

DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTIONS 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT



COMPLAINANT: Terrance Okemow
Represented by Doug Long,
Employment Standards Officer

RESPONDENT: Saskatchewan Indian Gaming Authority Inc. (SIGA)
o/a Gold Eagle Casino
Represented by Karla Kewell,
Director of Employee Relations, SIGA

DATE OF HEARING: February 9, 2016, 10:00 a.m.

PLACE OF HEARING: Kramer Building
North Battleford, Saskatchewan

I. INTRODUCTION and ISSUES

This is an appeal by the Employer, Saskatchewan Indian Gaming Authority Inc. (SIGA) o/a Gold Eagle Casino, from a Wage Assessment in favour of the Employee, Terrance Okemow, dated November 26, 2015.

Terrance was employed as a Security Guard at the Gold Eagle Casino in North Battleford, Saskatchewan until he was terminated on June 19, 2015. The issue is whether the Employer had just cause for the dismissal.

Terrance says he picked up a “Splish Splash” car wash card in the Casino parking lot next to his vehicle, claims he thought the card was his, and used it to wash several vehicles over a period of three weeks. The card belonged to the Casino, and the Employer maintains that the taking of the wash card and its use by Terrance was theft; SIGA has a strict zero tolerance policy concerning theft, and argues Terrance was justly terminated.

II. PRELIMINARY MATTERS

The Parties agree that if Terrance was terminated without just cause, his damages for pay in lieu of notice pursuant to *The Saskatchewan Employment Act*, section 2-60(1) would be eight weeks wages, plus holiday pay, for a total of **\$6,791.49**. (This amount is slightly higher than the

Wage Assessment, which did not take into account additional holidays available to the employee.)

Neither party had any objection to the jurisdiction of the *Act* in this case.

The Employer produced many documents marked as exhibits during the Hearing; Ms. Kewell asked that the copies provided to the Employee and the Employment Standards Officer be returned to her at the end of the Hearing as they contain proprietary information belonging to SIGA. The Employee and the Employment Standards Officer had no objection to this. Most of the documents referred to are documents with which the Employee was familiar during his time at the Casino, or, are copies of letters generated by him or on his behalf. I advised Ms. Kewell that portions of the documents would likely be referred to in my decision, and that the Adjudicator would retain copies of the documents for the record. She agreed.

Both the Employee and the representative of the Employer emailed me comments and information after the conclusion of the Hearing. I had requested a copy of Employer Exhibit #17, SIGA Corrective Action Guide, be emailed to me and the parties; any other information contained in the emails was not solicited and not considered in making my decision.

III. EVIDENCE

The Employer filed seventeen Exhibits and called two witnesses: Kevin Sapp, the Human Resource Manager at the Gold Eagle Casino; and, James (Jim) MacGowan, a Security and Surveillance Investigator for SIGA. Mr. Sapp testified about the Casino's policies and procedures and the events leading to Terrance's dismissal. Mr. MacGowan formerly managed a casino, and has been with SIGA as a Security Specialist since 2008. He testified on the interpretation of SIGA's policies and procedures, as well as the training and duties expected of a casino Security Guard. Mr. MacGowan was excluded from the Hearing room until after Mr. Sapp testified.

Terrance Okemow testified as the Employee. No other witnesses were called.

There is no dispute concerning Terrance's employment prior to the events leading to his dismissal. Terrance started at the Gold Eagle Casino in North Battleford in September 2001. He worked for just under two years with "live games" then became a Security Officer and remained in that position until his termination in June 2015. There were no serious issues with Terrance's performance; he had been disciplined and suspended for other concerns, but nothing relevant to the facts under consideration in this Hearing and nothing within the previous two years. Terrance occasionally was called upon to do Temporary Performance of Higher Duty (TPHD) and he testified his most recent performance review had overall been "pretty good".

a) Employer Evidence: Context

The Employer presented much documentary and oral testimony concerning the responsibility and importance of the high level of trust required of a Security Guard (or Officer) working in a casino.

