

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 697-2011
OF JARI C. DAVIS,)	
)
Claimant,)	FINDINGS OF FACT;
)
vs.)	CONCLUSIONS OF LAW;
)
	AND ORDER
)
MISSOULA COUNTY PUBLIC SCHOOLS,)	
)
Respondent.)	

* * * * *

I. INTRODUCTION

Jari C. Davis filed a claim for unpaid wages on October 21, 2010, alleging Missoula County Public Schools owed her \$55.76 in unpaid wages. On November 26, 2010, the Wage and Hour Unit determined Missoula County Public Schools owed Davis \$55.76 in unpaid wages, plus a 15% penalty, totaling \$64.12, if the unpaid wages were paid by December 14, 2010. On December 15, 2010, the respondent appealed and argued that Davis is not owed for unpaid wages.

Hearing Officer Caroline A. Holien convened a contested case hearing in this matter on March 16, 2011. The parties agreed to proceed by telephone.

Claimant Jari C. Davis appeared on her own behalf. Maeta Kaplan, a teacher with Missoula County Public Schools, appeared as a witness for the claimant. Attorney Megan Morris represented Missoula County Public Schools. Gail Chandler, Principal, C.S. Porter Middle School, Stephen McHugh, Director of Human Resources and Labor Relations, Carleen Hathaway, C.S. Porter Middle School Classified Staff Member and Secretary, Merged Missoula Classified Employees Organization (MMCEO), and Karen Allen, Executive Regional Director, appeared as witnesses for the respondent.

Documents 1 through 69, provided to the parties with the Notice of Hearing and Telephone Conference, dated January 19, 2011, were admitted into the record.

Exhibits CL-1 through CL-9 and CL-34, submitted by the claimant, were admitted without objection. Exhibits A through F, submitted by the respondent, were admitted without objection.

II. ISSUE

Whether Missoula County Public Schools owes wages for work performed, as alleged in the complaint filed by Jari C. Davis, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Missoula County Public Schools (MCPS) employed Jari C. Davis as a Family Resource Specialist at C.S. Porter Middle School from September 6, 2002 through September 24, 2010. Davis worked Monday through Friday, 8:00 a.m. to 3:30 p.m. Davis' ending hourly wage was \$13.94.

2. Davis held a federally funded position under Title I, the purpose of which is to strengthen the literacy of financially disadvantaged students and their families. Funds for Davis' position came from the district allocation of Title I funds, rather than the school based allocation.

3. Davis' duties included recruiting and coordinating the schools' Family Center, its staff and volunteers. Davis was also responsible for scheduling and facilitating activities promoting family literacy and working with school and community parent groups in support of the Family Center. Davis worked closely with teachers, school staff, and local service agencies, as well as the students and their families in the performance of her duties. She was also required to assist administrators, staff, and families by serving on school-related committees and attending school-related meetings.

4. Davis was a member of the One Book, One Community Committee (One Book Committee) throughout her employment at C.S. Porter Middle School. The One Book Committee program is designed to encourage students, staff, and community members to read the same book and engage in community-based programming related to the book in an effort to promote literacy at the school and in the community. The program and committee are funded by Title I funds.

5. MCPS requires all employees to have prior approval before engaging in work for pay for MCPS during the summer months when they are not under

contract. Classified staff members, such as Davis, are not required to participate in school committees. Administrators and certified staff members, which include teachers and counselors, are required to serve on such committees. Chandler advised those classified employees who inquired that they would not be paid for time spent working on those committees. Chandler did not inform Davis that she would not be paid for time spent working for the One Book Committee.

6. On March 11, 2009, C.S. Porter Middle School Principal Gail Chandler sent a memorandum to Davis informing her that she was required to “flex” any time worked beyond 35 hours in a week. Chandler directed Davis to submit an accounting of time worked, including hours she worked beyond her normal workday.

7. Davis complied with Chandler’s directive and submitted an accounting for time worked via email at or near the time she submitted her regular time sheet. Davis clearly delineated the time she spent working on activities or attending meetings for the One Book Committee. Chandler never advised Davis she was not to participate in the One Book Committee during or outside of the workday.

8. The 2009-2010 academic year began on August 27, 2009 and ended on June 11, 2010, which was the term of Davis’ contract for the 2009-2010 academic year. Davis was not authorized to receive pay for work performed after June 11, 2010.

