emperingham said they lacked in training and system capabilities to handle the activities that were going on. She testified that she had several discussions over several months at the warehouse office regarding difficulties Janet was having in the workplace. She said it was not a "one off", it's just the way things were at AgraCity.

[241] When asked to describe circumstances of work on July 12, 2018, Ms. Emperingham stated that Janet Clarke came in looking tired and had been working in the office with Melissa. She understood that an email had come in from Stevie Yang the day before, and Janet broke down in the office. She encouraged Janet to see her doctor because she had health concerns at that point. She was concerned about her health and believed Janet Clarke was doing her best to manage. She asked Janet how she was feeling - that's when she broke down and started crying. She said that she hadn't touched loads in June but was still being blamed for everything. She said she discussed this with Jason in June, with the multiple errors even though they weren't building loads. He was convinced Janet was sabotaging the system. She encouraged her on July 12<sup>th</sup> to see her doctor.

[242] She was questioned about Exhibits A-7 and A-8 being an email from Janet to herself and then a subsequent email from her to Jason Mann, which included all but one sentence from Janet's email. Ms. Emperingham said she didn't want to hurt Jason's feelings upfront but did remove the word "cancers" from the email. She said she was trying to be professional, but wanted to be upfront and honest about the situation. She always takes pride in having difficult discussions. She recognized she was an employee of Jason Mann's and wanted to treat him with a degree of respect.

[243] When presented with Exhibit A-9, being the termination letter to Janet Clarke, Ms. Emperingham confirmed that she had signed it, but was not aware what the phrase "internal reviews" within the letter referred to. She said that if a review existed she would've known about it, and that there were no performance reviews undertaken with Janet Clarke. She also indicated there was no documented discipline and that it wasn't a standard practice at AgraCity. With respect to the letter, Ms. Emperingham testified that she expressed her views to Jason Mann before it was drafted and he called her in on July 13<sup>th</sup>. He said to her "Janet Clarke has duped us and taken her leave". He said he didn't care if she was on leave, that she should be fired immediately. Dianna Emperingham said she didn't think it was warranted and told him she was not sure someone could be legally fired if they were on leave. Based on her experience at Bayer, it wouldn't have been done there. She said Jason Mann said to terminate her on the Friday, but she refused and said she would take care of it on Monday - leaving it at that.

[244] When asked specifically whether prior to July 13<sup>th</sup> she had been instructed to terminate Janet Clarke, she said she had a couple of previous heated discussions with Jason Mann who said "I didn't think she would last", but she maintained that Jason Mann did not specifically instruct her to terminate Janet Clarke during their discussion in June. She said Janet Clarke was being blamed for every load, although hadn't touched many of them. When asked how closely she worked with Janet Clarke, she said that when she moved into the warehouse in March 2018 they shared an office. She was familiar overall with all of the day to day duties, but not all of the process steps. She said she had nothing but respect for Janet Clarke from the time she interviewed her. She had years of experience in many aspects of agriculture operations and good references. She said there were some mistakes, but not just in her area and they had good discussions on setting up brand new logistics operations in a very short period of time. She said they had moved from one warehouse to another during a very busy period and that resulted in more ability to build trucks and filling trucks, and there was lots of change in a very short period of time.

[245] Dianna testified that she resigned from AgraCity in October 2018 as it wasn't a good fit and there wasn't an opportunity to make any changes she thought she could and should make. When asked who initiated her departure, she said she was on vacation in August reflecting on it and had back and forth interactions between Jason Mann and James Mann.

[246] She said James Mann had approached her as Jason had sworn a court document saying they were caught up on vendor payments when they were behind on some. She said Jason Mann got very upset that she issued a contrary statement to his own and when she returned from vacation she was to report to the office. She received an unsatisfactory performance letter dated September 18, 2018 by Jason Mann and April Arseneault. She was directed to only remain in her office and do as he directed. She said she was already struggling with whether she could reconcile things and believed it was better for her to resign.

[247] Ms. Emperingham confirmed that prior to April 18, 2018 their work hours were 8:00 a.m. to 4:30 p.m. with a one hour lunch. After that time and until Janet Clarke's termination, they worked considerable overtime. She also confirmed that she was testifying under subpoena as she found it quite unnerving and would've preferred not to testify.

[248] In cross examination, Ms. Emperingham confirmed that there were significant differences between Bayer and AgraCity as one was a large multinational corporation and the other a small start-up company. She also confirmed that Bayer was not a direct to farm seller. She also agreed that shipping direct to farm was different as Bayer sent product directly to dealers rather than producers. She agreed that many farmers changed their minds during the season as that was part of their practice, and further agreed that distributors generally had a good idea of what product they required as she said they worked on forecasting.

[249] Ms. Emperingham agreed that her responsibility at AgraCity was to build the logistics and warehouse team. She agreed that she was responsible for having access to training and organizing of her staff. She also confirmed that, as their boss, if anything was inadequate she would need to follow up. As their boss she was also responsible to see them perform in their duties. She agreed it was her responsibility to deal with any lack of training provided to her employees.

[250] When presented with Exhibit A-1, being the employment offer letter to Janet Clarke from AgraCity, she confirmed her familiarity and indicated that April Arseneault had prepared it. She also confirmed she offered the position of Order Fulfillment Supervisor to Janet Clarke. She described the duties as responsibility to build loads, to execute orders to growers, and that this involved input into AgraCity's accounting system for certain information. She also agreed that it would include the verification of delivery of loads and the inputting of loads that were delivered into the AX system. She also agreed that all of this was important as it helped AgraCity to know what was received by farmers.

[251] When asked whether Janet Clarke had been hired to enter information into the AX system when documents were received and to enter it on a timely basis, Ms. Emperingham indicated that "yes" that was correct. She further agreed that, as stated on page 2 of the offer letter, Janet Clarke could be terminated without cause. She indicated that she was not aware of the AgraCity HR policy manual when this letter was signed.

[252] When shown Exhibit A-20 being the HR policy manual, she confirmed that this was before her employment there and that on page 22 there was a reference to harassment. Ms. Emperingham said that from her discussion with April Arsenault, she was told there was no policy expect to go to Jason Mann with the complaint. When asked whether she recalled receiving the HR manual when she was first employed, she said she did not recall receiving it.

[253] When asked about Janet Clarke's training by Stevie Yang, Dianna confirmed that it was provided but that she was not present for it. She noted that it had occurred over November 2 and 3, 2017.

[254] When asked whether Gail Fitzsimmons was part of MPower and thus not building loads, Ms. Emperingham indicated that "yes, that's correct, but Gail often redid loads after we built them". When asked whether Gail was making changes because of customer order changes, Ms. Emperingham said she wouldn't entirely agree.



[255] When presented with Exhibit A-21, being a request for Stevie Yang and Gail Fitzsimmons to continue training until Janet Clarke's training was concluded, she agreed that it was to carry on for a further two week period. When asked whether they continued until the training was complete, Dianna agreed that was correct and by late November Janet Clarke could do all parts of the position after training was concluded. When asked whether there was any documentation suggestion that training had been inadequate for Janet Clarke, Dianna stated, at that point Janet's training was accurate for the loads at the time. It was different out of season than in season. Those were not busy months for AgraCity. When asked whether the period from the end of November to the beginning of April provided an opportunity for Janet Clarke to fulfill the OFS role at AgraCity, Ms. Emperingham agreed that was an opportunity for her to learn how to do the job. She agreed that by April and through June that Janet Clarke should've known how to do the OFS job. She also agreed that there was adequate training to build loads and work on the AX system and enter POD's.

[256] Dianna testified that she assisted Janet Clarke in writing the email at Exhibit A-30 requesting training from Stevie Yang. When asked again whether Janet Clarke should have known how to build loads in AX at that time, Ms. Emperingham indicated that she did. She said we were talking about variables and that Jason said Stevie was coming over. Ms. Emperingham testified that she believed that Stevie Yang was coming to warehouse because of volume of loads not to give training. When asked whether Janet had discussed Stevie Yang's response with her, she said Stevie Yang said she wasn't there to train but to build loads after May 22nd because Jason Mann had directed it.

[257] She said, "you have to approach Stevie Yang in certain ways to get cooperation", and thought working side by side with her would've helped. When asked whether Stevie Yang's email was discussed with Jason Mann, Ms. Emperingham testified she didn't recall as it was moot point by then. When asked if it was concluded by then that they couldn't work with Stevie Yang, Dianna said didn't recall the response to the email.

[258] When asked about Exhibit A-22 and the other recipients to the email, Ms. Emperingham indicated that she didn't realize how much was involved in getting things shipped from Albaugh. She didn't realize what was required and that the load wouldn't be released without payment - and she didn't know this when she wrote the email. She agreed that it was important to keep others in the loop for cooperation and collaboration. She also agreed that her comment to Janet Clarke about Stevie Yang's email was not an example of teambuilding.

[259] When presented with Exhibit A-34, she agreed that the exchange with Myrna McIvor regarding inventory counts was accurate as generally one wouldn't release inventory numbers to the counters on the floors as they would count to the number. She said she indicated this to be a soft count because they were still reconciling losses from the prior year. When asked if she checked with Jason Mann before responding, he indicated "nope, that's fine". She also confirmed forwarding it to Brad Pelletier and Janet Clarke and that her mocking of her colleagues to them was not collaborative or cooperative. When asked whether it illustrated her setting up her team against the rest of the company she said "no, sorry if that's what it looks like to you".

[260] In each of Exhibits A-22 and A-24, she confirmed that the exchange between Janet Clarke and Stevie Yang about material safety data sheets and other things appeared prompt

and professional. When asked whether she was aware of disputes between Stevie and Janet Clarke up to mid-March, Dianna stated that she could not pinpoint any specifics.

[261] When asked about her earlier testimony that Stevie Yang and Janet Clarke had ability to build loads and whether she was aware that Stevie Yang's authority had been removed from AX once Janet Clarke was trained, Ms. Emperingham said she did not recall all the details, but later understood that Stevie Yang's authority had been removed. She said it was her understanding Stevie Yang's authorization had been removed since mid-November 2017 to May 22, 2018.

[262] When presented Exhibit A-26 and asked whether the large font in the email caused any concern at the time, Ms. Emperingham stated she did not recall. She did confirm that within the emails Stevie admitted a mistake to Janet regarding 810 litres that should've been referred to 800 litres. When asked whether that appeared to be a good collaborative exchange, Ms. Emperingham said it appears this one is.

[263] Ms. Emperingham agreed that in May 2018 it was chaotic in the AgraCity warehouse as it was their busiest time for shipping. She agreed to that it was important that logistics be fulfilled accurately and timely.

