

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2076-2014
OF CHRIS D. KLUCAS,)	
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	
)	
TOM WHALEN, individually,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On May 22, 2014, Chris D. Klucas filed a claim with the Wage and Hour Unit of the Department of Labor and Industry contending Tom Whalen, individually, owed him \$3,710.00 in unpaid wages for work performed from January 1, 2014 through April 1, 2014. On July 10, 2014, Whalen submitted a written response denying Klucas was owed any money for work performed while residing rent free at Whalen's ranch.

On September 3, 2014, the Wage and Hour Unit issued a determination finding Whalen owed Klucas \$2,226.00 in unpaid wages, as well as a penalty of 15%, for a total of \$2,559.90. On September 8, 2014, Whalen requested a contested case hearing.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on October 8, 2014. On October 16, 2014, OAH mailed a Notice of Hearing and Telephone Conference to both parties at the addresses of record. Neither mailing was returned as undeliverable.

On November 3, 2014, a telephone scheduling conference was held at which only Whalen appeared. Klucas contacted OAH after the scheduling conference had concluded and indicated he had missed the conference because he was out of state. At that time, Klucas confirmed the mailing address OAH had for him was correct.

On November 5, 2014, OAH mailed the Scheduling Order to both parties at the addresses of record. Neither mailing was returned as undeliverable. The

Scheduling Order included the hearing preparation deadlines and set the date and time for the in-person hearing to be conducted in Helena, Montana.

On December 11, 2014, Whalen submitted his proposed exhibits for hearing and provided a copy to Klucas pursuant to the Scheduling Order. To date, Klucas has not submitted anything or had any further contact with OAH.

Hearing Officer Caroline A. Holien conducted the hearing on January 13, 2015 in the Sacajawea Room at the Walt Sullivan Building in Helena, Montana. The Respondent, Tom Whalen, appeared personally. The hearing was delayed for approximately 15 minutes due to Klucas' absence. The Hearing Officer called Klucas at the telephone number of record at approximately 9:45 a.m., MST. The Hearing Officer left a voice mail message for Klucas advising him of the date and time of hearing and requesting he contact OAH. Klucas had no contact with OAH during the course of hearing or after the hearing had concluded.

Whalen; John McDermott; and David Brown presented sworn testimony. Documents 1; 24 through 28; 30 through 42; 44 through 47; and 53 through 56 from the administrative record compiled at the Wage and Hour Unit were admitted into the record. Respondent's Exhibits A through T were also admitted into the record. Whalen declined to file post-hearing briefs. The case was deemed submitted at the end of the administrative hearing.

II. ISSUE

Whether Tom Whalen, individually, owes wages for work performed, as alleged in the complaint filed by Chris D. Klucas, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Tom Whalen and Chris D. Klucas have been friends for several years. In December 2013, Klucas first approached Whalen about living in Whalen's bunkhouse. Whalen refused Klucas' request but ultimately relented when it became clear Klucas had nowhere else to go. Whalen agreed to allow Klucas to live in his bunkhouse rent free from January 1, 2014 through April 1, 2014, in exchange for Klucas helping with Whalen's cattle.

2. On or about January 1, 2014, Klucas moved into Whalen's bunkhouse. Klucas also moved his horse onto Whalen's property without Whalen's knowledge or consent. Whalen reminded Klucas that boarding and feeding Klucas' horse was not part of their agreement and would be an additional expense.

3. From January 1, 2014 through April 1, 2014, Klucas performed work on an intermittent basis for Whalen. The parties did not have a formal employment agreement or an agreement regarding wages, if any, would be paid to Klucas.