The Job Description for Security Officer (Employer Exhibit #11) summarizes the main duties as follows:

This position focuses on **risk management** and protection of Casino assets and people, by ensuring the safety and security of SIGA's guests, staff and assets, in compliance with established procedures and policies.

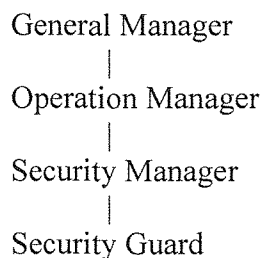
Terrance acknowledged he was familiar with his job description. It was reviewed annually during his performance review.

The Employer emphasized that gaming is one of the most heavily regulated industries in North America. Employees who work in a casino must be licensed by the Saskatchewan Liquor and Gaming Association (SLGA) and wear their "tags" at all times while working. Given the large amounts of cash involved in the day-to-day operations of a casino, SIGA has developed strict written policies and procedures, has on-going training, and demands professionalism and honesty of its employees. For example, except for those of Security Guards, employees' uniforms do not have pockets. Employees are aware they may be video-taped at all times, and must hold their hands up, indicating they are 'clear' anytime they leave the gaming floor.

All employees must abide by the nineteen-page Employee Code of Conduct Policy (Employer Exhibit #15) which reiterates that they are to follow SIGA's policies and procedures (4.1.B.b.3).

The SIGA Security Manual details the policies and procedures around security issues and was the primary reference guide for Terrance's position. The Security Manual is available to employees online, and updated regularly. Printed copies are available. Terrance agreed in his testimony that he had access to and referred to the Security Manual to perform his job duties. He also agreed his training was ongoing and he took SIGA courses in person or on-line; the list of his training courses was provided in Employer Exhibit #14.

Included in the Security Manual is a "Security Organization Chart" (Employer Exhibit #1) which illustrates the importance of the position of Security Guard in the casinos:



Mr. Sapp pointed to three Security Manual policies relevant to the present case.

First is Chapter 2.4 of the Security Manual – “Parking Lot Access Control” (Employer Exhibit #2) which makes security guards responsible for the parking lot area around the Casino. The Casino parking lot was seen as an extension of the Casino proper.

The second is Chapter 7.1 of the Security Manual concerning “Lost and Found” (Employer Exhibit #13) which details the process for all found items:

Chapter 7

7.1 Lost and Found

Policy:

All SIGA employees are required to report and turn in all found articles to Security. Security is to ensure all valuable articles are recorded in the Lost & Found Control Log and secured.

Non-valuable items such as gloves, scarves, keys, cigarettes, lighters and glasses will not be recorded, but kept in a Lost and Found Box.

All articles will be retained for 14 days after which they will be disposed of.

Procedure:

1. All found articles are to be brought to the attention of Security.
2. When valuable items are found, Surveillance will be notified (wallets, jewelry, cell phones).
3. Security will take the article(s) to the Casino designated storage area. Valuable articles can be put in the security safe.
4. When patrons claim the article ensure the Lost and Found Control Log is completed.
5. **Wallet or Purse** – Check for identification ensuring that a witness is present. If it contains identification, the patron will be paged. If the patron is not found any currency would be turned in as found money. The amount will be noted on the Lost & Found Control Log. ID, etc. will be secured in designated storage area.
6. **Found Money – Refer to Chapter 24 for Found Money Procedures.**
7. **Illegal Substances/Alcohol** – If any of these articles are found or seized, surveillance will be contacted immediately and an occurrence report will be filed. The Security Supervisor would ensure the substance is destroyed. Contact Local Law Enforcement for large quantities and obtain signature.
5. **Bank Cards/Credit Cards** – for Security reasons, the shift supervisor and one security officer will secure these items in the provided safe as soon as they are turned in.

