

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM )	Case No. 1086-2017
OF DEAN O. DUNN, )	
)	
Claimant, )	
)	
vs. )	<b>FINAL AGENCY DECISION</b>
)	
REDWOOD TRANSPORT, LLP, )	
a Montana limited liability partnership, )	
)	
Respondent. )	

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**I. INTRODUCTION**

On January 23, 2017, Dean O. Dunn filed a claim with the Wage and Hour Unit of the Department of Labor and Industry alleging the respondent, Redwood Transport, LLP (Redwood), owed him \$1,400.00 in unpaid wages. Redwood timely responded to Dunn’s complaint. The investigation revealed that the primary component of the parties’ dispute involved a personal loan between the girlfriends of Dunn and Joshua Stilwell, Owner.

On February 24, 2017, the Wage and Hour Unit determined Redwood owed Dunn \$1,400.00 in unpaid wages and imposed a 15% penalty of \$210.00 for a total of \$1,610.00. Redwood Transport timely appealed the determination.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on April 11, 2017. On April 14, 2017, OAH issued a Notice of Hearing and Telephone Conference. Following a scheduling conference on April 25, 2017, the matter was set for hearing on July 12, 2017. The matter was subsequently reassigned to Hearing Officer Caroline A. Holien and, due to a conflict in her schedule, the matter was rescheduled to July 21, 2017.

Hearing Officer Holien conducted a hearing on July 21, 2017. Claimant Dean O. Dunn appeared on his own behalf. Chelsea Johns was allowed to act as

Redwood's representative based upon her statement that she manages the company's business affairs. Stilwell appeared as a witness on behalf of Redwood. Dunn, Stilwell, and Johns testified under oath.

The administrative record compiled at the Wage and Hour Unit (Documents 1 through 66) was admitted into the record upon the agreement of the parties. Exhibit A, which includes documentation from the Montana Secretary of State's Office showing Redwood Transport, LLP became "Inactive Cancelled" effective July 17, 2017, was admitted without objection. A copy of Exhibit A will be included with this decision for the parties' records. The case was deemed submitted at the end of the administrative hearing.

## **II. ISSUE**

Whether Redwood Transportation owes wages for work performed, as alleged in the complaint filed by Dean O. Dunn, and owes penalties or liquidated damages, as provided by law.

## **III. FINDINGS OF FACT**

1. Redwood Transport, LLP (Redwood) employed Dean O. Dunn as a truck driver beginning in November 2016. Dunn never completed a 1099 Form and there has been no finding by the Independent Contractor Unit that the work Dean performed for Redwood was performed as an independent contractor.

2. Dunn and Stilwell never executed a written employment agreement. Dunn and Owner Joshua Stilwell orally agreed that Dunn would be paid \$200.00 per day. Stilwell paid Dunn in cash after he received payment from the customer.

3. Dunn and his wife lived in a property owned by Chelsea Johns, Stilwell's girlfriend. Johns manages the business affairs of Redwood and acts as a partner in the business.

4. From December 19, 2016 through December 26, 2016, Dunn made a run from Stevensville, Montana, to Madison, Wisconsin. Doc. 62. Dunn is owed \$1,400.00 for work he performed for Redwood from December 19, 2016 through December 26, 2016.

5. On December 26, 2016, Johns evicted Dunn and his wife from the home. There is a great deal of acrimony between Johns and Dunn and his wife. The

acrimony is based, in part, on money Dunn's wife owes for a truck and trailer she purchased from Johns.

6. Dunn had asked Stilwell to apply a portion of his wages to the loan between Johns and Dunn's wife. Payments were made to Johns in the amount of \$200.00 on October 31, 2016 (Doc. 42); \$300.00 on November 8, 2016 (Doc. 43); \$200.00 on November 30, 2016 (Doc. 44); and \$500.00 on December 22, 2016 (Doc. 47).

7. There was no written agreement between the parties regarding the withholding of wages from Dunn or applying those withheld wages to a loan between Johns and Dunn's wife.

8. After Dunn's eviction on December 26, 2016, Stilwell gave the entirety of the wages earned by Dunn from December 19, 2016 through December 26, 2016 to Johns as payment of the loan. Doc. 47.

