

**STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU**

<b>IN THE MATTER OF THE WAGE CLAIM</b>	)	<b>Case No. 1255-2003</b>
<b>OF LOUIS BEITL,</b>	)	
	)	
<b>Claimant,</b>	)	
	)	<b>FINDINGS OF FACT;</b>
<b>vs.</b>	)	<b>CONCLUSIONS OF LAW;</b>
	)	<b>AND ORDER</b>
<b>TIMBERLAND CONSTRUCTION, LLC,</b>	)	
a Montana limited liability company,	)	
<b>Respondent.</b>	)	

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**I. INTRODUCTION**

In this matter, Louis Beitzl (Beitzl) appeals from a Wage and Hour Unit determination and redetermination that dismissed his claim for additional wages from Timberland Construction (Timberland). The Wage and Hour Unit found that Beitzl had failed to show that the additional time he spent traveling on a boat in Flathead Lake from construction headquarters to a construction site on a nearby island was compensable.

Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on August 15, 2003. Beitzl appeared and represented himself. Thomas Tornow, Attorney at Law, appeared on behalf of Timberland. Beitzl, Brian Roache, and Phil Hebert testified under oath. Documents 1 through 107, as well as Exhibits 108-121 were admitted into evidence.

Due to a scheduling conflict, Timberland's sole witness failed to appear at the August 15, 2003 hearing. Over Beitzl's objection, the hearing was continued to a later date. The matter was then continued two more times at Timberland's request, once for the purposes of allowing the parties to further explore settlement, and a second time when Timberland requested representation by new counsel. The hearing officer granted the request and permitted J. Tiffin Hall, Attorney at Law, to represent Timberland. Hall then filed a notice indicating that Timberland would call no witnesses in the matter and stipulating that there was no dispute of fact. Based on this, the hearing examiner permitted the parties to appear telephonically on October 31, 2003 and make closing statements. The matter was then taken under advisement. Based on the evidence and argument adduced at the hearing and during closing argument, it is clear that Beitzl is entitled to compensation for the time he spent riding on the boat from the construction headquarters to the construction site.

## **II. ISSUE**

Is Beitel entitled to overtime compensation as alleged in his complaint and penalty as provided by law?

## **III. FINDINGS OF FACT**

1. Timberland hired Beitel to work as a carpenter at the Abbey Project, a large residential construction project located on Flathead Lake in Montana. Timberland agreed to pay Beitel \$18.00 per hour. Beitel began work on the project on October 28, 2002. He was discharged on January 13, 2003.
2. The Abbey Project encompasses both the project headquarters, located on the shore of Flathead Lake, and the island construction site which is located on Shelter Island, approximately two miles off shore in the lake. The project headquarters consists of the project office, a boat house, a shop with storage, and boat ramps from which the projects' two boats shuttled employees back and forth to the island project site. At the project headquarters, a sign containing rules of conduct was conspicuously posted near the project office. Among other things, the rules prohibited employees while anywhere on the project from playing radios or smoking. In addition, the rules required employees while anywhere on the project to wear hard hats and protective footwear and clothing. These regulations also governed conduct on the boat rides to and from the construction site.
3. Beitel's supervisors required him and all other construction employees to arrive at the project headquarters by 6:45 a.m., each day. Upon arrival, the employees received instruction from supervisors about the day's tasks on the island and the tools the employees would need to complete the tasks. They would then load the two transportation boats with both their own tools and tools belonging to Timberland Construction that were needed for the day's work.
4. After loading the boats, the employees got in the boats and were ferried across the water to the construction site. On a good weather day, the trip to the island took approximately 15 minutes. During rough weather, the trip took longer. On occasion, a boat broke down, extending the length of the trip considerably.
5. At approximately 5:15 p.m. each day, the employees loaded their tools and Timberland's tools back into the boats and were taken back across the lake to the project headquarters. The trip back also took approximately 15 minutes.
6. Timberland paid Beitel on a weekly basis. Beitel's check stubs (Documents 104 through 107) reflect that he worked the following hours on a weekly basis while employed by Timberland on the Abbey Project:

October 28, 2002 to November 3, 2002: 40 hours

November 4, 2002 to November 11, 2002: 40 hours

November 11, 2002 to November 17, 2002: 40 hours

November 18, 2002 to November 24, 2002: 30 hours

November 25, 2002 to December 1, 2002: 30 hours

December 2, 2002 to December 8, 2002: 40 hours

December 9, 2002 to December 15, 2002: 40 hours

December 16, 2002 to December 22, 2002: 40 hours

December 23, 2002 to December 29, 2002: 38 hours

December 30, 2002 to January 5, 2003: 40 hours

January 6, 2003 to January 13, 2003: 41 hours

These hours do not reflect the amount of time that Beitzl or any of the Timberland employees spent on the boat ride. Timberland knowingly did not compensate Beitzl or any of its employees for the boat rides to and from the construction site as Timberland believed that the boat ride was not time spent on the job.

7. On different occasions, project employee Brian Roache, a project foreman, Phil Hebert, and Beitzl asked if they might use their own boats to gain access to the island construction site. The Timberland Construction Job Supervisor, Chance Chacon, denied their requests.

