

On November 17, 2014, OAH issued a Notice of Hearing. Following a scheduling conference on December 2, 2014, the matter was set for hearing on March 17, 2015.

On March 12, 2015, the hearing officer conducted a pre-hearing conference with the parties. At the conference, the parties stipulated to the admission of Documents 1 through 66 which were included with the Notice of Hearing. The hearing officer overruled Rocky Mountain's objection to any testimony from Engel because he had not filed a pre-hearing statement identifying his witnesses.

Hearing Officer David A. Scrimm held a hearing in the case on March 17, 2015. The claimant represented himself. Brian Smith, Attorney at Law, represented the respondent. Engel and Dale G. Duff presented sworn testimony. The administrative record compiled at the Wage and Hour Unit (Documents 1-66) were admitted into evidence. At the close of hearing, Engel argued that it should be made clear under what authority he is exempt from overtime. In its closing argument, Rocky Mountain asserted Engel was exempt under CFR 782.2. At that point, the record was closed and the matter submitted for decision.

II. ISSUE

The issue in this case is whether Rocky Mountain owes wages for work performed, as alleged in the claim of Siegfried Engel, and owes penalties or liquidated damages, as provided by law. Specifically, the issue is whether Engel's employment was exempt from the requirement to pay overtime premium because he was employed as a mechanic at a business engaged in interstate commerce.

III. STIPULATED FACTS

1. The claimant was employed as a mechanic by Rocky Mountain Transportation, Inc. from September 13, 2013 to June 4, 2014.
2. The claimant's agreed-upon wages were \$14.00 per hour.
3. The claimant's job description was a mechanic and his duties included conducting safety inspections and performing maintenance on Rocky Mountain vehicles for their operation in interstate commerce.
4. The claimant has been paid his regular rate of pay for all hours worked.
5. The Fair Labor Standards Act (FLSA) applies in this case.

IV. FINDINGS OF FACT

1. Engel was hired as a mechanic at Rocky Mountain on September 13, 2013. Engel was discharged from his employment on June 4, 2014.

2. During his employment, Engel worked 567.72 hours in excess of 40 hours per week. Engel was paid his regular rate of pay for those hours, but was not paid the overtime rate of one and one-half times his hourly rate.

3. Engel's duties as a mechanic included maintenance and repair of three types of buses the employer owned: motor coaches similar to "greyhound buses"; school buses; and snow buses. Engel's specific duties with regard to his work on these vehicles included: checking the brakes; tune-ups; checking the mirrors; conducting safety inspections; checking and replacing light bulbs; checking the steering mechanisms; checking and maintaining the horns, turn signals, wipers, wheels, axles and tires, engine and transmission, and the suspension. Engel testimony.

4. Rocky Mountain is a diversified business enterprise providing passenger services in interstate commerce. All Rocky Mountain vehicles had to be ready for use in interstate commerce even though there might not be an immediate need to do so. Rocky Mountain contracts with airlines, railroads, and the federal government to provide transportation for passengers and government employees on very short notice. Such events have resulted and could again result in any of the vehicles being dispatched and loaded with passengers and transported throughout the western United States and Canada. The motor coaches were used primarily during the tourist season to provide transportation for tour companies leading guests on tours of the National Parks and other destinations across the western United States and Canada.

5. All the buses were maintained according to U.S. Department of Transportation requirements and records of their maintenance were required to be kept.

V. DISCUSSION AND ANALYSIS²

Both Montana law and the Fair Labor Standards Act (FLSA) prohibit employers from employing their employees in excess of 40 hours in a single work week unless the employee is compensated at a rate not less than one and one-half times the regular rate at which the employee is employed. Mont. Code Ann. § 39-3-405 and 29 U.S.C. § 207(a)(1). Both laws exempt certain employees from the

² Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

requirement for overtime premium pay. Mont. Code Ann. § 39-3-406(2)(a) and 29 U.S.C. § 213(a)(1). Montana law allows employees owed wages, including wages due under the FLSA, to file a claim with the Department of Labor and Industry to recover wages due. Mont. Code Ann. § 39-3-207; *Hoehne v. Sherrodd, Inc.* (1983), 205 Mont. 365, 668 P.2d 232.

Engel contends that Rocky Mountain owes him overtime pay for 567.72 hours worked in excess of 40 hours per week. Rocky Mountain contends that Engel is an exempt employee because he was employed as a mechanic.

A. Engel is not entitled to overtime pay because Rocky Mountain is exempt from the overtime provisions of the FLSA.

Under the FLSA, employers, including those engaged in interstate commerce, are required to pay overtime at the rate of one and one-half the employee's regular rate of pay for any hours worked in excess of 40 hours per week. 29 U.S.C. § 207.