[264] When presented with Exhibit A-16, Ms. Emperingham agreed that it was correspondence between Janet Clarke and Melissa Murphy and that Melissa Murphy had been kind and helpful to Janet in her job. She also agreed that in the email Melissa was indicating concerns about a load being finalized and entered into AX. She agreed that building loads in AX to create bills of lading was Janet Clarke's job and that there was reference to them "being weeks behind in finalizing loads". When asked whether this appeared to be Melissa providing a gentle reminder to Janet Clarke, Dianna said "that's what it reads, yes". When asked whether she had raised concerns about Janet Clarke about getting behind, Ms. Emperingham said that this was two years ago and that if someone proposed they were behind, Janet Clarke was going to address it. She said we met to discuss improvements and Janet Clarke was going to apply it.

[265] Dianna also acknowledged that Myrna McIvor's response to Janet Clarke indicated a concern about having missed steps in the process and, when presented with the sentence that "we discussed with you and Dianna many months ago," Ms. Emperingham said she had no reason to disagree with the statement but didn't recall a discussion. She agreed that Janet Clarke indicated that she would improve.

[266] Dianna also agreed in her testimony that by May 9<sup>th</sup>, Melissa was providing help to Janet Clarke to get things processed more quickly. When asked whether she had a conversation with Myrna McIvor following her comments that the team wouldn't help if processes weren't being followed, Ms. Emperingham said she did not recall any particular discussion. She agreed that Myrna McIvor's email appeared to be collaborative and professional. She also noted that the email was sent to Stevie Yang to begin load builds again.

[267] When asked whether she was aware that Stevie Yang had attended at the warehouse the weekend prior to May 18<sup>th</sup> to assist with inventory and load building issues, Ms. Emperingham indicated that she was not aware of that. When asked whether her logistics team had fallen behind, she said that the organization had fallen behind. She did agree that they were behind on documentation entry into the AX system. When presented with Exhibit A-5 and

concerns raised by sales reps in Eastern Canada, she agreed that resolving these were Janet Clarke's responsibility and that it appeared orders were not being met in Eastern Canada.

[268] When questioned about interactions with Brian Rumberg in May and June, Ms. Emperingham confirmed that she had a lot of collaboration with him as he was her peer as national sales manager in the organization. She agreed that there were concerns with deliveries in May and June but that also that product wasn't in the warehouse yet. She didn't recall anything specific Mr. Rumberg raised about Janet Clarke's performance and only his concern about product not getting to growers.

[269] When asked whether there had been heated discussions with Jason Mann before Janet Clarke's termination, Dianna recalled two discussions and in one case he had indicated they would probably have to terminate Janet Clarke. When asked whether she was pressured to terminate Janet Clarke in June by Jason Mann, she said "yes, and I reminded him that no load had been built by her since May 22<sup>nd</sup>. When asked if he had told her to terminate Janet Clarke, she said that Jason Mann never said I must terminate her. She said she understood that Jason Mann wanted somebody to do it because things were not going well and that the warehouse men were trying to sabotage him. He was more upset with Stephan than Brad Pelletier.

[270] When asked whether in June 2018 she didn't want to terminate Janet Clarke, Dianna stated that she would never terminate someone out of the blue without going through the appropriate process. She did agree that AgraCity could terminate without cause. When asked whether Jason Mann was unhappy with Janet Clarke's performance, Ms. Emperingham testified "yes, one of many he was unhappy with." She said Jason Mann did not say "you must terminate Janet Clarke" until the last day. She did agree that in June, Jason Mann expressed great disappointment with Janet Clarke's performance to her. She said it was other's performance besides Janet Clarke's that he was disappointed in.

[271] In questioning about her experience at Bayer and employee terminations there, Dianna indicated that she was familiar with Bayer's HR policies and that they had a process for reporting harassment. When asked whether complaints would require generating documents there, she said her role was to go the HR business partner to guide them through the process.

[272] When asked whether Janet Clarke reported harassment by an AgraCity employee to her, Dianna said she witnessed how Janet Clarke was being treated in the organization. When asked specifically if harassment had been complained to her, she said, "verbally, yes", and that she called April. When asked whether there were any notes, emails or statements, she confirmed there were not, and that April's instructions were simply to take it to Jason. When asked whether she documented the harassment complaint, she said she did not. The only documentation is Exhibit A-8 where she conveyed Janet Clarke's email to Jason Mann and copied April Arsenault on July 13, 2018.

[273] When asked whether she had a conference call to discuss AgraCity's new short term disability policy, Dianna said "yes". She was concerned at that point for the whole team. When pressed as to whether she inquired to April about the STD program so that Janet Clarke could go on it, she said "I never said that". She said "I told Janet Clarke to see her doctor as I would any employee". When asked whether she was concerned Janet Clarke was looking for alternate employment then, she testified that she may have been, but said she had not discussed it with her.



[274] Ms. Emperingham testified that she would not have known that Janet Clarke was forwarding work emails to her personal account on July 11<sup>th</sup>. She testified that she was directed by Jason Mann to terminate Janet Clarke on July 13<sup>th</sup> and met with her on July 16<sup>th</sup> when she gave her the termination letter. When asked about Exhibit A-9 being the termination letter, she confirmed that she signed it and that she had met Janet Clarke in a restaurant. She said that Brian Rumberg had said he would meet with her and Janet to do the termination, and acknowledged that usually an HR person would attend. She didn't think Brian's attendance was necessary and confirmed that she and Janet Clarke were the only ones there.

[275] In reference to Exhibit A-8 and the question regarding whether she was always wanting to be honest and upfront as referenced in the email, Ms. Emperingham said she always did to the best of her ability. When asked whether her failure to disclose the affidavit (she swore and that was filed in the AgraCity court action) to Jason Mann was not honest, she agreed that was correct. When asked whether she conversed with Brian Rumberg about her replacing Jason Mann as CEO, she indicated that was meant as a joke. She said Jason Mann wasn't truthful.

[276] When asked whether James Mann was looking to promote her within the organization, she said there was some discussion but not about her promotion. She also confirmed that there was a discussion about whether Brian Rumberg would stay within the organization and scenario where Jason was no longer with it. She agreed that such conversation were not examples of being "upfront and honest" with Jason Mann. When asked whether she ever discussed this with Jason Mann, she said "no". She said Jason attended during her September meeting and she said she wasn't surprised the relationship wouldn't continue afterwards.

[277] When asked whether she met with Labour Standards and gave a statement about the same time as her meeting with Jason Mann, she said "yes, it was in September" but she did not disclose it to Jason Mann. She stated that she would not work with him again.

[278] In re-examination, when asked about the harassment policy and whether April Arseneault asked her for a report to be provided, she said "no, she did not".

### ***Evidence of Janet Clarke***

[279] In examination-in-chief, Ms. Clarke testified that she had been employed in the agricultural industry from 1998 to July 2018. She held previous positions with Univar Canada in their distribution warehouse, with Crop Production Services for 4 years as a trainer in customer service, at Parrish Heimbecker for 4 years, and with AgraCity. She stated that as she left different jobs it was always for better opportunities. She is currently working as an Executive Administrator with the Saskatchewan Piping Industry and has been employed since November 2018. When describing her positions and the similarity to the job at AgraCity, she stated they were fairly similar as they each had their own in-house function within their programs. She said at AgraCity it was her first direct to farm position. She said she had good knowledge of delivery to these places. With Crop Production Services, her employer would have small locations in towns where a farmer would pick up product.

[280] She confirmed that her role at AgraCity was as logistics supervisor and she worked from November 2017 until July 16, 2018. Starting January 2018, she became more physically involved in her role. When asked why she was still not there, she indicated that she was fired

and didn't know why at the time, but in the letter she received it indicated an internal review of her role had been done and that was why she was let go.

[281] In describing the events of her hiring in November 2017, she indicated that she met with Myrna McIvor and Dianna Emperingham upon her hiring, and her first job was dealing with the deficit in their inventory account. Janet testified that because of her experience in inventory, which Myrna and Dianna lacked, she went through bills of lading from a prior account and found over \$200,000 in shortfall where AgraCity was out in its inventory. When asked what was the cause of the shortfall she indicated it was a result of handwriting on bills of lading. She said a lot of product was substituted within the system when they couldn't get a particular product. There were a lot of errors. Ms. Clarke described inoculants, which were used in the pre-planting season, and that the inoculant manager, Mike, would say that a supplier ran out of product and would go to another supplier to get product. She said no purchase orders were made, but they had to get product on the road to growers. They would grab product, put it on a truck, and write on bills of lading.

[282] Ms. Clarke testified that problems were discussed between her, Myrna McIvor, Melissa Murphy, and Dianna Emperingham, on how to better the system. Janet said that personally she did not agree with handwriting on bills of lading and that they should go out clean. She said they would try and change this to the extent that it was in her control. She said too many errors happen when there was handwriting on bills of lading. She said warehouse staff could get a clean bill of lading built on clean paper, and a sales rep would call and say put more on a truck because they know a truck is going a certain way. They would handwrite the change on the bill of lading. She said it "creates too much error for me to know when things are put on and taken off trucks". She said up until the end of March 2018 such handwriting didn't happen, but when inoculant began moving in April 2018, it became more frequent. She said Brad Pelletier would try and get her paperwork but sometimes truck drivers would leave before she was there and it would be too late to create a bill of lading before they left.

[283] When asked how these handwriting concerns affected her job, Janet Clarke indicated that she wouldn't necessarily know unless it was communicated to her what went out on a truck. She said product may come in late and get thrown on a truck for farmers. She would receive product and begin building a load without knowing if product was already on a truck. This all created a lot of extra grief, extra paperwork and chaos - of who got what until the paperwork came back to her. By that time, more product may have been put on another truck.

[284] In describing her load-building role as logistics supervisor, she said that once the payment is through the accounting process, product was placed on a pick list. She would then bring up a territory, identify available product, send a truck to the area, and put the product on the bill of lading for each grower. This paperwork was then given to Justine at MPower and she would map the directions for drivers. Janet stated that she would get paperwork and the map to MPower and say we have a load ready, please find a driver. This was then given to the warehouse to pick the load and get it on a truck. She said that within the AX system, she could see the screen and one column was not visible to logistics, meaning that sales orders were in the system, but not yet paid. She said she could not pull product if it was not yet paid for. Until the accounts receivable department received payment, it was not visible to logistics or available for loading to the grower. She did not deal with payment as that was with accounts receivable people.

[285] When asked how she would know what happened on a delivery run, she said she would have no idea until the paperwork came back. The driver would give it to Gail Fitzsimmons at MPower, and she would scan and put it in a folder so others could see it. Gail would send her an email confirming proof of delivery and she would print and update the system if changes needed entering. When asked if anyone else received POD's, Ms. Clarke stated that sometimes drivers may leave them in the warehouse if they returned at night and guys would give them to MPower.