9. MCSP approved Davis to participate in a District Indian Education for All program from June 8, 2010 through June 30, 2010. MCPS paid Davis \$445.90 for work performed during this period.

10. On June 16, 2010, Davis attended a half-day meeting of the One Book Committee. The purpose of the meeting was to begin strategic planning for programming during the 2010-2011 academic year. In May 2010, Maeta Kaplan, a C.S. Porter Middle School teacher and member of the committee, sought and obtained Chandler’s approval for committee members to be paid for this time. Kaplan did not outline who was a member of the committee; nor did Chandler ask for a list of affected members. Kaplan sent an email to all committee members, including Davis, in May 2010 advising them of the June 16, 2010 meeting and that they would be paid for the time spent at this meeting.

Davis’ role on the committee was to develop a partnership with a local retirement home that would allow students to interact with older members of the

community in literacy programming. Davis reported the status of her efforts during the June 16, 2010 meeting.

11. On or about June 16, 2010, Davis submitted an extracurricular time sheet to report the four hours she spent working with the One Book Committee, as did other school staff members who were members of the committee. Davis mistakenly indicated she spent those four hours on June 15, 2010. Davis included the time on the right day of the week but provided the incorrect date. Davis had never submitted or had been required to submit an extracurricular time sheet in the past and typically used a different form when submitting her time reports. Other staff members, who were certified, submitted the extracurricular time sheet to report the hours they spent at the June 16, 2010 meeting.

12. On June 17, 2010, Chandler returned the time sheet with a note stating, "You were not approved for extracurricular pay."

13. On August 16, 2010, Chandler spoke with Davis and informed her that classified employees must have prior approval before receiving extracurricular pay.

14. On September 1, 2010, Davis sent a memorandum to Chandler indicating she mistakenly used the wrong time sheet and submitted a time sheet entitled, "Detention, Cafeteria Duty, Intramurals, Curriculum, Etc." listing the four hours spent at the June 16, 2010 meeting. Davis did not intentionally submit the incorrect time sheet.

15. On September 3, 2010, Chandler sent Davis a memorandum advising her that she would not be paid for the four hours spent at the June 16, 2010 meeting, because she was not authorized to receive such pay. Chandler noted, "Classified employees are voluntary members of building committees and are not compensated for time spent on these committees outside of their regularly scheduled work day." Chandler again reminded Davis she was required to "flex" time worked over 70 hours each two-week pay period.

16. On September 10, 2010, Davis sent a memorandum to Director of Human Resources and Labor Relations Steve McHugh requesting payment for her time at the June 16, 2010 meeting.

17. On September 14, 2010, McHugh sent Davis a memorandum confirming Chandler's decision to deny Davis payment for the time spent at the June 16, 2010 meeting.

18. On September 26, 2010, Davis resigned from her position as the Family Resource Specialist.

19. On October 21, 2010, Davis filed a claim for unpaid wages, alleging that \$55.76, based upon four hours of work at \$13.94 per hour, had not been paid.

20. MCSP owes Davis for unpaid wages totaling \$55.76 (\$13.94 hourly wage x four hours of time worked).

21. Pursuant to Admin. R. Mont. 24.16.7556, Davis is owed a 55% penalty on the unpaid wages in the amount of \$30.67 (\$55.76 x 55%).

IV. DISCUSSION¹

A. Wages Owed

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.

¹Statements 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.

Davis argued the employer owes her unpaid wages for four hours she spent attending the June 2010 One Book Committee meeting. Kaplan testified Davis attended the June 16, 2010 meeting and updated the committee on her efforts to develop cooperative programming with a local retirement home. Davis later submitted two different time sheets indicating she had spent four hours at this meeting. (Documents 54, 55, and 56). The preponderance of the evidence shows Davis spent four hours attending the June 2010 One Book Committee meeting.

The employer's position is that Davis is not entitled to compensation for these four hours. The employer argued Chandler did not give prior approval to Davis to attend this meeting. The employer submitted evidence showing MCSP's policy prohibits classified employees from receiving payment for services rendered after the conclusion of the academic year without first obtaining the permission of his or her supervisor. The employer also submitted evidence showing Davis had received permission to participate in various summer programs for which she was compensated in the past in support of its argument Davis knew or should have known of this policy. (Exhibits A, C, and D).