However, Congress, in enacting the FLSA, included a number of exemptions to the overtime requirements. See e.g. 29 U.S.C. § 213(a)(1). "FLSA exemptions are to be 'narrowly construed against . . . employers' and are to be withheld except as to persons 'plainly and unmistakably within their terms and spirit.'" *Auer v. Robbins*, 519 U.S. 452, 462, 137 L.Ed. 2d 79, 91, 117 S. Ct. 905, 912 (1997) (quoting *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392, 4 L. Ed. 2d 393, 80 S. Ct. 453 (1960)); see also *Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151 (9th Cir. 1983); *Klem v. County of Santa Clara*, 208 F.3d 1085, 1089 (9th Cir. 2000).

In this case there is no dispute as to the hours Engel worked or that he was paid his regular hourly rate of \$14.00 per hour for all those hours. Engel claims that 567.72 of those hours should have been paid as overtime at a rate of \$21.00 per hour. The employer argues that based on its business operations, and Engel's job as a mechanic, it is not required to pay him overtime premium for hours worked in excess of 40 hours per week.

The FLSA provides the following exemption to its general overtime requirements:

- (b) Maximum hour requirements. The provisions of section 7 [29 USCS § 207] shall not apply with respect to--
 - (1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to

the provisions of section 204 of the Motor Carrier Act, 1935 [49 USCS § 31502]; . . .

29 USCS § 213 (emphasis added).

Section 204 of the Motor Carrier Act provides, in pertinent part:

§ 31502. Requirements for qualifications, hours of service, safety, and equipment standards.

(a) Application. This section applies to transportation--

(1) described in sections 13501 and 13502 of this title [49 USCS §§ 13501 and 13502]; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) Motor carrier and private motor carrier requirements. The Secretary of Transportation may prescribe requirements for--

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

49 USCS § 31502 (emphasis added).

Section 13501 referred to above, states in pertinent part:

General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part [49 USCS §§ 13101 et seq.], over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier--

(1) between a place in--

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

49 USCS § 13501.

Accordingly, for Rocky Mountain to prove that it is exempt from the overtime requirements of the FLSA, it must show that it is engaged in interstate transportation of passengers and that Engel is employed as a mechanic whose duties are related to the safety of the vehicles and its passengers.

As is common at both the state and federal level, executive agencies such as the United States Department of Labor (USDOL) adopt rules necessary to carry out or clarify statutory language. Relevant to this case, the USDOL adopted rules to define the classes and types of work that determine whether an employee falls under Section 213:

(b)(1) The carriers whose transportation activities are subject to the Secretary of Transportation jurisdiction are specified in the Motor Carrier Act itself (see § 782.1). His jurisdiction over private carriers is limited by the statute to private carriers of property by motor vehicle, as defined therein, while his jurisdiction extends to common and contract carriers of both passengers and property. [internal citations omitted]. The U.S. Supreme Court has accepted the Agency determination, that activities of this character are included in the kinds of work which has been defined as the work of drivers, driver's helpers, loaders, and mechanics [internal citations omitted] employed by such carriers, and that no other classes of employees employed by such carriers perform duties directly affecting such "safety of operation."

(2) The exemption is applicable, under decisions of the U.S. Supreme Court, to those employees and those only whose work involves engagement in activities consisting wholly or in part of a class of work which is defined: (i) As that of a driver, driver's helper, loader, or mechanic, and (ii) as directly affecting the safety of operation of motor vehicles on the public highways in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695; *Levinson v. Spector Motor Service*, 330 U.S. 649; *Morris v. McComb*, 332 U.S. 442.

(3) As a general rule, if the bona fide duties of the job performed by the employee are in fact such that he is (or, in the case of a member of a group of drivers, driver's helpers, loaders, or mechanics employed by a common carrier and engaged in safety-affecting occupations, that he is likely to be) called upon

in the ordinary course of his work to perform, either regularly or from time to time, safety-affecting activities of the character described in paragraph (b)(2) of this section, he comes within the exemption in all workweeks when he is employed at such job. This general rule assumes that the activities involved in the continuing duties of the job in all such workweeks will include activities which have been determined to affect directly the safety of operation of motor vehicles on the public highways in transportation in interstate commerce. Where this is the case, the rule applies regardless of the proportion of the employee's time or of his activities which is actually devoted to such safety-affecting work in the particular workweek, and the exemption will be applicable even in a workweek when the employee happens to perform no work directly affecting "safety of operation." . . .

29 CFR 782.2 (Emphasis added).

The USDOL has also adopted rules to more specifically define mechanic's duties that involve keeping motor vehicles in a good and safe condition.