[286] She said once you build the load, a load number is attached to the sales order and the product being shipped. A shipment number was also attached to the product, not to each sales order. The shipping number told her if product was on a load somewhere, with MPower, or on a truck - an indication that it was in process of shipping. The shipping number would get finalized when a POD was returned and remain in the system but within the background.

[287] When asked if others could see loads, she said that Gail Fitzsimmons could see and create loads as they worked together. If Janet arrived late, Gail could build loads or if either had holidays. She believed anyone could see a load within AX but couldn't change it unless they had access. When asked how often Gail Fitzsimmons might build loads, Janet said when things were really busy.

[288] Janet Clarke stated that she's a single mom and shared custody of her children so when she had no kids she would leave work at 7:00 p.m. but otherwise would leave at 5:00 p.m. to get the kids. During those weeks, Gail had access to build loads, if needed. Janet indicated that she had her children on a week on week off basis and got them on Fridays at 5:00 p.m.

[289] When asked who could affect "permissions" in AX, she indicated Myrna McIvor and Melissa Murphy could turn them on and off, but she could not. When asked what happens when a load is changed, Janet stated that when things were busy, sales reps would come and take product. She would see if it's on a load or ask Gail if it's on another truck. If not, and if product was in the warehouse with paperwork, she would take it off the paperwork and remove it to make a separate bill of lading for the sales rep. She said that Gail and she could follow those same steps and Stevie Yang could after mid-May 2018. She said "I don't know who all had permission for what". When asked whether you could tell who made changes within the AX system, Janet indicated that if it could be done, but she was not privy to it.

[290] Janet Clarke indicated that many things at MPower affected her job. She would try to have at least 5 loads ready per day to go. She said Dianna Emperingham and Terry Lay had a discussion about trucks and Terry had said build the loads and we will get them out. However, many times loads did not go out and paperwork remained in Gail's office until a trucker or driver became available. Often this was not done on a timely basis. She said at one point at least 12 bills of lading were waiting and sat for over a week. She said this could mess up a whole chain of events as, when doing the mapping, Justine talked to farmers who expected product within 2 to 3 days. If it wasn't there by then, they would call sales reps who would come and pick it up and take their own half ton load. She said she would need to give product to sales representatives but now a load would be smaller in volume and she would have to build a load again, which all became very confusing. When asked how often this confusing process would happen, she stated daily from mid-April on. Prior to April it was not so much of a problem as product movement was not as demanding. When asked how this would affect her day, she said time would be not spent building loads but rather tracking down paperwork.



[291] Janet stated everything was put on her. She was responsible to receive product. Stevie Yang was a purchaser who would purchase it and Janet would receive it in. If there was a mistake on loads, handwriting about a missed product, or a shipment was wrong, then responsibility was on her to find out what happened. Janet said she had nothing to do with it following its release. Justine called the customer and MPower was to ship it. The warehouse's role was simply to pick and then responsibility came back with the POD. She said when a POD was returned, unless someone advised sooner, the warehouse wouldn't know what necessarily happened when a truck returned at night. If it was not told to her she would have to wait and see what changes physically happened. She was not typically told before a POD was returned of any changes.

[292] When asked about her training, she indicated that she had a meeting with Myrna McIvor, Melissa Murphy and Dianna Emperingham to go over the various steps in the AX system. They went to the old warehouse and sat with Gail Fitzsimmons to shadow her. At that point, she did not touch the system. Gail and Stevie came to her office for 2 to 3 hours for a couple of days to review steps in AX, otherwise she went into AX and learned a lot of it herself. She stated that Melissa Murphy was great whenever she had a question and would explain things.

[293] She said Stevie Yang and Gail Fitzsimmons showed her how it had be done for years. She said Gail was Stevie Yang's relief and could build loads, and that she learned their ways and processes. When asked to described "their way", Janet stated she remembered asking Stevie and Gail following her meeting with Myrna and Melissa. She had Melissa's document of the steps in AX for building loads. Stevie and Gail had missed a few steps as they said they didn't need certain steps "because it just takes time". They said they could get POD's back and get things out of the system fast enough. When asked what the "skipped" steps were, Janet indicated that she did not know the name of them but when a BOL was made, you would mock a first run and when it goes on a truck you are supposed to do something within the system to finalize it in the system. Somehow this marking with the shipment would cause it to freeze in the system so it could not be touched or something to this effect. She said she did things Stevie and Gail's way as they had previously been building loads. She said she found out later that missing or skipping this step caused problems for accounts receivable, and Melissa had sent an email out about the process not being followed. Janet assumed that when a bill of lading was created that product was taken out of inventory right away. She said she didn't know that it did not come out of inventory until the shipping part was done. So the result was that she went to build a load and there would not be enough product. She said this wasn't a problem from November through March because there was so little movement and a truck may go out and return before the next truck was prepared. You could finalize things and there would be no issue. The skipped step became a problem when things got busy from mid-April on. Janet stated that shadowing Gail and her training method meant she watched her work and her day to day dealings at MPower. She didn't shadow anyone else after Gail.

[294] When shown Exhibit R-4, Janet explained it as describing a situation where a bill of lading was created by her and would've been given to Justine. She put directions to the driver and the time to expect the load. It is given to the warehouse and they insert the driver name and trailer number. Justine would also provide a drop number. Janet said there was a different load number written on it and it looked like it was signed by the driver and the farmer, and then came back to her as a POD. She indicated that she did not know who created the particular bill of lading, but knew that Stevie Yang and Gail Fitzsimmons had access to the system on June

18, 2018 regarding a load to Fred in Rycroft, Alberta. It appeared that they were trying to ship 38 of something and that 12 got shipped - and 10 more, but zero got shipped. When asked how this happened, Janet stated Aurora was an order at MPower. Product was being repackaged at the time, but may not have arrived or been packaged. She believed Jason Mann was trying to create a slogan to empower farmers so it was called MPower Aurora. She interpreted the indication "customer only wanted 12" to mean that he only wanted 12 of the 38 packages and must've changed his mind on receiving the load. When she received the BOL, this is how she interpreted it. She said handwriting came on BOL's daily and all of them received in the day would have some type of change written on them. When asked who at AgraCity would write on BOL's, she said the warehouse staff sometimes if they were short a product or told to add to a load she said a driver might if a load was short or a customer didn't want something, sometimes sales reps (but not often), sometimes MPower if a farmer phoned them; and she didn't know who else.

[295] Janet Clarke testified that she was familiar with Agricultural Chemical Warehouse Standards Association and understood that they regulated how chemicals should be stored such as how high to stack product and what can be placed next to other product. This was to keep warehouse's honest with their product. When asked whether she created policies and procedures Janet stated that they started to make some when she and Brad Pelletier first started during the first 3 months of employment. Documents were given to Myrna McIvor but they never heard anything back regarding those. She said she thought the policies and procedures were a good idea to ensure proper protective equipment for people in the warehouse such as steel-toed boots and eyewear. She didn't recall anything else. She was also trying to not make the warehouse and shipping documents and loads a free for all as they needed a control that all would know about. She said they wanted to prevent handwritten changes on bills of lading. She said she had asked Jason Mann if they could buy 3 or 4 carbon paper documents so when a load was printed there were carbon copies available then if there were changes made, she could get a carbon copy and know what was changed. She said he thought it was a good idea at the time, but it was left and not followed up.

[296] She stated that before she started, AgraCity had about 20 to 30 products available that were sold. This may or may not have included inoculant. When she started, Jason Mann was working to get his own lines of products. 30 to 40 more rights to product were being sought and this more than doubled in the first year. When asked how this affected her as Order Fulfilment Supervisor, she said she didn't work the 2017 busy season, but when it was busy in 2018 there was definitely pressure. It was busy and difficult because a lot of product was new to everybody as a bunch was being made on a production line. She said if forms weren't filled out she couldn't finalize her end of things. She said forms were often lost if not handed in and it was hard getting information transferred. Melissa could do some of this when she had the forms, but it wasn't her own task to get the forms. Janet described the new warehouse at AgraCity as being large enough to fit 5 or 6 of the old warehouses within the new warehouse facility.

[297] Janet confirmed that she reported to Dianna Emperingham and worked with Brad Pelletier, the Warehouse Manager. On the logistics staff there was also Steven and the seasonal worker - as well as Justine, who worked under Janet. She said Brad would receive incoming product and give her the paperwork to receive it into the system and then they would build loads of the product from the bill of lading she would create. She said that the warehouse team would sometimes write on the bills of lading if there was not enough product or may

scratch out others to make any corrections. Alternatively, if sales reps called after hours to add to a load, warehouse staff may add it on. They were giving bills of lading to Janet and, if she wasn't there, they could go to Gail or Stevie.

[298] Janet stated that glyphosate was a huge seller at AgraCity, and it was for most sellers, as it was a huge commodity that farmers relied on before cropping and following the growing season. Glyphosate was acquired for AgraCity by Stevie Yang, to her knowledge. When asked about glyphosate and inventory during May 2018, Janet said it was not available because it was in transit from China most of the time and in short supply. She said she had nothing to do with the supply end of things or purchasing. She said it was Stevie Yang's job to know prior sales orders and to forecast the needs of AgraCity. When asked about acquisition of inoculant she said that "was Mike Newlove's baby" and he took care of the sales orders in the system and took care of what was needed in the warehouse. She was not part of acquiring it and simply shipped inoculant.

[299] When asked about Exhibit A-14, and Gail Fitzsimmons apparent questioning of a load, Janet recalled that on this occasion, although she didn't know the extra circumstances, she was trying to deliver product but it had already been delivered on a previous load. She said loads looked as though the product had been delivered 40 loads prior. She said that in December 2017 she was working on inventory issues. The load in the email could have been a customer pick up, she couldn't recall.

[300] Janet stated that following Christmas 2017 and January 2018 she took over building loads. Exhibit A-33 was explained as Myrna McIvor telling her there was an order but not to ship it because it hadn't been paid for. When asked how she could have put it on a pick list, Janet indicated she could not do any accounting or account receivable functions and that sometimes when an order came in, a customer might order product A, but product B is shipped. She said a sales rep may fix sales orders in the CRM (customer relationship management system). There were times when CRM communicated with the AX system. A sales rep may not get to accounts receivable before information came to Janet. She was not sure how CRM communication with AX affected things, and that it didn't happen a lot. She said it was usually caught and an email would come to say don't ship.

[301] When presented with Exhibit A-18, and an invoice regarding Mr. Thiessen, Janet Clarke confirmed at that point in time, Stevie Yang had been responsible for shipments in Saskatchewan.

