

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



Lisa Ulph

COMPLAINANT/EMPLOYEE

-AND-

Saskatchewan Indian Gaming Authority

APPELLANT/EMPLOYER

DATE OF HEARING: June 5, 2019

PLACE OF HEARING: Moose Jaw, SK

LRB FILE: No. 115-19

WAGE ASSESSMENT: No. 1-000212

INTRODUCTION

This matter was heard before me on June 5, 2019 in Moose Jaw, Saskatchewan.

The hearing commenced at 10:00am.

I am satisfied there has been compliance with subsections 2-74(6), 2-75(2) and 2-75(3) of *The Employment Standards Act* (the 'Act'). Therefore I have determined that I do have jurisdiction to hear this matter.

Lorne Deason, Employment Standards Officer represented the Department of Employment Standards.

Complainant/Employee, Lisa Ulph did not attend and no evidence was given on her behalf.

The Appellant/Employer, Saskatchewan Indian Gaming Authority, was represented by Sarah Bridgette, the Director of Employee Relations and James MacGowan the Security and Surveillance Investigator for the Saskatchewan Indian Gaming Authority.

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The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014 c.s-15.1, herein after referred to as "The Act" is for \$5,500.00.

I. PRELIMINARY MATTERS

There were no preliminary matters raised by the parties.

II. AGREED FACTS

The parties agreed as follows:

1. Lisa Ulph was an employee of the corporation from November 14, 2008 up to an including December 14, 2018.
2. The Wage Assessment in the amount of \$5,500.00 was accepted as being correct in the event that the employee was not dismissed for just cause and the \$5,500.00 would be the amount owing pursuant to section 2-60 of The Act.

III. DISPUTE

The sole issue to be decided in this matter is whether or not the employee was dismissed for just cause.

IV. EVIDENCE OF THE EMPLOYER

Sarah Bridgette, Director of Employee Relations of the Corporation was sworn and gave evidence as follows:

The employee occupied the position of a Surveillance Operator at the Living Skies Casino in Swift Current.

The position of Surveillance Operator involves an employee monitoring security screens, monitoring the cash in the casino, behavior of the staff and guests of the casino and was to identify corporation policy breaches or infractions in the casino.

The employee held this position from her date of hire in November of 2008 up to and including December 14, 2108 when she was terminated.

The main role of the employee was to enforce the rules and policies of the corporation regarding the conduct of other employees or patrons to the premises.

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The position of the employee was one of a great deal of trust and integrity as the casino's two licenses, one from the Liquor Commission and the other for Operating the Casino depend upon the rules and policies of the corporation and the regulations of the licensors be followed absolutely. If not, the corporation can incur penalties such fines, have a temporary suspension of either of their licenses or lose either license outright.

Some time prior to the termination of the employee the employer was asked by the employee for medical leave with respect to personal issues. Apparently the Department of Social Services had apprehended two of the employee's grandchildren and the employee took personal leave to deal with this issue.

The employee was in the process of extending her medical leave when she attended at the casino with her grandchild, who was well under the age of 19.

The employee, when she attended the casino to bring her further extension documents, decided to enter the building through the

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employee entrance, continue through another staff entrance into the casino and then up a stairwell to the surveillance room which she entered.

The employee also brought the minor with her through the employees entrance into the casino and also into the surveillance room.

All of this was against corporate policy and Government regulation.

The employee should not have entered the building through the employee entrance when she is not working and, under no circumstances, should she of entered the security room when she was not scheduled to work.

Also, under no circumstances should she have brought a minor into the premises and certainly not to the security room.

The employee had received considerable training over the course of the 10 years that she was employed, regarding policy and

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government regulations. She was aware of the policies and had been educated regarding the rules and regulations. Her main purpose as a Security Operator was to enforce these policies and regulations with fellow employees and casino patrons.

The employer stated that the Corporation was not alleging progressive discipline but that the employee was dismissed for cause for the one incident. This was her entering the casino through an Employee entrance when she was not scheduled to work, bringing a minor into the premises, and in particular, entering the surveillance room which was in violation of the Liquor & Gaming regulations as well as corporation policy.