The Security staff has the primary responsibility for handling lost and found items. There is no leeway to dispose of potentially non-valuable items; ALL are to be taken to Lost & Found and dealt with according to policy.

The third policy is Chapter 24, "Found Money Procedures" (Employer Exhibit #12). To summarize that policy, ALL items of value, including currency, coins, TITO (slot machine) tickets and table chips – beginning at a value of \$0.01- must be taken to the "Cage" where they are recorded in a log.

SIGA has a detailed Corrective Action Guide for Managers (Employer Exhibit #17) setting out dozens of examples of infractions, and types of progressive action to be taken by managers, ranging from verbal warning to suspension to termination. There are a number of behaviours that warrant termination for a first occurrence, including theft.

There are no progressive discipline steps for theft. Theft will result in immediate termination. It is a zero tolerance policy, and employees are made aware of this.

b) Employer Evidence: Events

The Gold Eagle Casino has an account at a nearby do-it-yourself car wash facility called "Splish Splash". One can pay for a car wash by inserting cash, debit or credit card, or a pre-paid wash card into the meter. The pre-paid car wash cards are a plastic card similar to a debit card or a Tim Horton's card.

To access an account at the car wash, the user slides the card into a meter in the car wash stall. The meter has a display which tracks usage time and cost. If the card is attached to a specific account, the account name also appears on the display. When the Casino's card is placed in the meter, "Gold Eagle Casino" appears at the top of the display (see photo in Employer Exhibit #3). This does not occur with 'regular' pre-paid wash cards. With 'regular' cards the display will also show how much money remains on the card. The Gold Eagle Casino card has no monetary limit.

The Casino had only one Splish Splash card and it was kept in the Facility Manager's Office at the Casino. Designated employees could sign out the card to wash vehicles owned by SIGA. When the card was used to wash company vehicles, a log titled "Splish Splash Wash Card" was supposed to be signed with the date, time card out, time card in, vehicle washed and driver name. The card was not used on a daily basis.

The last entry in the log prior to the events leading to Terrance's termination was on May 19, 2015, which showed the card was taken and used from 9:39 to 9:55 by someone with an illegible signature.

The Casino's Operation Manager, Harris Sutherland, did not find out the card had disappeared until June 17. An email was sent immediately to Casino staff advising that the wash card was missing. Mr. Sutherland advised HR Manager Kevin Sapp of the circumstances, and

they went together on June 17 to Splish Splash to cancel the card and investigate. The card was cancelled at 1:30 p.m. At the car wash they obtained the documents collectively marked as Employer Exhibit #3.

Employer Exhibit #3 includes a printed account summary which showed the Casino's card had been used at the car wash on the following dates after the last record in the Casino's log (the date/time and amount are from the Splish Splash account summary; I have added the numbers for the sake of clarity):

	Date/Time	Amount
1.	23/05/2015 10:56 AM	\$7.00
2.	23/05/2015 12:02 PM	\$4.00
3.	23/05/2015 12:52 PM	\$5.00
4.	23/05/2015 2:43 PM	\$5.50
5.	25/05/2015 2:42 PM	\$7.50
6.	25/05/2015 2:53 PM	\$1.00
7.	25/05/2015 2:54 PM	\$7.00
8.	09/06/2015 9:15 PM	\$12.00
9.	16/06/2015 10:44 AM	\$15.00
10.	16/06/2015 11:04 AM	\$15.00

For each transaction, Splish Splash had video footage available which Mr. Sutherland and Mr. Sapp reviewed. In transactions 2, 3, and 4 they identified a Casino employee named Justin, washing 3 different Casino vehicles. Transactions 5, 6, and 7 showed Terrance Okemow in all three, washing a motorcycle. A motorcycle was being washed in transaction #8. Terrance was seen washing a car in transaction #9 while a different car was washed in transaction #10.

Two still photos from the video were attached as part of Exhibit #3, which, according to Mr. Sapp, showed Terrance at the car wash.