[302] When shown Exhibit A-5, and what gave rise to the email, Janet said that she was responsible for the shipping in Eastern Canada and there was an Access warehouse there that Stevie Yang had put product in. Janet would create loads for the East and email them to the Access warehouse asking them to ship product. For two or three loads she asked when they would be shipped and Access answered. She sent the answer to George and Pierre and referred George to her previous answer. She said that Stevie Yang did not like her response and she stated that Access said AgraCity was not their only customer, had much to ship, and wouldn't bend over backwards just to help her. She informed George and Pierre of this. They didn't appreciate her answer and thought she should have better control over the service. She indicated that she had no control over Access. They were a massive warehouse for many companies and shipped for AgraCity and many, many others. They acted as kind of a hub for



other companies. Janet said that she could not recall what she did after the email, and that she could do nothing to Access as they had their own schedule, trucks, and route plans.

[303] In questions regarding Exhibit A-6, Janet stated that she did not know how product got missed as Stevie Yang was building loads for Alberta at the time. She said Stevie was also responsible for getting chemical spray oil into AgraCity. Janet said she was not at all responsible for this issue. She said that Stevie Yang was in charge of loads and she was part of the email simply asking for time of arrival for the return to this customer because he needed the chemical spray he didn't get earlier. She said typically "if I got the call, I would send an email", but didn't recall this specific request.

[304] Janet confirmed that after May 20<sup>th</sup>, she was responsible for Eastern Canada, courier, sale representative pickups, and customer pickups. She built loads for Eastern Canada that were handled through Access. She was not aware of any other warehouses used by AgraCity in Eastern Canada. She said the ratio of load building for Eastern Canada versus Western Canada was probably 20:1 as there were many fewer loads in Eastern Canada. Of those, about 80% of those were bulk glyphosate.

[305] When shown the email, Exhibit A-17, and asked how such a mistake would happen, Janet indicated that a load could've been misread and loaded with 1,000 litre totes. The pick list would have said 640 litre totes and they might have misread it and loaded it wrong. She said in the beginning some mistakes were made because they were shipping in jugs and the warehouse was accustomed to cases. She said this happened a half dozen times and was discussed and fixed. She said that there were also times that there was MPower product created and wrong cases were shipped of non-MPower product by mistake. She said usually a case had 10-4 litre jugs or 4-6 litre jugs within it and they might send a double unit. Sometimes the driver would bring some back or a farmer might keep it. Unless it was written on a bill of lading, they might have gotten 24 jugs. She indicated that a May 17<sup>th</sup> bill of lading was probably created by herself and once it was in warehouse's hands, she would have no more control over it. She had no part in physical packaging of product.

[306] When asked to explain Exhibit A-3, she said because glyphosate was late in coming Brian Rumberg gave her an allocation list because he knew what areas needed it before others. All orders were broken down and she was given a list of deliveries to satisfy until more product came in. She allocated them within the system so it was taken out of the system and ready to go. She said 540 came in and they had been using 360, but changes had not been made in the system. She said Brian had told her to send 540 but the sales rep hadn't changed it from 360 to 540 so the system still showed that we owed him 360. Until the system was changed, he would still be sent 360. She said it was logical that if Gail was not included in the email, she would not know this especially if someone was away. She said that the sales rep should've changed it to reflect 540 in CRM and change would then show up in AX. Janet recalled having a conversation with Brian about allocations, but no specifics.

[307] When asked what "on a load to go now" meant, she said they got a truck driver under this load. It could leave with glyphosate. She sent 3 totes and they were still loading on the truck. She said changes occurred often and this was example of the system showing 360 when it should have been 540. She would need to do a bill of lading showing 360 closed off and write 540 on because she couldn't pick it as the sales order was not updated within the system. The fix would occur once the sales order was finalized - whenever that took place. She said with

glyphosate this happened a lot as they couldn't get 360, but customers wanted 360. This represented different concentrate level until the new information was reflected in AX - it was handwritten and no one knew where glyphosate was at. When asked when the swap from 360 to 540 started, Janet said 10 days prior to this, but didn't recall the date. She was still receiving POD's and Stevie Yang continued with handwriting on these issues probably into June.

[308] When presented with Exhibit A-11, Janet Clarke described it as an exchange including Stevie Yang and a discussion about the use of shipment numbers and load numbers. Ms. Clarke said she and Gail Fitzsimmons discussed the combining of load and shipment numbers because she was trying to understand the system and wanted to have fewer mistakes. She said that she and Gail would come up with resolutions to prevent mistakes, but Stevie Yang was not willing to concede to different ideas because she was used to her own way of doing things. She estimated that they came up with better resolutions about a half dozen times. She said that she came up with a revision to load numbers so that they would go in sequential order and people would know of revisions, however, Stevie Yang and Jason Mann did not like that approach. She described that the email exchange was her asking Stevie Yang about a load that she had built for sending to MPower. In this instance, she said there was product that should not have been pulled off the load because it went to the address in the paperwork. If it was not gone, it would be pulled back, paperwork would need to be changed, and the product sent as the customer wanted it. She believed Stevie Yang response to her was rude and she felt humiliated by it. She said that Stevie was in the same office as her in the warehouse, but emailed everything. Janet Clarke thought Stevie Yang should walk over and ask her questions directly. She stated that within a month or two "you cover your ass and email everything because things are quickly twisted by many people." She indicated that, going forward, she emailed everything as well.

[309] Regarding an email of June 13, 2018, being part of Exhibit A-11, Ms. Clarke was asked what she thought about Stevie Yang's reply - "stop messing up with the load numbers". (notably, the email goes on to say load number 17858 is disappeared in AX, who deleted the load number ....) Ms. Clarke said Stevie Yang was being hostile and pointing fingers. (This email went to both Gail Fitzsimmons and Janet Clarke. When asked why the email went to her and Gail Fitzsimmons, Ms. Clarke replied because she and Gail both built loads and had access to AX. When asked who created the load number, Ms. Clarke indicated that she had no idea but Stevie was blaming Gail or her for deleting a load number. She said she was blamed daily for everything. When asked about further email exchange of a similar nature, Ms. Clarke indicated that as far as she could see load numbers had been changed and that someone must've gone physically into the system and changed them, however, she did not change them. She said that Stevie Yang automatically assumed that someone else did something wrong rather than her messing up.

[310] When asked about Exhibit A-15, an email exchange between her, Garret Bain, and Gail Fitzsimmons, Ms. Clarke described fertilizer as having been ordered and shipped, and that would've gone around the same time as inoculants prior to seeding. She said that the unfilled order could've been a lack of supplier or road bans, and that AgraCity would only send what it had at the time. She said this kind of problem arose weekly.

[311] With Exhibit A-16, Ms. Clarke spoke to the differences between "registered" and "activated" stages within the system. When material was put on a truck, it should then be transferred into the loaded stage. This was a step that Stevie Yang and Gail Fitzsimmons did

not do in the system. They only completed the registered and activated stages. This was only noted when the POD would come back and, up to this point, Janet Clarke had not completed the other step either. This was raised as a possible shortcoming in her training stages.

[312] Janet Clarke said that she and Brad Pelletier met to discuss better ways of getting a handle on what was on a truck before a POD came back. They agreed warehouse staff would begin to photocopy paperwork so she would know what was on a truck and if changes were made she could then make them in the system the next day effectively and efficiently. She was letting Melissa Murphy, Myrna McIvor, and Dianna Emperingham know that she and Brad met to rectify the problem and better communicate. When asked when summary paperwork was starting to be sent, Ms. Clarke indicated that week. When asked what the effect of such paperwork was on AgraCity, she said it was time consuming and did give her some help to gain a better understanding whether things were on a truck so she knew more information when sale reps called. This all occurred at about the same time as she suggested using 3 or 4 carbon sheets to Jason Mann.

[313] She said the summary paperwork changes worked better, but were more time consuming. It affected the rest of the job because it required more hours. She indicated that first thing in the morning she would need to review the PODs from overnight. She was busy with pickups during the day as well as receiving new product and building trucks. The summary paperwork provided a better understanding because after receiving the PODs she would still need to review them twice to make the changes. Sometimes growers didn't want something so this had to be noted. Ms. Clarke stated that she wanted nothing to leave the building with handwritten notes on it. When asked whether she made a full effort going forward following the email exchange in A-16, Ms. Clarke said she did and she followed the process Melissa Murphy had described.

[314] In response to Exhibit A-28, Ms. Clarke described that she had been taking paperwork home daily to close matters, review them, and fix where there was handwritten notations. She was reviewing all PODs given to her. She had picked and finalized all loads unless there was not enough product. She said the product lines may have been making product and having it ready to ship, but it was not showing up in AX and she couldn't close orders even if they had been shipped. With most products, including Kick-off, anything "picked" meant she had a bill of lading showing it was shipped, but no POD to be able to close it. This was all taking place on Saturday and Mother's Day weekend, she said up to May 13<sup>th</sup> anything that could be physically closed within the system, she closed. In describing pages one and two of the email, and Stevie Yang's inquiries regarding the delivery status and PODs not being "in folders", Ms. Clarke described that when a POD was returned, Gail at MPower would scan it and it would go into a folder that they could review and identify by load number. Anyone could pull and see it if it was completed. She did not know why some PODs were not in the folders - whether they weren't returned, not followed up by Gail, or product hadn't gone out.

[315] In explaining her response, Ms. Clarke indicated that Cougar was a substitute product that they had turned into "Hellcat." Within the AX system, it still recorded Cougar because Hellcat had not been created in the system. She had to cross out "Cougar" and write "Hellcat". Within the system, she described that she may have to deduct products a, b, c, and d to create Hellcat and then add and create Hellcat in the system. This also then had to change in sales orders. She could not change it within the system.



[316] Ms. Clarke testified that Melissa immediately showed her how she could close individual orders within the load and she did so after this. As product was being made, it would be transferred in the system, so the system would say they do not have it any longer. During this period, Ms. Clarke described it as very busy, and from the end of April until she left she would work on her laptop at home until 10 p.m. many days. She would begin work at 7 a.m. and leave at 6:30 to 7 p.m. from the warehouse when she didn't have her kids. She would then work until 10 p.m. at night. When she had her kids she would work from 8 to 10 p.m.

[317] Ms. Clarke also described product coming from Albaugh. This location was in the United States and they could ship from it to the warehouse in Ontario. She said these were all procurement issues that were not her responsibility. If the product didn't get to the Ontario warehouse, Ms. Clarke indicated she could not meet customer deadlines. In describing what was taking place in the email exchange at R-5, Ms. Clarke stated that warehouse staff had come to her and said there was not enough product, so she removed some member's deliveries from the load. Gail subsequently said there was enough product. When Stevie Yang forwarded the email to her, she added to the bill of lading indicating it was already gone. Janet said there was no communication. The driver brought back product without the paperwork, and the warehouse was then aware it was short shipped. When product came back, they added it onto the load. She stated that she only found out later once the paperwork all came in. She indicated that she was not responsible for the errors on these particular loads, was being blamed, and had to defend herself in a situation that wasn't in her control. She did not recall talking to Justine at all.