4. Klucas performed work for Whalen on the following days:

01/12/2014	2.5 hours
01/16/2014	8 hours
01/19/2014	8 hours
01/20/2014	1 hour
01/21/2014	1 hour
01/23/2014	8 hours
01/24/2014	8 hours
01/25/2014	1.5 hours
01/26/2014	8 hours
01/30/2014	8 hours
02/02/2014	8 hours
02/03/2014	1 hour
02/04/2014	1 hour
02/05/2014	4 hours
02/06/2014	4 hours
02/07/2014	4 hours
02/08/2014	4 hours
02/09/2014	12 hours
02/12/2014	8 hours
02/15/2014	1 hour
02/16/2014	8 hours
02/17/2014	1 hour
02/18/2014	4.5 hours
02/19/2014	1 hour
02/20/2014	1 hour
02/22/2014	1 hour
02/24/2014	1 hour
02/25/2014	2.5 hours
03/01/2014	1 hour
03/02/2014	1.5 hours
03/06/2014	1.5 hours
03/09/2014	1 hour

TOTAL: 128 hours

5. In mid- to late-March 2014, Whalen reminded Klucas that he would be required to vacate the bunkhouse by April 1, 2014. Klucas presented Whalen with an invoice demanding payment for wages he contended were owed to him for work performed at Whalen's ranch.

IV. DISCUSSION¹

A. The Relationship Between Whalen and Klucas

The first issue that must be addressed is the nature of the relationship between Whalen and Klucas. Montana Code Annotated § 39-2-101 defines employment as:

The contract of employment is a contract by which one who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

“Employ” means to permit or suffer to work. Mont. Code. Ann. § 39-3-201(3). “Employee” includes any person who works for another for hire, except that term does not include a person who is an independent contractor. Mont. Code Ann. § 39-3-201(4). “Employer” includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States. Mont. Code Ann. § 39-3-201(5).

Work not requested but suffered or permitted is work time. Admin. R. Mont. 24.16.1005(1). In all such cases, it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. Admin. R. Mont. 24.16.1005(3).

Whalen conceded Klucas performed work that benefitted him and his ranch from January 1, 2014 through April 1, 2014. Whalen testified his agreement with Klucas provided for Klucas to receive rent free housing in exchange for performing work around the ranch. Given Whalen was aware Klucas was performing work and allowed Klucas to continue performing that work, the evidence shows Klucas was Whalen's employee during the period in question.

¹ 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.

B. Number of Hours Klucas Performed Work for Whalen

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).

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.

Klucas submitted a list of the days he worked for Whalen with the claim he filed with the Wage and Hour Unit. Klucas did not note with any specificity the actual number of hours he worked. In contrast, Whalen produced monthly calendars noting the hours Klucas worked, which basically comported with the dates Klucas listed in his submission. Whalen testified he was frequently at the ranch during the period in question and noted each day the number of hours Klucas worked on a calendar he kept at the ranch. Whalen provided detailed information regarding the type of work Klucas performed each of the listed days. The credibility of Whalen’s detailed and straightforward testimony was bolstered by the contemporaneous records he kept during the time Klucas worked at his ranch. Whalen’s testimony and evidence he presented is deemed more credible than the information Klucas presented in his wage and hour claim. The evidence shows Klucas performed a total of 128 hours of work for Whalen.

C. Wages Owed to Klucas

The parties did not have a formal agreement regarding Klucas’ wages. Montana Code Annotated § 39-3-404(1) states that “. . . An employer shall pay to

each employee a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.”

Klucas contended in his wage and hour claim that Whalen owed him between \$150.00 to \$300.00 for each day worked and amounts ranging from \$50.00 to \$75.00 for partial days he worked. Whalen strenuously disputed ever agreeing that he would pay Klucas that much for work that was performed on an intermittent basis. Whalen testified that he generally manages the ranch on his own and has rarely hired ranch hands. John McDermott appeared on behalf of Whalen. McDermott and his family have ranched in Butte-Silver Bow county for several years. McDermott has a ranch of his own that is of comparable size to Whalen’s ranch, and he also denied that he or any other rancher in the area would have ever agreed to pay someone that kind of money. McDermott testified he and other ranchers in the area typically pay minimum wage when they hire ranch hands.