The following activities performed by mechanics on motor vehicles operated in interstate or foreign commerce are illustrative of the specific kinds of activities which the courts, in applying the foregoing principles, have regarded as directly affecting "safety of operation": The inspection, repair, adjustment, and maintenance for safe operation of steering apparatus, lights, brakes, horns, windshield wipers, wheels and axles, bushings, transmissions, differentials, motors, starters and ignition, carburetors, fifth wheels, springs and spring hangers, frames, and gasoline tanks (*McDuffie v. Hayes Freight Lines*, 71 F. Supp. 755; *Walling v. Silver Fleet Motor Express*, 67 F. Supp. 846; *Wolfe v. Union Transfer & Storage Co.*, 48 F. Supp. 855; *Mason & Dixon Lines v. Ligon* (Tenn. Ct. App.) 7 Labor Cases, par. 61,962; *Walling v. Palmer*, 67 F. Supp. 12; *Kentucky Transport Co. v. Drake* (Ky. Ct. App.), 182 SW (2d) 960.) Inspecting and checking air pressure in tires, changing tires, and repairing and rebuilding tires for immediate replacement on the vehicle from which they were removed have also been held to affect safety of operation directly. *Walling v. Silver Fleet Motor Express*, 67 F. Supp. 846; *Walling v. Palmer*, 67 F. Supp. 12.

29 CFR 782.6.

Rocky Mountain proved through Engel and Duff's testimony that its principal business is that of a motor carrier whose passenger buses carry passengers from one state to another or from one state into a foreign country. Rocky Mountain must still prove that Engel was a mechanic whose duties were related to the safety of the vehicles and its passengers.

Engel testified that his duties as a mechanic at Rocky Mountain included: checking the brakes; checking the mirrors; conducting safety inspections; checking and replacing light bulbs; checking the steering mechanisms; checking and maintaining the horns, turn signals, wipers, wheels, axles and tires, tune-ups, engine and transmission, and the suspension.

Engel's job as a mechanic included precisely the type of duties determined to be exempt from the overtime requirements of the FLSA and the regulations adopted by the USDOL. Accordingly, Engel is clearly and unmistakably exempt from the overtime provisions of the FLSA.³

B. Rocky Mountain is also exempt from the overtime provisions of the Montana Minimum Wage and Overtime Compensation Act.

Like the FLSA, Montana law requires employees to be paid overtime at a rate of one and one-half times the regular rate of pay. Mont. Code Ann. § 39-3-405. Montana's overtime laws may require payment of overtime wages even if the Fair Labor Standards Act is found to be inapplicable.

39-3-408. Provisions cumulative. (1) The provisions of this part are in addition to other provisions provided by law for the payment and collection of wages and salaries and are applicable to employees of the state of Montana, except that the penalty provisions of 39-3-206 do not apply to minimum wage and overtime claims that are subject to the Fair Labor Standards Act of 1938, in which case liquidated damages as determined under the Fair Labor Standards Act of 1938 apply.

Berry v. KRTV Communs., Inc., 262 Mont. 415, 425, 865 P.2d 1104, (1993).

³ As such, Engel is not "covered" by the FLSA. An employee not "covered" by the FLSA may be "covered" under Montana's overtime provisions as described in the next section of this decision.

However, Montana has an overtime exemption nearly identical to that of the FLSA which provides that:

- (2) The provisions of 39-3-405 do not apply to:
 - (a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

Mont. Code Ann. § 39-3-406(2)(a).

In applying this provision, the Montana Supreme Court conducts the same analysis as described above under the FLSA. See *V.K. Putnam v. McFarlane*, 239 Mont. 300, 779 P. 2d 905 (1989). Thus, under the analysis in Section A of this decision, Engel would not be “covered” by Montana law either and Rocky Mountain would not be required to pay him overtime wages.

VI. CONCLUSIONS OF LAW

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

2. Rocky Mountain Transportation, Inc. is a business enterprise engaged in interstate commerce as a passenger motor carrier. 49 USCS § 31502.

3. Engel was employed as a mechanic on passenger vehicles placed into interstate commerce and his duties were safety related. Fair Labor Standards Act, 29 U.S.C. § 213(1), and Mont. Code Ann. § 39-3-406(2)(a). As such, he was an exempt employee not entitled to overtime premium pay when he worked more than 40 hours per week.

4. Because Rocky Mountain Transportation, Inc. is a business enterprise engaged in interstate commerce as a passenger motor carrier and because Engel was employed as a mechanic on passenger vehicles placed into interstate commerce and his duties were safety related, Rocky Mountain Transportation, Inc. does not owe him overtime premium pay, liquidated damages, or penalties for the hours he worked over 40 per week during the period September 1, 2013 to June 4, 2014.

VII. ORDER

The wage claim of Siegfried Engel for overtime premium pay is hereby **DISMISSED**.

DATED this 26th day of March, 2015.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
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.