[318] When asked how often she was being blamed, Ms. Clarke said close to daily at this point and time. She felt powerless, belittled and hated at times. When asked how all of this progression occurred, Ms. Clarke said because logistics was a new team there was resistance within the office to it and that some people had a hard time with change. She said that Myrna was helpful some days, but other days was very hostile in her demeanor. She said that Stevie Yang was hard to deal with right from the beginning, and she would ask Stevie questions and not get answers. She said Stevie would route paperwork to Melissa Murphy rather than to her and was hard to approach. She said that she would give Gail loads to do and that Gail would say we should split them apart. She said nothing I could do from the beginning was good enough. She also said that Myrna McIvor would sit in her office and chat about a process and then return to her own office and make fun or say things against her.

[319] When questioned about Exhibit A-29, Ms. Clarke described that glyphosate was coming from Vancouver to the Calgary warehouse, but she wasn't privy to all the details. She was told to change the loads so they could loop to Calgary and so she also told Gail Fitzsimmons. She had asked Stevie Yang where to send the paperwork, and Stevie then responded that she had asked only for one drop to be changed not the entire load. By the red print in her email, Ms. Clarke felt Stevie Yang was making a point and a bit hostile. Later she indicated that the red text made her feel as though Stevie Yang was yelling at her and belittling her. This was taking place in the exchange identified within Exhibit R-2. Additionally, in R-2, she said it also described when Brian Rumberg came to her with a glyphosate allocation. She printed off who would get what. She took 30 to 40 pieces of paper and spread them out to map which group goes with which. She said she asked Gail Fitzsimmons to help because she was good with directions and they had 7 or 8 piles of truck loads going so she was telling her they were all allocated.

[320] She indicated that she wanted Stevie Yang to quit yelling at her in her red bold comments and this is reflected in her email to Stevie. She indicated that part of the message was sent only to Stevie as she did not want to be rude back.

[321] In describing Exhibit R-1, Ms. Clarke said she did not like to be confrontational and said things had been difficult between Stevie Yang and her. She wanted to approach her and say there were no ill feelings and she was willing to receive any guidance she was willing to give. She said that Stevie's reply to her where she said "told by who" made her feel like she was being shot down and didn't matter. She said that Stevie Yang did not give her any more training on building loads at that point. Ms. Clarke testified that she was looking forward to working with Stevie again because she had many years of prior experience and was organized at getting things out and back. She thought maybe the process was slow because she wasn't doing it Stevie's way. She said she was just hoping to speed things up, particularly as they were moving double the number of products that had been done previously.

[322] When asked about Exhibit R-3 and what gave rise to the email, Janet testified that there had been a glyphosate purchase order for 115 litre jugs but had been written as 120 on the purchase order. She found the mistake on the purchase order a week before this email was sent and Melissa Murphy had helped her through changing the purchase order. All of it was completed. She said that with the prior mess with the glyphosate, Stevie Yang had taken all her receiving home and pointed out the mistakes that had already been fixed, in an email she had sent multiple recipients. When asked what "load problems" Melissa Murphy might have been referring to, Janet indicated that the PODs were still not coming back although product was shipped and not in inventory. There had been loads not done as per the procedure and at the time they were loading 1,000 litre totes with glyphosate that were going into smaller quantities, but the paper was not caught up thus creating problems. She said that if the product line was not getting paperwork in then that could be the source of the problem. When asked what occurred following her receipt of the email, she indicated she went to the washroom, threw up, and composed herself. She said Melissa was there. She said that she cried as she was frustrated for being blamed for everything. She also said that Melissa was reprimanded by Myrna for being there with Janet for the day. She overheard this conversation on a phone call.

[323] Ms. Clarke testified that before she attended at her doctor's office she cried for half an hour before being able to speak. She said her doctor wanted her to take a leave of absence right away. Janet Clarke said she returned to the office to clean up as much as she could that day and to give Melissa some assistance. That morning, she sent to Dianna the medical information that she had received and said she would be off of work.

[324] When asked whether she worked on July 12<sup>th</sup>, Ms. Clarke said "yes", she attended first thing in the morning and spoke to Dianna Emperingham but was a physical mess. Dianna told her to go see her doctor, because she wasn't coping. When she got to the doctor's office, she said the doctor gave her a note and said "you're done". She said when she returned to the office, Melissa, Dianna, and Brad were there, and then she cried in front of them and said nobody should have to go through this demoralizing workplace. She remained at the office until 5 p.m. to get things done and clean things up so others wouldn't have to do those things - and she left.

[325] When asked to describe the email at Exhibit A-7, Janet Clarke said much of it stems from James and Jason Mann having a dispute and it going down through all the teams and

nobody wanting to work with anybody. She said she was a new person trying to come in and within the first few months saw backstabbing within the work environment and it was very toxic right from the beginning. She said she felt that if you weren't in with a team, they were hostile towards you. She testified that she raised these issues with Dianna Emperingham who said she would talk to Jason Mann. She testified that when she received emails from Stevie Yang, Dianna would be copied. When that didn't happen, she would send them to Dianna so she knew she was trying. When asked who she was referring to as "cancers" in the email, she said Stevie Yang and Myrna McIvor. She said sometimes she had resistance from Gail but other times Gail was helpful to her.

[326] Ms. Clarke confirmed the doctor's note that was provided to Ms. Emperingham and confirmed that she did not work on Friday, July 13<sup>th</sup>.

[327] When shown Exhibit A-9 and asked what "recent internal reviews" might have meant to her. Ms. Clarke indicated that she did not know as she had not received a performance review or a warning or a suspension. She had never been disciplined at AgraCity at all.

[328] Janet Clarke stated that she began accruing overtime by banked days in April when she started coming in at 7 a.m. She was working approximately 3 hours per day overtime and took her computer home and worked on weekends. She confirmed that she had 22.5 days of banked overtime above her standard hours. She said this would apply for the busy season from April until it slowed down in August, and after harvest things quieted right down.

[329] When shown Exhibit R-6, Ms. Clarke described it as a document she had received from April Arsenault that required filling out. Ms. Clarke said she took it back to her doctor and had it completed it and subsequently handed it into AgraCity. She said she didn't receive anything back. It was just sent to the insurance provider. All of this pertained to her July 12<sup>th</sup> meeting with her doctor.

[330] Ms. Clarke indicated that she spoke to April Arsenault the day following her termination letter and understood that she had benefits for two additional weeks or until the end of July 2018, and that April said that if there were dental or glasses required with her kids to get it done. [There were redactions on these notes completed by Ms. Clarke's lawyer - he indicated that he left as much as he dared.]

[331] When presented with Exhibit R-7 and the notes describing her condition, Ms. Clarke confirmed those accurately reflected her meeting with her doctor on July 12<sup>th</sup> and that she had brought up issues at her work at AgraCity. She also named one person in particular, that being Stevie Yang. She said by that time she had been feeling under extreme pressure for about a month. Ms. Clarke indicated she had Crohn's disease which can flare up when she has stress. She also stated she began drinking alcohol on the weekends when she did not have her kids because she was stressed and overwhelmed. She said she hid herself in the bottle over the weekend and had never drank like that before. This drinking began about a month earlier and took place by herself on the weekends.

[332] When questioned about the notes regarding her September 11, 2018 visit to her doctor, Ms. Clarke said at that point she was non-functioning and was laying on the couch all the time. She said her mom lives in the basement and helped take care of the kids as she had zero interest in anything at that point. She believed it stemmed from losing her job as she had no self-worth because of it.



[333] In describing her visit to her doctor on October 18, 2018 she said that she was still feeling very numb, but had begun going through the motions in life because she had to. This still stemmed from losing her job and the fact that she felt very beaten up by everything that happened at AgraCity and the events leading up to her being fired. She said to this day she still needs to work on her self-esteem and her self-worth.

[334] When presented with Exhibit R-8, Ms. Clarke confirmed that Dr. Fowler is the doctor who works with her Crohn's disease and, because she had many flare ups, this required much stool and blood work. When her doctor asked her about changes in her life she told her about the stress when she worked at AgraCity and they discussed stresses and flare ups as a result. Ms. Clarke stated that she needs to take one needle a week to keep her Crohn's at bay.

[335] When asked whether she had been paid any wages since the decision of the OH&S officer of October 16, 2018, she indicated "no", she had not received any money from AgraCity nor been reinstated to her position. She confirmed document prepared as Exhibit R-11 – indicated what AgraCity owed her had they paid her in accordance with the decision of Officer Luciak. She stated that she had been making \$30.048 dollars per hour at AgraCity, but had not achieved those earnings since. She indicated that the column indicating the actual gross is what she made each week, as actual gross earnings. She said that among the benefits at AgCity she had matching RRSP contribution of 3% and didn't know whether AgraCity retained the approximately the \$700 of its contributed share, or if it had been transferred to her. She had a paystub of July 25, 2018 indicating she was paid for her overtime.

[336] When asked whether she had any knowledge of AgraCity undertaking any investigations regarding her complaints, she said that none took place to her knowledge and that she was never interviewed - nothing was done to remedy any of her complaints. She said that Stevie Yang's treatment of her did not improve after May 22, 2018.

[337] When asked what she'd like to say about her experiences in the process, Ms. Clarke stated that she had always taken pride in her work, her worth ethic and ability to be a team player. She takes pride in teaching her kids to stand up for themselves and it was very hard coming home in tears convincing her children she was actually okay. She taught them that bullying is not right and that they should treat people right. She said she is a 44 year old mother teaching her kids to stand up for themselves and she was trying everything, but that it was falling on deaf ears. She said that these days she is cautious and skeptical of people. She said although she has a new job with good people, she said nobody should have to be demoralized in the workplace.

[338] In cross-examination, Ms. Clarke confirmed that although she had responsibility for order fulfilment and logistics in some prior positions, she had never previously been responsible for building loads for delivery to farmers. She indicated that her duties at Crop Production Services included working at the front end with customers, making product orders, inputting those orders into the system, and doing billing. She would also apply payments. She confirmed that she was not building loads although assisted with some smaller loads despite it not being her direct job. She confirmed that, in joining AgraCity, Ms. Clarke knew that it was a small new company and not a multi-national. When asked whether AgraCity was developing processes and in growth mode when she was there, Ms. Clarke said she could not say and did not know how much growth had occurred. She agreed there were many new products added in 2018.

[339] When asked whether there were specific Order Fulfilment Supervisors at Crop Production Services or Univar where she previously worked, she said that there probably was at their head office, but wasn't that familiar with it. She agreed that there was only one person in the Order Fulfilment Supervisor role at AgraCity and Stevie Yang occupied the position before her. She agreed that it was a demanding position as she came to learn. She agreed that the position entailed building loads, creating lists of products to specific producers, creating shipments for trucks including loads to a number of producers. She also agreed that the goal was to ensure drivers would go to particular areas with any number of customers for efficiency reasons - all which required coordination. She also agreed that she produced bills of lading for each farmer who was to receive a shipment from the load. She had access to the logistics part of the AX system, and agreed it was an important role to process bills of lading as PODs following shipment.