After visiting the car wash, Mr. Sutherland and Mr. Sapp returned to the Casino and met with Terrance's supervisor, Marcel Gullion, Security Manager. As it was part of the employee Justin's regular duties to wash the Casino vehicles they reasoned that he had used the wash card on May 23 without signing it out or in, but how had Terrance ended up with it? They discussed the situation with Mr. Gullion and made arrangements to meet with Terrance before his shift the next day.

All three managers attended the meeting on June 18 although only Mr. Sapp asked questions of Terrance. A transcript of the interview was provided as Employer Exhibit #4. Terrance acknowledged during the Hearing that it was an accurate summation of what was said. The meeting was not long: approximately 10 minutes.

The interview started with Mr. Sapp advising Terrance that they were in the early stages of an investigation surrounding the disappearance of the Casino's Splish Splash Card, that his

name had come up in the investigation, and they wanted to meet with Terrance to see if he could shed some light on the matter. Terrance admitted right away that he had “found it”. The other information gleaned was as follows:

- He said he found it in the parking lot.
- He said he could not remember when he found it.
- He admitted he had used the card earlier that week to wash his car.
- He denied letting anyone else use it.
- His reply to why he didn’t report it to his supervisor was that he [Marcel] “didn’t know what was going on”.
- When asked how if he realized how serious this looked, Terrance had no reply.
- Terrance said he usually paid cash to wash his car.
- When specifically asked if he purchased car wash cards “there” (meaning Splish Splash), he said, “No... sometimes I guess. I go to the new car wash usually.”
- At the end of the interview, Terry stated, “Is there any way I can make this better? It’s not like it’s a million dollars.”

Mr. Sapp first read aloud then gave Terrance a letter which stated he was placed on administrative leave with pay, pending further investigation (Employer Exhibit #5).

The next day, June 19, Terrance was given a letter advising that his employment was terminated (Employer Exhibit #6). The stated reasons were that he had had the Splish Splash card in his possession since May 25, 2015 and used it on May 25, June 9 and June 16 for a total of \$57.50 worth of washes. The letter went on to say:

Terrance, as you well know the Security Officer role is a position of trust. Your role and behavior surrounding SIGA’s missing car wash card are a direct violation of SIGA’s values. This conduct breaks the trust of the organization and places SIGA’s reputation at risk.

The letter also outlined the process to appeal the termination - in writing to Roger Anderson, Senior Operations Manager, within seven days.

A letter dated June 22, 2015 from Terrance Okemow to Roger Anderson was introduced at the Hearing as Exhibit Employer #7, in which Terrance indicated he was appealing the termination. In the letter, he included some explanations that did not match what he said in the interview with the Managers. He now stated he had found the card “a few weeks before”. He “picked it up and stuck it in with the other splish splash cards I have in my vehicle”.

By letter dated July 8, apparently after a meeting on July 3, 2015, Terrance was notified by Casino General Manager Kelly Atcheynum that his termination of employment would be upheld. To take his appeal further, Terrance could write to Lionel Tootoosis, Senior Vice President of Operations of SIGA (Employer Exhibit #8).

A letter was then prepared by Terrance or on his behalf and sent to Mr. Tootoosis, dated July 27 (Employer Exhibit #9). The copy of the letter provided is a blurry photo-copy of a

screen shot and difficult to read, but he appears to blame at least in part the failure of the Casino to take proper care of the wash card for his dismissal.

By letter dated August 5 (Employer Exhibit #10), Mr. Tootoosis denied Terrance's appeal:

After careful consideration of the information submitted in your letter of appeal, I am writing to confirm that I am upholding the decision of Gold Eagle Casino to terminate your employment. This decision has been reached as there were no irregularities during the investigation process and no new evidence has been provided to indicate that the decision is against the weight of the evidence.