In the absence of a formal employment agreement, it is determined that Klucas is owed an hourly wage no greater than the applicable minimum wage of \$7.90. The evidence shows Klucas is owed \$1,011.20 in wages for 128 hours of work performed for Whalen from January 1, 2014 through April 1, 2014 (128 hours x \$7.90 = \$1,011.20).

D. Propriety of Withholdings for Room and Board

Klucas noted in his wage and hour claim that the amount owed to him should be reduced by \$1,050.00 for the monthly rental of Whalen’s bunkhouse. Whalen also contended that the monthly rental costs should be withheld from Klucas’ wages, as well as the costs for utilities and for the meals provided to Klucas.

An employer may make reasonable deductions for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment or other deductions provided for by law. Mont. Code Ann. 39-3-204(1). Attorney General Opinion No. 25, Volume 11 dated March 25, 1953 noted:

An employer cannot withhold the wages or any portion thereof due and owing to an employee as wages earned, and apply such wages to an account which the employee has with the employer unless the account existing between the employer and employee is for board, room or other incidentals, which the employee has agreed may be deducted as a condition of the employment.

Klucas clearly conceded in his wage and hour claim that the costs associated with his room and board should be deducted as a condition of his employment with Whalen. Klucas is the first party to offer a total of \$1,050.00 as a deduction.

McDermott testified that, in addition to ranching, he also works in real estate in Butte-Silver Bow County. McDermott testified the average monthly rental in Butte-Silver Bow County runs approximately \$500.00. McDermott testified, based upon his knowledge of the residential real estate market in that area and the condition of Whalen's bunkhouse, he believed \$350.00 per month for the bunkhouse on Whalen's land was conservative but reasonable.

Whalen testified he paid a total of approximately \$450.00 for the bunkhouse's utilities during Klucas' residence; as well as \$450.00 for the meals he provided to Klucas. Whalen testified he paid approximately \$150.00 per month in utilities for the bunkhouse and he estimated the cost of meals provided to Klucas each day at approximately \$10.00 each day. Whalen argued a total of \$2,700.00 should be withheld from Klucas' wages for room and board.

Whalen's argument regarding the propriety of withholding \$1,050.00 for three months rent (\$350.00 x 3 months); \$450.00 for utilities (\$150.00 x 3 months); and \$450.00 for meals provided to Klucas (\$10.00 x 45 days) is well taken. The parties clearly intended Klucas' work on the ranch to cover the costs associated with his housing in Whalen's bunkhouse. It is highly doubtful that Whalen ever anticipated covering the entirety of Klucas' living expenses in exchange of his performing only 128 hours of work in a three-month period. Whalen's figures also appear to be reasonable and consistent with what other ranchers in Butte-Silver Bow County are calling for when renting out residential property.

The evidence shows Klucas was owed a total of \$1,011.20 in wages for work performed for Whalen from January 1, 2014 through April 1, 2014. The evidence further shows Whalen is entitled to make certain withholdings related to Klucas' room and board for a total amount of \$1,950.00.

Therefore, because Klucas was owed only \$1,011.20 in unpaid wages and Whalen is entitled to withhold \$1,950.00 for costs associated with Klucas' room and board, Klucas is not owed anything more for work he performed for Whalen during the period of January 1, 2014 through April 1, 2014.

E. Additional Costs Related to Klucas' Residing on Whalen's Property

Whalen contended he was owed \$350.00 as a security deposit to cover the costs he incurred repairing the damage Klucas had done to the bunkhouse and

\$750.00 for costs associated with boarding of Klucas' horse. Neither cost is directly associated with Klucas' employment by Whalen. As such, the Hearing Officer cannot find that those amounts should be used to reduce whatever wages Whalen may have been found to owe Klucas.

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. Chris D. Klucas has not shown he is owed additional wages for work performed during the period of January 1, 2014 through April 1, 2014.

VI. ORDER

Based on the foregoing, the wage claim of Chris D. Klucas is hereby dismissed.

DATED this 22nd day of January, 2015.

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.