[340] When asked whether handwritten changes were made sometimes on PODs, Ms. Clarke indicated that they were and that it was her job to "close shipments" following the entry of handwritten information into the AX system from the PODs. She also confirmed that this was very important as others would know of deliveries and what had been delivered. She also agreed that all of this helped track inventory levels and to know what parts of loads were still outstanding. She agreed that these were all key aspects of her job.

[341] When walked through an example of a bill of lading with handwritten notations, Ms. Clarke confirmed the various entries and the importance of each part as well as the timely entering into the AX system. She also confirmed that she received 2 to 3 days of training in November 2017 in the AX system and felt capable to build loads and create bills of lading by January 2018. She indicated that she had knowledge of the speed and what needed to be done at that time. She confirmed that from January to March she didn't ask for additional assistance as she thought she had what was adequate for the loads being delivered during their slow period. She agreed that work picked up in April and in May things were very busy.

[342] When it was suggested to her that her job had not changed over that period of time but the number of loads had simply increased, Ms. Clarke indicated that the job increased by about ten times. When asked to confirm whether her duties had changed, she stated that they had not except that she was responsible for receiving production into the warehouse from March forward. This role required her to get paperwork from the warehouse and enter product received into the AX system.

[343] When questioned about Exhibit A-16, an email exchange dated May 8 and 9, 2018, she confirmed that it appeared to indicate a concern about loads not being finalized in the AX system. She was asked specifically if she had fallen behind in entering POD's following loads being delivered. Ms. Clarke indicated that "yes", if they had not been given to her from the truck drivers. She said that there was a handful she had questions about and didn't finalize in the system at this time. When asked to comment about the "missed steps", Ms. Clarke replied that, in the process, once a BOL was created, it was locked down and shipped and then the POD would come back. She would go through it for handwritten changes, finalize things in AX, and then close it in the system. She agreed that she hadn't been changing entries within AX to "loaded" from "activated". She said that Stevie Yang had followed a different process and that she had trusted Stevie Yang and Gail Fitzsimmons guidance because of their experience in the system.

[344] When suggested to her that she was not getting PODs entered in a timely way, Ms. Clarke indicated that if PODs were not given to her in a timely way, she could not get them entered. She said lots of PODs weren't sent because they were building product in the warehouse and things could be closed in the system if the system thinks you have inventory of that product. She said that if, for example, they were making MPower Aurora and the product line was taking boxes of other product to manufacture Aurora unless the other items were inputted appropriately the inventory would not be correct in the system.

[345] When asked whether you would need product in inventory to put it on a load, Ms. Clarke indicated "no" and that in AX system you could put anything on a truck that was identified on a sales order as it is not a "live" system. She said inventory would only be depleted in the system upon on a POD being returned and entered. She said a bill of lading, once created and marked as "loaded", would only indicate a product on a truck but inventory would not be depleted until the POD was closed. She said she was under the impression that it showed only that it would be on a truck and moving. She said Melissa Murphy is an AX guru and she wasn't lying to me. "When we physically add items being produced and not entered into the system it created problems". She confirmed that she had no reason to question Melissa Murphy. She stated that before May 8, there had been no concerns expressed to her by either Myrna or Melissa.

[346] Ms. Clarke indicated that Melissa and Myrna told her if things had gone wrong prior to her being in the position, they didn't want that moving forward. At the beginning, they wanted changes. She was shown steps and she thought nothing should go out on handwriting. Ms. Clarke indicated that she committed to working with them and doing the best she could on procedures. She recalled Melissa and Myrna showing her steps on what worked and the various messes that resulted from handwritten changes on BOLs.

[347] When asked whether Dianna Emperingham had made repeated commitments to Myrna about the processes, Ms. Clarke said that Dianna did not speak to her about those processes that she recalled. She said we had talked about PODs that were coming along and I couldn't close them because of the production line issues. She said that Dianna didn't talk to her about the process of changing items from "active" to "registered". She agreed that she was hampered if not receiving PODs in a timely way, but confirmed she was not making the change from "active" to "delivered". When asked about what areas they were "going to take back", Ms. Clarke indicated that it was to help close PODs and that Melissa was helping with this. She confirmed that this was all a result of falling behind in a critical responsibility in her job. She also stated that by May 9<sup>th</sup>, Melissa Murphy had been helping close for about a week. This had come about because she made a request to Dianna Emperingham who spoke to Myrna McIvor. She confirmed that Melissa Murphy was helping with this at the main office. She said that when Melissa Murphy came to the warehouse to assist with PODs they were to have been scanned. Some were partly resolved and Melissa looked over what Janet Clarke had and did the work to close them. In answering the question that she had fallen behind closing PODs despite receiving help from others, Ms. Clarke indicated that she couldn't close full loads due to issues with inventory and indecipherable handwriting. She said that the majority of loads at this time were not closed because of one error or another.

[348] When questioned about the email in Exhibit A-28, Ms. Clarke indicated that she was familiar with it. It disclosed a concern expressed by Jason Mann about getting items closed so that they would have a clear picture of the glyphosate situation. Ms. Clarke agreed that glyphosate was a big product for AgraCity and she agreed there were a number of customer



orders not filled by that time. Ms. Clarke agreed that glyphosate coming from Vancouver could not be allocated because loads were not closed and remained shown as "active". Ms. Clarke indicated that she could not put loads into the loaded stage because the system said there was not enough product. She said if it was being produced on a product line and lists of new products were not updated on AX, PODs couldn't be closed. Ms. Clarke agreed that AgraCity was not producing glyphosate, but indicated that, despite this, glyphosate was being repackaged from 1000L totes to smaller drums. She said she did speak to Dianna about this and agreed that the concerns had nothing to do with the glyphosate. When asked who was responsible for re-entering packaged glyphosate into the AX system, Ms. Clarke indicated that Melissa Murphy was. She didn't know if information she provided to Dianna Emperingham regarding a product line and the finishing of product builds was being forwarded on. When questioned specifically if she had received assistance from Myrna McIvor's team, Ms. Clarke indicated that Melissa had been helping her in the beginning of May and June. She believed they were helpful.

[349] Ms. Clarke was questioned about her exchanges with Brian Rumberg, Sales Manager at AgraCity. She agreed that they had met frequently in May and June 2018 to find out about customer orders and particularly allocations of glyphosate. She understood that he was concerned about AgraCity not meeting customer orders. She recognized it was a pressing concern and that she created bills of lading based on the allocations they had. She made loads based on what was coming in, but if MPower had no trucks then it was out of her hands.

[350] In questioning about Stevie Yang taking over the Order Fulfillment Supervisor duties, Ms. Clarke confirmed that around May 18th, Stevie Yang began assisting with those duties despite having other duties on the procurement side. Although she recognized that Stevie Yang had other duties, Ms. Clarke indicated that she didn't know the demands of Stevie Yang's position. She agreed that Melissa Murphy had a busy job and that these two people, Melissa and Stevie, were taking on part of the OFS responsibility. Ms. Clarke indicated that she understood that Stevie Yang was to help for a couple weeks and not necessarily taking over the entire job.

[351] When asked when she began looking for alternative work, Ms. Clarke indicated that she had only thought of the possibility of other work and was not actively looking, but, because of the stress, if something had come up she might consider it. She said she did not apply or interview at that time. She was suffering stress and bullying. When asked whether she discussed a new position with either Melissa or April, Ms. Clarke said she told Melissa that the bad environment was stressful on her and she would look at other jobs. She didn't recall any conversations with April. She denied having any conversation with Brian Rumberg about her situation being unfair or her being harassed.

[352] When asked about Exhibit A-5 and her exchange with George and Pierre, two salesmen in Eastern Canada, she agreed their emails were not harassing, and she described how AgraCity had switched from a warehouse in Ontario to Access. There had been concerns with Access, which she was dealing with and trying to get loads built and delivered in Eastern Canada. She felt she was being scapegoated and blamed for problems in Eastern Canada. She said it was the trucking company and warehouse that were not getting product in place. She said she was being blamed for problems described in the emails.

[353] When asked whether Jason Mann was satisfied with her job performance in May and June of 2018, Ms. Clarke stated she didn't know. She said he never came right out and told her. She said she never heard from Dianna that Jason wanted to terminate her employment in either June or July 2018. She agreed, however, that the largest part of her job had been reassigned. She said she was still doing most PODs, inventory relocations, and recent customer pickups, but agreed that her role of building loads was gone. When asked whether AgraCity was not satisfied with her work in the OFS position, Ms. Clarke said she was aware AgraCity felt they needed some help.

[354] Ms. Clarke was questioned about the emails that she had forwarded from her work email to her personal account on July 11<sup>th</sup> and explained that she believed she needed them to prove her stress when presenting her situation to her doctor. She said the handwritten notes were made on the various emails the next day after printing them and before going to her doctor.

[355] When questioned about various emails and the responses to them, Ms. Clarke believed a number of the response were inappropriate, and, when pressed, agreed that some of the emails were directed to she and Gail Fitzsimmons and neither individual was necessarily being blamed. She was not named specifically.

[356] When questioned about Exhibit R-1, Ms. Clarke indicated that she assumed Stevie Yang was coming to help for a couple weeks to address the backlog and confirmed that her wording respecting "training" was not necessarily correct. She confirmed that she did not think she needed training at OFS at that time. She said she was looking for Stevie Yang's expertise on organizing things and with the backlog rather than training. She also confirmed that she did not speak to Stevie Yang face to face after early May and all of their correspondence was by email. When asked whether the complaints of harassment by Stevie Yang were only via email, Ms. Clarke said "no". She said many times Stevie Yang would come to her office and be hostile and leave. She would then communicate with her by email rather than respond to her. Ms. Clarke stated that, after May 18<sup>th</sup>, she understood there were more loads to be built than she could do on her own and agreed that they were very busy by May 22<sup>nd</sup>.

[357] When asked whether she knew whether anyone told Stevie Yang to train her in May, Ms. Clarke said she had showed Dianna the email and Dianna said that Jason forgot to tell Stevie Yang she was to come and help. She did not know whether Stevie Yang had a conversation with Jason Mann about training her. She did not reply directly to Stevie Yang's email just forwarded it to Dianna.

[358] Ms. Clarke testified that she felt that by not including her on emails people were being critical of her. She agreed however that, in Exhibit R-5, despite not being on the original emails, Stevie Yang added her to the email chain. She agreed that Stevie Yang actually gave her information and explained appropriate involvement. When suggested to her that this was not an example of someone going behind her back and actually including her, Ms. Clarke agreed that this was one instance of this. She said she was being blamed further in the email by Gail Fitzsimmons and felt she had to defend herself. She agreed in questioning though, that Stevie Yang was not identified as blaming her for anything.