Terrance carried the issue further, appealing the revocation of his SLGA 'tags'. SIGA would have notified SLGA of Terrance's termination, and the reasons for it, and the tags, essential to work in a Casino, would have been revoked. A SLGA hearing was scheduled for October 22, 2015, but Terrance withdrew his appeal on October 2015. Terrance explained this was on the advice of a lawyer he has consulted.

At the Hearing, Mr. Sapp admitted during cross-examination that the Casino had no evidence to suggest that Terrance had done anything other than find the card in the parking lot near his vehicle. He stated his position was that as Terrance had found the card on Casino property, he committed theft by removing it from the premises.

When asked the same question, Security Investigator Mr. MacGowan had a slightly different answer. He stated that the finding and using of the card constituted the theft. Terrance's initial act in removing the card from Casino property was against policy in general and the Lost and Found policy in particular. The theft did not occur until Terrance used the card at the car wash for his personal benefit.

Mr. MacGowan noted that the wash card was equivalent to cash, in that anyone could gain a benefit from using it. Unlike a bank card, one did not need a PIN number to use it. Therefore, Mr. MacGowan testified, there is no difference as far as SIGA is concerned between finding the card on the parking lot and finding money.

Mr. MacGowan further testified that SIGA casino employees have been terminated, and in some cases, had criminal charges laid against them, for theft.

The Employment Standards Officer asked questions of the employers' witnesses as to why the 'log' process had not been used for the Splish Splash card in the present case. Both acknowledged that the proper procedure had not been followed. No one knows how the card got to the parking lot; either it was taken by someone from the office without being signed out, or, it was not returned when signed in, probably by Justin, who washed the three vehicles on May 23. Mr. Sapp admitted that the Facilities Supervisor was suspended for one day for his failure to monitor the card properly.

Referring to the Employer's Corrective Action Guide for Managers (Employer Exhibit #17), I asked Mr. MacGowan why Terrance's actions would not be considered "[i]mproper use of company property including vehicles, telephone, email, internet, cell phones, mail services, etc. (Minor)". The Guide indicates that the penalties for this infraction start at "verbal" and go up to "termination", with the proviso that the manager "may progress faster depending on severity of improper use".

Mr. MacGowan acknowledged there was a grey area in the Guide, which is why each incident requires an investigation. In this case, because the employee used the card for personal gain, and allowed a third party to use it as well, it was considered theft.

I note that the Guide also lists "*unauthorized possession, removal, willful destruction of casino/employee's property...*" as an infraction which will result in termination for a first-time offence.

In reply to a question from the Employment Standards Officer, Mr. Sapp testified that employees were never given Splish Splash cards as gifts or bonuses, and they were never used as giveaways by the Casino.

c) Employee Evidence: Events

Terrance testified at the Hearing that he found the Splish Splash card on the Casino parking lot ground near the end of his shift. He claimed earlier that day he had been in his car, grabbing some change, and thought maybe he had dropped one of his own Splish Splash cards while leaving the vehicle. He said he kept his personal Splish Splash cards, one of which belonged to his wife, in his vehicle. He pointed out that the face of the Casino wash card and any other card are identical: only a long digit account number on the rear and a bar code differentiate them from each other.

Terrance said he used the card at the car wash several times, and acknowledged that one time he noticed the Gold Eagle Casino name appear on the display. He said he thought that maybe it was his wife's card, and perhaps the Casino had given it to his wife's employer as a giveaway, and she had obtained it from her employer. He knew that there were monthly prize draws at the Casino for employees, awards given to employee of the month and some Christmas bonuses. Although he had never received one himself, he thought it possible that Splish Splash cards had been one of the giveaways.

No other evidence was presented as to Terrance's use of Splish Splash or its wash cards prior to this incident, or that he had previously purchased cards. He produced two cards at the Hearing, but no usage records; one of the cards apparently was the one he found that day in the parking lot.

There was also no evidence as to how many wash cards Splish Splash had in circulation in general.