The employee by, violating the policies and regulations, broke the trust relationship between her and the employer such that it could not be repaired. Termination was required.

Mr. James MacGowan, Security and Surveillance Investigator was sworn and gave on behalf of the corporation as follows:

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Mr. MacGowan went through employer exhibits ER1-ER6 outlining the transgressions that the employee made regarding the casino operations, the government regulations regarding liquor licensing and gaming licensing. The government regulations regarding minors, as well as corporate policy respecting the same and the surveillance room.

Mr. MacGowan confirmed that all surveillance employees, including Ms. Ulph were aware, and had been trained in, the corporate policies and government regulations regarding both licenses.

Mr. MacGowan indicated that there were many alternatives available to Ms. Ulph, including telephoning someone at the corporation and/or at the casino, entering into the casino through the front doors and asking to speak with security or a supervisor. Mr. MacGowan was of an opinion that the conduct of the employee was such that she could no longer be trusted regarding security which is paramount in the casino. Termination was the employers' only option.

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Mr. MacGowan also stated that, in his experience, had the transgressions of the employee become known to either of the regulators, the Casino licenses would have been suspended and/or terminated, in particular, the Gaming Act license.

Mr. MacGowan was adamant that the employee knew she should not have entered the security/surveillance room, and more particular, bring another party into security/surveillance room. Also, She was fully aware that bringing a minor into the premises violated both corporate policy and government regulations regarding both the Liquor and the Gaming licenses that were required by the corporation in order to operate the casino. Therefore termination was the only avenue that the corporation could implement.

V. DECISION

The employer states that the conduct of the employee was such that the corporation had no alternative but to terminate the employee.

The employee had breached the trust relationship between herself and the employer and it was irreparable, particularly as it related to the entering the security/surveillance room and bringing the minor into the room with

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her, as well as having the minor on the premises. All of these events contradicted corporate policy and government regulation relating to both licenses held by the casino.

The employee chose not to give or call any evidence and, as such, the employer's evidence is uncontradicted. I accept the evidence set forward by both of the employer's witnesses as being credible.

The employer's evidence is that, one or both, of their licenses to operate the casino would have been suspended or possibly terminated had the regulators of the licenses been involved in this situation.

The employee had been employed by the employer in excess of 10 years, had been trained extensively in and knew of the license restrictions, regarding gambling and liquor. She was aware of the corporate policy and worked in the very room that was not to be entered by anyone other than those working there at the time. She was aware bringing a minor onto the premises and, more importantly taking them into the security and surveillance room, was a serious breach of the Licenses held by the Employer.

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I am satisfied that the Employee would have known the consequences to the employer and herself, of her breaching these government regulations and corporate policies. This knowledge would have come about as a result of her training and 10 years of employment in her sensitive security position with the employer.

Section 2-75(9) of The Act states that the wage assessment provided to me is proof in the absence of evidence to the contrary that the amount stated in the wage assessment is due and owing.

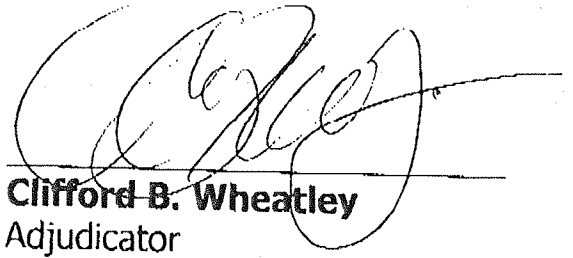
I accept the uncontradicted evidence of the employer to constitute evidence to the contrary within the meaning of the above section 2-75(9) and that evidence shows the employer had just cause to terminate the employment of the employee.

VI. CONCLUSION

The Appeal is allowed and the Wage Assessment is set aside.

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Dated at Moose Jaw, in the Province of Saskatchewan, this 20th of
June, 2019.



Clifford B. Wheatley
Adjudicator

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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 <http://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.