The employer's argument is not persuasive. Davis submitted spreadsheets that she submitted to Chandler throughout the 2009-2010 academic year showing the time she spent working on the One Book Committee for which she was compensated. (Documents 13 through 36). Chandler initially denied having seen the documents prior to hearing and then changed her testimony when questioned by Davis. Chandler then admitted she had received the spreadsheets but had not carefully reviewed the documents despite directing Davis to submit the spreadsheets with her time sheets. Davis' testimony was clear, direct, and more credible than Chandler's testimony, which was evasive and, at times, contradictory.

The evidence shows Chandler knew or should have known that Davis was an active member of the One Book Committee. It seems unlikely that a school principal would not know which staff members were members of the One Book Committee or have access to that information. It is undisputed Chandler informed Kaplan in May 2010 that staff members attending the June 2010 One Book Committee meeting would be compensated for four hours of work. Kaplan testified that had been the routine practice during Chandler's five years as principal. It appears Chandler made little to no effort to clarify which employees would be attending this meeting or to specify for Kaplan that her permission extended to only certified staff members and not classified staff members, specifically Davis.

The preponderance of the evidence shows Davis had customarily attended One Book Committee meetings and had been compensated for the time she spent at these meetings. While she may not have obtained Chandler's express permission to attend the June 2010 meeting, Davis reasonably relied upon Kaplan's notice that Chandler had approved Kaplan's request for staff to be paid for time spent at the June 2010 meeting. Davis' failure to obtain Chandler's permission was reasonable based upon her prior participation on the committee and Chandler's repeated failure to inform Davis that she was not entitled to compensation for time spent at these meetings.

The employer also argued Chandler did not require, request, or direct Davis to attend the June 2010 One Book Committee meeting and that her participation on the committee was unrelated to her role as the Family Resource Specialist. The employer's argument is disingenuous based upon Davis' past attendance and Chandler's approval of her pay for time spent at those meetings. Moreover, Davis' position was funded by federal Title I funding and she was responsible for "scheduling and facilitating activities promoting family literacy." (Exhibit CL-1). She was also responsible for serving on "school-related committees and attending school-related meetings as appropriate," and "developing relationships with community resources and business in support of the school community." (Exhibit CL-1). It is difficult to understand how her participation on the One Book Committee, which is also funded under Title I, was unrelated to her role as the Family Resource Specialist. Further, while Chandler may not have required, requested, or directed Davis to attend these meetings, she surely did nothing to dissuade Davis from attending these meetings throughout Chandler's five-year tenure as principal; nor did she do anything to advise Davis that she would not be compensated for her participation.

Finally, the employer argued Davis did not perform any productive work while attending the June 2010 One Book Committee meeting. The employer submitted meeting minutes indicating an update was presented regarding efforts to develop cooperative programming with a local retirement community, which Kaplan indicated Davis presented at the meeting. (Exhibit B). Kaplan also testified Davis had several responsibilities as a committee member, including logistics, writing newsletter articles about the committee, and recruiting guest speakers. Kaplan testified Davis' duties were taken over by another employee and a parent volunteer after her separation. Kaplan has no reason to lie and her testimony was credible. The preponderance of the evidence shows Davis not only attended the meeting but performed actual work in furtherance of the committee's goals and objectives.

Davis has shown she performed four hours of work while attending the June 2010 One Book Committee meeting for which she was not compensated. MCSP owes Davis \$55.76 for unpaid wages (\$13.94 hourly wage x four hours of time worked).

B. *Penalty*

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. The law requires MCSP to pay at least a 55% penalty on the unpaid wages it owes Davis. Admin R. Mont. 24.16.7566. The hearing officer finds Davis is owed a 55% penalty on the wages owed in the amount of \$30.67 (\$55.76 x 55%).

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. Missoula County Public Schools owes Jari C. Davis for unpaid regular wages in the amount of \$55.76 and a penalty in the amount of \$30.67.

VI. **ORDER**

Missoula County Public Schools is hereby ORDERED to tender a cashier's check or money order in the amount of \$86.43, representing \$55.76 in wages and \$30.67 in penalty, made payable to Jari C. Davis, 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. Missoula County Public Schools may deduct applicable withholding from the wage portion but not the penalty portion of the amounts due.

DATED this 31st day of March, 2011.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

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 service of the decision. See also Mont. Code Ann. § 2-4-702.

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.