Ms. Kewell asked Terrance: When you are a security officer and know policies are so strict, why didn't you take the card back to the Casino when you saw the display pop up with "Gold Eagle Casino"? Terrance replied that no one had asked for it.

Terrance acknowledged that he was aware of SIGA's Lost and Found policy but he did not follow it in these circumstances because he initially assumed the card was his, and later, his wife's.

At the Hearing, when presented with the photographic evidence from the Splish Splash, Terrance admitted that he had allowed another person – not a family member - to use the card to wash their motorcycle.

Terry testified he became aware via employee email on June 17, 2015 that the Casino's Splish Splash card was missing.

During the interview with the three managers, he offered to pay the Casino back for his use of the card, which was \$57.50

During his testimony, Terrance was obviously very upset and bitter about his termination by the Casino. He felt he had been dealt with unfairly and should not have been labelled a thief. Apparently although all proceedings surrounding the termination were supposed to be confidential, word had leaked out that he had been fired for stealing. Terrance expressed anger at "the guy" who had lost the Splish Splash card in the first place, saying his stupidity caused Terrance to lose his job.

During cross-examination by Ms. Kewell, Terrance also acknowledged that he knew SIGA had a zero tolerance policy concerning theft, and he was aware that other employees had been terminated for theft.

IV. ANALYSIS

a) Evidence

I accept that Terrance Okemow found the Gold Eagle Casino's Splish Splash wash card on the Casino parking lot. I do not accept that he used the card without knowing it belonged to the Casino. There are a number of inconsistencies in Terrance's testimony and incongruities with other evidence which lead me to this finding.

- At the Hearing Terrance testified that he thought the card was his. He did not mention this in his interview with the Managers on June 18 or in his letter of appeal to the Senior Operation Manager dated June 22.
- At the Hearing, Terrance claimed he thought the card had fallen out of his vehicle when he went to get change from the vehicle earlier in the day. This trip to his vehicle was not mentioned in his interview with the Managers on June 17, his letter of appeal to the Senior Operations Manager of June 22, or his letter of appeal to the SIGA Vice-President

of Operations on July 27. His memory of events would surely be clearer in June 2015 than January 2016.

- Terrance admitted seeing the Gold Eagle Casino name on the display at the car wash. His convoluted excuse that he thought it was his wife's card (which just happened to be the one that fell out of his car and which he just happened to pick up on the Casino Parking lot, which she got from her employer, who in turn had received it from the Casino) is not credible. The Casino confirmed these cards were never given away.
- Terrance would also have seen on the car wash display that there was no monetary limit on the found card. If, as he testified, he had lots of cards and used them regularly, he would have known this was unusual. Most people, when using their cards, look to see how much money they have left.
- Terrance agreed that he knew there was a Splish Splash card used by the Casino for washing company vehicles, yet claims he never even considered this card might belong to the Casino.
- Terrance admitted at the Hearing that along with the other Casino employees he received notice via email on June 17 that the Casino's wash card was missing. He took no action.
 - If he still thought the card was his, why suddenly now assume that it was the Casino's, which he admitted at the interview the next day?
 - Or, if the sudden realization came to him that the card belonged to the Casino, why would he not return it immediately to his supervisor or another member of management, along with an explanation and reimbursement for the washes?
 - And, why did he not take the card to the interview?
- Terrance denied at the interview that he let someone else use the wash card or that anyone else knew he had the card. Only when confronted with evidence at the Hearing did he acknowledge that he had "loaned" the card to another person.
- At the Hearing, Terrance said he had several Splish Splash wash cards. But during his interview with the Managers, he said he usually paid cash to wash his vehicles, typically went to the "new" car wash, although he "sometimes I guess" purchased car wash cards at Splish Splash.
- Even if Terrance had not suspected the card he found was the Casino's it was also possible that it belonged to another employee or patron. He understood that the policies and procedures of the Casino required that all Lost and Found articles be accounted for, yet because there was no name on the card, felt he could keep it.
- Terrance had worked at the Casino for fourteen years, twelve as a Security Officer. In the course of his daily job he would have regularly dealt with lost and found articles according to SIGA's policies, and his actions in these circumstances were clearly an exception to those procedures.