[359] In questioning regarding Exhibit R-7 and various medical records, Ms. Clarke confirmed that she referenced "going to the Labour Board" was something she raised with her doctor because of the harassment and bullying she was subjected to.

[360] Ms. Clarke testified that in a group setting she had heard Jason Mann saying he needed to know the details of this so "I can fire this person". When questioned about the document provided to OH & S and dated July 31, 2018, Ms. Clarke confirmed she wrote it and typed it herself. When asked whether she understood that Jason Mann wanted to terminate her when he made the comments she referred to, Ms. Clarke said "no" rather she felt he wanted to terminate her based on what Stevie Yang or Myrna McIvor were telling him. She felt his comments referred to her and he made the statements, but she didn't know all of this for sure.

[361] When asked about the statement attributed to Jason Mann questioning her ability "do you even know what you are doing?" Ms. Clarke indicated she just knows he said these things and not necessarily who they were directed to. She agreed that the entire paragraph was about work performance and was critical of the performance.

[362] When the statement was put to her that "you were aware in May 2018 that Jason was dissatisfied with your work", Ms. Clarke said this was not specifically told to her by Jason Mann or Dianna Emperingham - that he or anyone else thought that I wasn't doing a good job. This wasn't said to her face. She said she felt it was directed at her, but no one came out or sat her down and said she was messing up and things have got to change, that they would write her up, or if things didn't improve she would be fired.

[363] She agreed that the statements she made regarding harassment were never made in a written statement and the only time they were reduced to writing was in the email from her to Dianna of July 13<sup>th</sup>, being Exhibit A-7.

## **Analysis and Discussion**

[364] The following legislative provisions from the Act are central to the questions that must be addressed on this appeal:

### **Discriminatory action prohibited**

3-35 No employer shall take discriminatory action against a worker because the worker:

- (a) acts or has acted in compliance with:
  - (i) this Part or the regulations made pursuant to this Part;
  - (ii) Part V or the regulations made pursuant to that Part;
  - (iii) a code of practice issued pursuant to section 3-84; or
  - (iv) a notice of contravention or a requirement or prohibition contained in a notice of contravention;
- (b) seeks or has sought the enforcement of:
  - (i) this Part or the regulations made pursuant to this Part; or
  - (ii) Part V or the regulations made pursuant to that Part;
- (c) assists or has assisted with the activities of an occupational health committee or occupational health and safety representative;
- (d) seeks or has sought the establishment of an occupational health committee or the designation of an occupational health and safety representative;
- (e) performs or has performed the function of an occupational health committee member or occupational health and safety representative;
- (f) refuses or has refused to perform an act or series of acts pursuant to section 3-31;
- (g) is about to testify or has testified in any proceeding or inquiry pursuant to:



- (i) this Part or the regulations made pursuant to this Part; or
- (ii) Part V or the regulations made pursuant to that Part;
- (h) gives or has given information to an occupational health committee, an occupational health and safety representative, an occupational health officer or other person responsible for the administration of this Part or the regulations made pursuant to this Part with respect to the health and safety of workers at a place of employment;
- (i) gives or has given information to a radiation health officer within the meaning of Part V or to any other person responsible for the administration of that Part or the regulations made pursuant to that Part;
- (j) is or has been prevented from working because a notice of contravention with respect to the worker's work has been served on the employer; or
- (k) has been prevented from working because an order has been served pursuant to Part V or the regulations made pursuant to that Part on an owner, vendor or operator within the meaning of that Part.

#### Referral to occupational health officer

3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.

(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:

- (a) cease the discriminatory action;
- (b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;
- (c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and
- (d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.

(3) If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3-35, the occupational health officer shall advise the worker of the reasons for that decision in writing.

(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35:

- (a) in any prosecution or other proceeding taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and
- (b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

(5) The amount of money that an occupational health officer may require to be paid pursuant to clause (2)(c) is to be reduced by an amount that the officer is satisfied that the worker earned or should have earned during the period when the employer was required to pay the worker the wages.

(6) The employer has the onus of establishing the amount of the reduction mentioned in subsection (5).

[365] I am also guided by the adjudicator in *Banff Constructors Ltd. and Lance Arcand*, LRB File No. 184-19, where he set out the following considerations at paragraphs 44 through 46:

[44] While it isn't necessary, in interpreting these provisions, to approve the public policy that underlies them, the creation of a presumption and reverse onus as set out in subs. (4) does not seem unusual. The worker is required to establish he or she was engaged in protected activities and that the employer took a discriminatory action. Both of these are within the knowledge of the worker and can readily be proven by the worker if the facts exist. While the worker may believe, on reasonable grounds, that there is a causal connection between the two, proving that is potentially far more difficult. Consequently, the onus shifts to the employer, who has knowledge of why the discriminatory action was taken and is required to establish that it was taken for good and sufficient other reason.

[45] One might argue there should, as a practical matter, be a requirement for a nexus (adopting the term from the adjudicator in *Britto*) between the protected activity and the discriminatory action to the extent it can logically be concluded, based on the evidence that the discriminatory action may have been taken because the employee engaged in the protected activity. However, this is unnecessary, since the evidence required to rebut the presumption against the employer and satisfy the onus will depend on the circumstances. In some instances, for example where there is a clear causal connection established between the two actions, the presumption will be difficult to overcome. However, in other instances, for example where there is no indication of a causal connection between the two actions, including a temporal connection as discussed by the adjudicator in *Britto*, it might require little from the employer to meet the onus and rebut the presumption. In some cases, the presumption will be rebutted by the worker's own evidence.

[46] Having reached this conclusion on the interpretation of s. 3-36(4), the broad issues to be determined in the instant case are:

1. Did the employee engage in protected activities, i.e. activities that come within the ambit of s. 3-35?
2. Did the employer take discriminatory action against the employee within the meaning of that term as defined in s. 3-1(1)(i)?
3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3-36(4)?

[366] I agree with the statements set out by the adjudicator in *Banff Constructors*, and will apply the same 3 part analysis as he determined in paragraph 46.

**1. Was the Respondent, Ms. Clarke engaged in an activity described in s. 3-35 of the Act (i.e. a protected activity)?**

[367] Yes. Ms. Clarke reported health and safety concerns to her employer, AgraCity, through her supervisor, Dianna Emperingham. The reporting was confirmed by Ms. Emperingham; however, whether it was conveyed to anyone else at AgraCity in a timely manner remains in dispute. The reporting was not carried out in accordance with AgraCity's documented policy. Regardless, the reporting of such concerns constitutes a protected activity within the ambit of s.3-35.

[368] The Appellant submitted that there may be latitude to find that resolving this first line of inquiry may bring an end to the matter if the concerns are not made out as *bonafide* health and

safety concerns. It cited *Britto v. University of Saskatchewan et al.*, CANLII 74280 (Sk LRB) as authority for this contention. In effect, if episodes of harassment and bullying are not confirmed in the evidence, this question should be answered in the negative and the matter is at an end without further inquiry required on the following two parts of the analysis. I disagree. Regardless, a review of the evidence surrounding the allegation of harassment is warranted.

[369] Janet Clarke alleges that she was bullied and harassed by Stevie Yang in particular. Much of this centered on email exchanges over a very short period of time rather than direct verbal communication, although there was some testimony from Ms. Clarke alleging Ms. Yang spoke disrespectfully to her.

[370] Ms. Clarke considered the use of highlighting, red lettering and bold lettering within a small number of email messages as forms of yelling or subtle conveying of harassing messages. In her testimony, Janet Clarke expressed a progression of growing unrest and unease with the email exchanges to the point that she was emotionally devastated and, at times, in tears. This must be contrasted with the evidence of other witnesses who indicated that the various methods and forms of communication with Stevie were not uncommon, and they were not considered by them to be challenging or difficult. Furthermore, Stevie Yang testified that her use of highlighting and red lettering was generally to illustrate or highlight specific important information. From a purely objective perspective, this makes sense.

[371] The lack of any significant verbal communication and other underpinning of the harassment elements is concerning. While I believe Ms. Clarke was suffering emotionally, I cannot conclude that Stevie Yang's correspondence and interactions alone were sufficient to constitute harassment or caused Ms. Clarke's suffering. It might have served as a trigger that exacerbated Ms. Clarke's condition. But the messages themselves, when considered in the overall employment context and the very short timeframe over which they were sent, are neither harassment nor bullying.

[372] It is understandable that an employee may feel intimidated and possibly annoyed when another person is brought in to take over their job even for just a while. This may have some bearing on Ms. Clarke's reaction to the communications from Stevie Yang. Conversely, an employee assigned to take over another's role in view of what is perceived as the employee's shortcomings, may be an annoyance to the re-assigned employee as well. Stevie Yang had other functions to perform at the time of being assigned most of Ms. Clarke's role in May 2018. She may have held some degree of resentment, however, resentment was neither displayed in any verbal communication between them nor was it apparent from her testimony. Some email exchanges had overtones of frustration. Much of this was further explained in Stevie Yang's testimony.

[373] One must also look to the actions and words of Jason Mann toward Janet Clarke to consider whether there was elements of harassment in those behaviours. At times, he expressed dissatisfaction with Ms. Clarke's work and laid blame for many shortcomings and problems at her feet. Some conclusions were drawn without any investigation and only on occasional observations and indications from others. The "domino effect" that late entries into the AX system caused through the sales and delivery chains could, on many occasions, be traced back to the load building function. Ms. Clarke testified that Mr. Mann had told her directly that he was dissatisfied with her performance.

[374] In assessing the validity of a harassment complaint one must understand the reporting structure and to whom a harassment complaint at AgraCity is to be conveyed. April Arsenault,



manager of Human Resources, testified that she had not received a complaint of harassment from either Dianna Emperingham or Janet Clarke until just prior to Ms. Clarke's departure on July 13, 2018. Ms. Arsenault's office would be an obvious place to file a complaint of harassment and consistent with Agracity's Human Resource Policy Manual. I accept Ms. Arsenault's evidence in this regard, and do not believe that Ms. Emperingham advanced a formal harassment complaint on Ms. Clarke's behalf. While Ms. Clarke complained to Ms. Emperingham about Stevie Yang, Ms. Yang's actions toward her did not constitute harassment.

[375] Under s.3-35(b)(i) of the Act, a worker cannot be terminated for the simple act of seeking enforcement of Part III of the Act or the regulations. I find that Ms. Clarke held an honest belief and perceived that she was being bullied and harassed at work. I do not find that it met an objective standard of harassment. Based on the evidence, Janet was not a victim of harassment or bullying. She cannot be terminated for informing her employer of the offending behaviour thus the matter turns on the analysis and answering of the further questions set out below.

**2. Was the Appellant's termination of the Respondent's employment a discriminatory action as defined in clause 3-1(1)(i) of the Act?**

[376] Yes. Termination from employment is included within the definition of "discriminatory action" in the Act.