9. On January 6, 2017, Dunn demanded payment of his wages in full. A series of text messages sent that day suggest the parties were in pitched battle over the debt Dunn's wife owes Johns. Doc. 56. One text message read, "Your money was paid to Chelsea, take it up with her." Doc. 56.

#### IV. DISCUSSION<sup>1</sup>

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to "show the extent and amount of work as a matter of just and reasonable inference." *Id.* at 189, 562 P.2d at 476-77, citing *Anderson*, 328 U.S. at 687, and *Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; see also, *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff's wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

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<sup>1</sup> Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, “the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation’ . . . .” *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell v. Keegan*, supra, 359 Mich. at 576, 103 N.W. 2d at 497.

Dunn performed work for Redwood from December 19, 2016 through December 26, 2016 for which he was not paid. It is more likely than not the parties agreed Redwood would pay Dunn \$200.00 per day rather than the \$0.40 per mile testified to by Johns and Stilwell based upon the fact that Stilwell paid Dunn in cash. In either event, Dunn’s claim of wages owed in the amount of \$1,400.00 is not significantly different than the amount that would be owed to him if the payment agreement outlined by the respondent’s witness were taken as true. See Doc. 62 (3,602 miles driven x \$0.40 = \$1,440.80).

The primary point of contention in this case is whether Dunn directed Stilwell to give the entirety of his wages to Johns to pay down a debt owed by his wife to Johns. Johns testified she wanted the money due to it being Christmas. Dunn countered that he would not have made such a request because it was Christmas and because he and his wife had been evicted and needed to find another home. Given the acrimony between Johns and Dunn’s wife, it seems unlikely that Dunn would be willing to forego an entire week of pay in order to pay down a debt his wife owed to Johns. This is particularly true given that previous payments to Johns from Dunn’s wages were made with a portion of his pay and not the entirety. There was no credible evidence offered by the respondent in support of its contention that Dunn had previously directed Stilwell to give Johns his full pay as payment on his wife’s debt. Dunn’s testimony that he never asked Stilwell to give the entirety of the \$1,400.00 in wages owed to him to Johns is deemed more credible as it describes a more likely series of events and the absence of any written agreement between the parties allowing the respondent to withhold money from his wages.

Montana Code Ann. § 39-3-204(1) provides:

Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and

a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in 39-3-205. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or as otherwise provided for by law.

The evidence shows Redwood withheld Dunn's final wages to pay down a debt owed by his wife to Johns and not "for board, room and other incidentals supplied by the employer," as provided for above. There is no provision in law allowing for an employer to give an employee's wages to a creditor to pay off a debt owed by another. Clearly, the parties will most likely continue to dispute what is owed to whom and for what. Those battles are better fought in another forum and not through a wage and hour claim.

Dunn has shown by a just and reasonable inference that Redwood owes him \$1,400.00 for work performed from December 19, 2016 through December 26, 2016. The respondent offered no credible evidence to negate the reasonableness of that inference. Therefore, Redwood owes Dunn \$1,400.00 in unpaid wages for work performed during the period of his wage claim.

## **V. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Redwood Transport, LLP, a Montana limited liability partnership cancelled effective July 17, 2017, owes Dean O. Dunn \$1,400.00 in unpaid regular wages. The liability for unpaid wages owed to Dunn is now imposed upon the owners of Redwood Transport, LLP based upon the cancellation of the partnership.

3. A 55% penalty amounting to \$770.00 is due on the unpaid regular wages. Mont. Code Ann. § 39-3-206.

## **VI. ORDER**

The owners of Redwood Transport, LLP, a Montana limited liability partnership cancelled effective July 17, 2017, are hereby ORDERED to tender a

cashier's check or money order in the amount of \$2,170.00, representing \$1,400.00 in unpaid regular wages and \$770.00 in penalty, made payable to Dean O. Dunn, and mailed to the **Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503**, no later than 30 days after service of this decision. Redwood Transport, LLP, a Montana limited liability partnership cancelled effective July 17, 2017, may deduct applicable withholding from the wage portion, but not the penalty portion, of the amount due.

DATED this 25th day of July, 2017.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN  
CAROLINE A. HOLIEN  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Wage & Hour Unit  
P.O. Box 201503  
Helena, MT 59624-1503

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.