In summary, although Terrance's elaborate explanation is possible, I do not find it probable.

The circumstances in this case point to Terrance taking advantage of a mistake made by another Casino employee. When he found the card, obviously lost by someone, it was easy to take and use. Even when he saw the Gold Eagle Casino name on the car wash display he did not return the card: there appeared to be a slim likelihood of being discovered, especially when the

card was not immediately reported missing. He even loaned the card to another person during the three weeks he had it in his possession.

I find on a balance of probabilities that the Employee in this case was guilty of dishonest conduct – knowingly using the Employer’s car wash card for personal gain.

b) Law

There are two steps in determining whether an employee can be dismissed for dishonest conduct. Firstly, was there dishonest conduct, and secondly, does the context of the dishonest conduct warrant summary dismissal?

This was clarified by the Supreme Court of Canada in *McKinley v. BC Tel*, 2001 SCC 38 (CanLII) paras. 32-33, 48-53; [2001] 2 S.C.R. 161. Iacobucci J. stated at paragraph 48:

More specifically, the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.

As stated above, I have found dishonest conduct in the present case.

Next I must look at the context. Terrance only charged \$57.50 on the Casino’s wash card. There was no question at the Hearing that Terrance felt he should have been able to make reparation given his long period of employment at the Casino. Dismissal of a fourteen-year employee initially seems harsh for such a small sum. However, the fact that a dishonest act involves something of nominal value does not necessarily mean dismissal is inappropriate. Nor does the mere fact of long service with an employer shield the employee from the consequences of his or her misconduct. One must still look at whether or not the essential trust component of the employment relationship has been fundamentally violated.

Whether this has occurred will be a factual finding depending on the circumstances of each case. For example, in the case of *Whiterock Gas and Confectionary v. The Director of Labour Standards* 2014 SKQB 300 (CanLII), Judge Chicoine said at page 24:

Iacobucci J. in *McKinley* makes the point that not every act of dishonesty will result in the dismissal of the employee and that the principle of proportionality must be applied. However, I am of the opinion that Mr. Swindler’s act of dishonesty in taking a package of cigarettes without paying for them was serious and went to the core of the employment relationship. Ms. Gopher [the Employer] was entitled to expect that all of her employees, especially employees in supervisory positions, could be entrusted to care for and protect the assets of the business. Among Mr. Swindler’s duties as a supervisor was to make an accurate count of the cigarette inventory on a daily basis in order to prevent theft and also to cash out at the end of the day. The theft of even one package of cigarettes by a manager in Mr. Swindler’s position in my opinion warrants dismissal for just cause.

Terrance was a Security Guard. His Job Description, his position in the Casino hierarchy, and the policies and procedures he enforced on a daily basis all emphasize the need for total trustworthiness in protecting property and people.

The Employer insists that its policies and procedures be rigorously maintained. The Lost and Found policy clearly states:

All SIGA employees are required to report and turn in all found articles to Security. Security is to ensure all valuable articles are recorded in the Lost & Found Control Log and secured.

In the circumstances before me, this means that the wash card found on the ground in the Casino parking lot should have been turned in immediately. The wash card was no different than “found money” or any other lost item and the Casino policies require even the lowest denominations of cash be dealt with according to their process.

The amount Terrance charged to the wash card is not determinative – in fact, the manner in which it happened is even more telling: he took advantage of a set of circumstances to profit by it personally. If the card had not been identified as missing, he would have continued to use it. Terrance never admitted he had done anything wrong or in violation of the policies and lied to his managers about letting another person use the card. When he saw the Gold Eagle name on the display at the car wash, he did not return the card, because “no one asked”. Terrance sought to blame others for his dismissal: the lax policies concerning the log-out sheet for the card or “the guy” who lost it and did not report it.