**3. Was the Appellant's termination of the Respondent a discriminatory action taken "for good and sufficient other reason" within the meaning of section 3-36(4) of the Act?**

[377] In its brief of law, the Respondent contends that the following approach should be used in my analysis and application of the relevant law when addressing this question:

In dismissal cases, there are two kinds of dismissal: without just cause and just cause dismissal. **In discrimination cases like the one involving Clarke, "without cause" cannot be relied on because it is an admission that there is no legally supportable reason for termination and, in fact, it is incompatible with the "good and sufficient other reason" defence to a discrimination claim. Therefore, the only option available to the Appellant is to establish that they had "just cause" to dismiss Clarke.** Since there was no progressive discipline against Clarke, the just cause argument must fail because "just cause" also requires progressive discipline. **[emphasis added]**

[378] I respectfully disagree with Respondent's position emphasized above. The Appellant is not required to establish that the termination of the Appellant was for just cause. A correct characterization is set out by Adjudicator Tegart in *International Women of Saskatoon and Ivette Gonzalez*, SK LRB File No. 203-19, where he wrote the following at paragraph 65:

[65] The fact an employee makes a complaint pursuant to s.3-36(1) of the Act, even where it's established that he or she engaged in a protected activity and the presumption and reverse onus kick in, does not insulate the employee from the possibility of a termination. The employee is only protected from discriminatory action where that action

is taken *because* the employee engaged in the protected activity, subject to the comments below concerning the phrase "good and sufficient other reason".

[379] My inquiry and determination need not consider whether or not Janet Clarke ought to have been dismissed, but whether her termination was made *for good and sufficient other reason* – and not for the reason of having reported harassment and bullying in the workplace.

[380] The evidence of Jason Mann indicates that he believed Janet Clarke was unsuitable for the Order Fulfillment Supervisor position in May 2018. He encountered problems raised by customers and other staff regarding late or incorrect deliveries, lack of timely uploading of information into the AX system, failure to enter information from Proofs of Delivery among others things and believed many of them to be Janet Clarke's fault. Some of his beliefs were supported by information he received from other staff, some of whom testified in this hearing to their corroborating, direct observations. Whether the shortcomings attributed to Ms. Clarke were the result of lack of effort, training, or ability appeared to matter little to him. Jason Mann testified that he drew these conclusions well before Ms. Clarke's termination, and testified that he had previously broached concerns with Ms. Clarke's direct supervisor, Dianna Emperingham, his hand-picked Vice President responsible for logistics.

[381] Within the first six weeks of AgraCity's busy season, bills of lading and deliveries were already weeks behind. This situation was confirmed by a number of witnesses including Dianna Emperingham. The OFS position was pivotal in keeping the system moving and getting product lined up and delivered to growers. This was not happening and was critical to AgraCity's success. Removing Janet Clarke's ability to build loads for Western Canada by mid-May is very telling – she was so far behind in the role that exceptional measures had to be taken. On cross examination, Ms. Clarke acknowledged that she was very far behind and required the assistance of others. Melissa Murphy assisted and testified on the significant unfinished paperwork around Janet Clarke's office when she first arrived to assist. Stevie Yang was returned to her earlier role to get things done and manage through the busy season.

[382] Although Dianna Emperingham testified otherwise, Jason Mann stated that he had instructed Ms. Emperingham to terminate Janet Clarke from her employment as early as June 2018. Ms. Emperingham stated that she was not directed by Mr. Mann to terminate the employment until July 13, 2018. Whether or not he dictated to Ms. Emperingham that Ms. Clarke should be terminated from her employment at AgraCity, it is plainly evident from his comments that this was his desire. Ms. Emperingham acknowledged Mr. Mann's frustration with and negative comments about Ms. Clarke. Jason Mann's decision to remove Janet Clarke from building loads and reinstatement of Stevie Yang to the role is clear evidence of his dissatisfaction with the way the logistics role was being carried out.

[383] One might assume that the CEO of a company has the authority to summarily dismiss an employee who they perceive is unsuitable for any position with the company, but AgraCity's situation was different in July 2018. Mr. Mann believed he was constrained by a court order from directly terminating any employees. As noted in his evidence on the hearing, he has since carefully reviewed the court order and concluded that his authority was not so constrained. However, at the time, I believe he was operating under the belief that to terminate Janet Clarke's employment at any time from May through July 16, 2018 would place him in breach of a court order. Regardless, by July 13, 2018, his clear indication was that Ms. Clarke's employment at AgraCity must be terminated.

[384] A unique feature of this particular set of circumstances is the role Dianna Emperingham played in either addressing or at least conveying Ms. Clarke's concerns to other company officials. Ms. Clarke was a member of Ms. Emperingham's Logistics team, and they had also developed a friendship on a more personal level. Ms. Emperingham testified that she was aware of Janet Clarke's struggles in the Order Fulfilment Supervisor role quite early in spring 2018. When additional training was considered as a possible remedy for some of the problems, Ms. Emperingham apparently did not press hard to obtain more training for Ms. Clarke. Ms. Clarke testified that she did not require more training, just some assistance in getting entries into AX caught up. Ms. Emperingham allowed Janet Clarke to languish in the role and did not challenge Mr. Mann as one might expect in defense of their own direct report staff.

[385] In her testimony, Ms. Emperingham expressed exasperation and a reluctance to challenge Mr. Mann on some issues regarding Ms. Clarke and staffing. Given the testimony that both she and Mr. Mann provided regarding the court proceedings involving Mr. Mann and his brother, and Ms. Emperingham's concerns with Mr. Mann's behaviour in his role, the lack of cooperation and communication between them, at best, created inefficiencies and, much worse, caused near paralysis at times. This tense and uncooperative relationship between Mr. Mann and Ms. Emperingham is an unfortunate wrinkle in this case. While it may have extended to others, the evidence before me clearly indicates discord between these senior leaders of AgraCity. Part of the collateral damage that arose from this discord was the treatment of Ms. Clarke. In the tug and pull of their relationship, Mr. Mann was intent on terminating Ms. Clarke while Ms. Emperingham appeared intent on doing otherwise. Ms. Emperingham had developed a friendship and fondness for Ms. Clarke, which eventually led to Ms. Emperingham aiding in an attempt to have Ms. Clarke covered under a short term disability program that was new to AgraCity. She may also have intended to conceal the attempt from Mr. Mann.

[386] Based on a number of events described in Mr. Mann's testimony, it was clear that he believed he had reason to terminate Janet Clarke's employment well before it took place on July 16, 2018. He cited examples of having to work on the warehouse floor in order to get deliveries moving more quickly and to catch up on numerous delays. He testified that these originated at the order fulfilment supervisor position as PODs had not been entered into the AX system and inventory control was terribly mishandled. His observations and concerns were identified and corroborated by other witnesses from AgraCity who shared the concerns, particularly Melissa Murphy, Myrna McIvor, and Stevie Yang. The pace of the busy season at AgraCity was such that systems had to be working fairly efficiently and there was little time to implement changes and reflect on shortcomings. The employees at AgraCity who testified on AgraCity's behalf understood the urgency and adapted. Others did not. I accept this evidence of valid concerns with Ms. Clarke's performance in her role such that good and sufficient other reasons for her dismissal existed in June and July, 2018.

[387] When he reassigned Stevie Yang to the role of order fulfilment supervisor for western Canada, this was a clear sign of his lack of confidence in Ms. Clarke's ability to adequately perform the role. In cross-examination, a number of events that Mr. Mann relied upon as evidence of failing in her duties were confirmed as not arising on Ms. Clarke's watch. Regardless, there were numerous examples of problems with Janet Clarke's work. The downstream effects of failures at the origination of building loads and early steps in the system were clearly felt by the accounting and sales staff. Their frustration was real as Ms. McIvor's and Mr. Rumberg's testimony indicated.



[388] There was considerable evidence focused on who was responsible for mistakes after May 22, 2018. While such evidence is relevant, there were already many concerns about ability and performance in the role of OFS.

## **Conclusion**

[389] Mr. Mann could have terminated Janet's employment when he first became disgruntled with her performance or even shortly thereafter. This could have avoided a situation where Janet became uncomfortable in her role and developed anxiety upon Stevie Yang resuming the OFS role. To be demoted can create complexities that might have been avoided. Janet began to struggle with confidence issues and anxiety prior to mid-May 2018, and these were exacerbated as her work was reassigned and she was blamed for many errors. Some of the errors were hers, some were not.

[390] Ms. Emperingham testified that she was aware of Janet Clarke's difficulties in the OFS role, and that she was not able to provide her with additional assistance, although she did not attempt to work side-by-side with Janet Clarke to determine the breadth and scope of the problems. As she worked two days per week from home, her availability was limited.

[391] Ms. Emperingham testified that Mr. Mann never directly told her to terminate Janet Clarke's employment until July 13, 2018. She testified that she was previously aware of his significant frustration with her, and frustrations expressed by other staff. Irrespective, she did not terminate Ms. Clarke of her own initiative. Failure to do so in the face of the mounting indications suggest a wilful resistance to terminating her employment. Whether personal interests were being prioritized over corporate interests, or whether a vacancy in the OFS position was an untenable scenario for Ms. Emperingham was not clear from her testimony. Personal loyalty to Ms. Clark was evident in the testimony.

[392] Had Ms. Clarke been terminated in mid or late May 2018, as Mr. Mann's testimony suggested he was prepared to do, she may not have suffered some of the emotional turmoil that she felt.

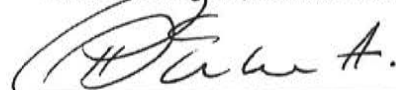
[393] AgraCity's business model relied on trucks carrying a variety of product and making multiple stops on a delivery run. Assembly of the loads could be complicated and was critically important. There was considerable reliance on timeliness and accuracy for others to manage their own responsibilities. While not part of this inquiry, one is left wondering whether the role should have been supported by more than one person. Despite one individual performing the function prior to Ms. Clarke's hiring, the addition of product lines added to the complexity of the job in 2018. That Stevie Yang was able to perform most of the role after mid-May suggests that it was manageable; however, she did make some mistakes and was only responsible for deliveries in Western Canada.

[394] Having weighed all of the evidence, and despite my sympathies for Ms. Clarke and her struggles on a number of fronts, I am satisfied that there were good and sufficient other reasons for AgraCity to terminate Janet Clarke's employment and the within Appeal must succeed.

## **Order**

[395] This order is made pursuant to s.4-6 of the Act. The Appeal is allowed. The Decision is quashed and set aside.

Dated at Regina, Saskatchewan, this 30<sup>th</sup> day of November, 2020.

A handwritten signature in cursive script, appearing to read "Perry D. Erhardt", written in black ink.

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Perry D. Erhardt, Q.C., Adjudicator