In another employment situation, the taking and use of the car wash card could be considered a minor incident, particularly if the employee reimbursed the employer. In the context of the Casino and particularly, in the context of Terrance’s role as a Security Guard, it takes on more significance. The Employer’s business is highly regulated. Large amounts of money are handled on a daily basis in the casino and the Employer has a zero tolerance policy for theft. As result of the taking and use of the wash card, the Employer no longer believes it can trust Terrance in this critical position.

Given that context, it would only be in the most compelling circumstances where discipline for theft would warrant a penalty other than dismissal. Those circumstances are not present in this case.

After careful consideration, I am satisfied that the misconduct of the plaintiff was so serious that it undermined the fundamental relationship between the parties; the Employee’s behaviour destroyed the trust his position demanded of him. I conclude that SIGA had just cause to terminate Terrance Okemow’s employment with the Gold Eagle Casino.

V. CONCLUSION

The Employer’s appeal is allowed and the Wage Assessment is overturned.

A copy of the Exhibit List is attached to this decision.

Dated at North Battleford, Saskatchewan, March 6, 2016.

Original signed by Karen Ulmer

Karen C. Ulmer
Adjudicator

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at www.saskatchewan.ca.

Right to appeal adjudicator's decision to board

4-8(1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.

(3) A person who intends to appeal pursuant to this section shall:

- (a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and
 - (b) serve the notice of appeal on all persons mentioned in clause 4-4(1)(b) who received the notice setting the appeal or hearing.
- (4) The record of an appeal is to consist of the following:
- (a) in the case of an appeal pursuant to Part II, the wage assessment or the notice of hearing;
 - (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
 - (d) any exhibits filed before the adjudicator;
 - (e) the written decision of the adjudicator;
 - (f) the notice of appeal to the board;
 - (g) any other material that the board may require to properly consider the appeal.
- (5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.
- (6) The board may:
- (a) affirm, amend or cancel the decision or order of the adjudicator; or
 - (b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board

Appeal to Court of Appeal

4-9(1) With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.

(2) A person, including the director of employment standards, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.

(3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

Right of director to appeal

4-10 The director of employment standards has the right:

- (a) to appear and make representations on:
 - (i) any appeal or hearing heard by an adjudicator; and
 - (ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and
- (b) to appeal any decision of an adjudicator or the board.

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EXHIBITS – Employer

- #1 Security Organization Chart
- #2 Policy Lot Access Control Policy
- #3 Splish Splash card copy, photos, card copy usage record (7 pages)
- #4 Typed Statement of Terrance Okemow, June 18, 2015
- #5 Letter to Terrance Okemow June 18, 2015 re: Administrative leave (2 pages)
- #6 Letter to Terrance Okemow June 19, 2015 re: termination
- #7 Letter from Terrance Okemow to Roger Anderson, Senior Operation Manager, Gold Eagle Casino, June 22, 2015 re: appeal of termination (2 pages)
- #8 Letter from Kelly Atcheynum, General Manager, Gold Eagle Casino to Terrance Okemow July 8, 2015 re: appeal denied
- #9 Letter from Terrance Okemow to Lionel Tootosis, Senior Vice President of Operations, SIGA, July 27, 2015 re: appeal of termination (2 pages)
- #10 Letter from Lionel Tootosis to Terrance Okemow, August 5, 2015 re: appeal denied
- #11 Job Description for Security Officer, including Competency Statement (5 pages)
- #12 Found Money Procedures
- #13 Lost and Found Policy for Security
- #14 Terrance Okemow's Training Report (2 pages)
- #15 Corporate Policy Manual, Employee Code of Conduct Policy (19 pages)
- #16 Casino's Splish Splash wash card log (4 pages)
- #17 SIGA's Corrective Action Guide (7 pages)



EXHIBITS – employee

none