#### **IV. DISCUSSION**

##### *A. The Boat Ride Is Time On The Job.*

The parties' dispute boils down to whether or not Beitzl should have been compensated for the boat rides. Beitzl contends that his time on the boat was time spent "on the job" and that he is entitled to compensation for that time. Timberland counters that this time was merely "home to work" time as contemplated under the applicable regulations and therefore is not compensable.

Admin. R. Mont. 24.16.1010 (5) provides:

Travel that is all in a day's work. Time spent by the employee in travel as part of his principal activity, such as travel from job site to job site during the work day must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5:00 p.m., and is sent to another job which he finishes at 8:00 p.m., and is required to return to his employer's premises arriving at 9:00 p.m., all of the time is working time. However, if the

employee goes home instead of returning to his employer's premises, the travel after 8:00 p.m. is home-to-work travel and is not hours worked.

Beitl's evidence shows that the boat ride out to the island and the boat ride back was compensable. Everyday, the crew received instruction on the day's task before loading the boats with both company tools and their own tools for the trip over. Almost daily, the crews unloaded tools after returning from the island to the project headquarters. At all times, the crews were subject to Timberland control while on the island construction site and at the project headquarters. Under the facts adduced in this case, the travel on the boat was travel that was "all in a day's work" is compensable.

*B. Beitl Is Due Additional Regular And Overtime Wages.*

Having determined that the time on the boat is compensable, the question remains as to whether the extra time claimed is overtime due to Beitl or merely regular wages. Montana law requires employers to pay wages when due, and in no event later than 15 days following termination of employment. Mont. Code Ann. §§ 39-3-204 and 39-3-205. Montana law also requires employers to pay an overtime premium of 1½ times the regular hourly rate when employees work more than 40 hours in a work week. Mont. Code Ann. §39-3-405, MCA.

Seven of Beitl's 11 weeks of work resulted in 40 hour work weeks. His last week involved a 41 hour work week. The remaining three weeks (November 18, 2002 to November 24, 2002, November 25, 2002 to December 1, 2002, and December 23, 2002 to December 29, 2002) resulted in work weeks of 30, 30, and 38 hours respectively. Factoring in the additional time for the boat ride results in the following amount of regular and overtime wages due to Beitl:

Work Week	Hours on Island	Boat Ride (30 minutes x 5 days)	Hours Paid	Overtime Hours Due	Regular Hours Due
October 28, 2002 to November 3, 2002:	40	2.5	40	2.5	
November 4, 2002 to November 10, 2002:	40	2.5	40	2.5	
November 11, 2002 to November 17, 2002:	40	2.5	40	2.5	

November 18, 2002 to November 24, 2002:	30	2.5	30	0	2.5
November 25, 2002 to December 1, 2002:	30	2.5	30	0	2.5
December 2, 2002 to December 8, 2002:	40	2.5	40	2.5	
December 9, 2002 to December 15, 2002:	40	2.5	40	2.5	
December 16, 2002 to December 22, 2002:	40	2.5	40	2.5	
December 23, 2002 to December 29, 2002:	38	2.5	40	.5	2
December 30, 2002 to January 5, 2003:	40	2.5	40	2.5	
January 6, 2003 to January 13, 2003:	41	2.5	41	2.5	
TOTALS				20.5 hours	7 hours

Beitl is due 20.5 hours of compensation at his overtime rate (\$27.00 per hour ) for a total of \$553.50. He is also due an additional 7 hours of regular wages (\$18.00 per hour ) for a total of \$126.00. Beitl is due total additional wages of \$679.50.

*C. Penalty*

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. §39-3-206. For cases involving overtime claims, a penalty of 110% must be imposed in the absence of certain circumstances, none of which are applicable to this case. Admin. R. Mont. 24.16.7561. For claims involving compensation other than minimum wage and overtime compensation, a penalty of 55% must be imposed in the absence of certain circumstances, none of which apply to this case. Admin. R. Mont. 24.16.7566. Where a claim involves a failure to pay both overtime and regular wages, the penalties to be assessed must be calculated by applying the appropriate penalty to each component of the claim. Admin. R. Mont. 24.16.7569.

Applying these three regulations, Timberland owes penalty in the amount of \$608.85 (110% of \$553.50) for the unpaid overtime wages due to Beitzl. Timberland also owes penalty in the amount of \$69.30 (55% of \$126.00) for the unpaid regular wages due to Beitzl. Timberland thus owes total penalty of \$678.15.

## **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. The time Beitzl spent on the boat traveling to and from the island construction site is travel that is all in a day's work as described in Admin. R. Mont. 24.16.1010(5).
3. Timberland owes Beitzl additional wages in the amount of \$553.50 in unpaid overtime wages and \$126.00 in unpaid regular wages. In addition, Timberland owes Beitzl penalty of \$608.85 on the unpaid overtime wages and \$69.30 on the unpaid regular wages.

## **VI. ORDER**

Timberland Construction, LLC, is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,357.65, representing \$679.50 in wages and \$678.15 in penalty, made payable to Louis Beitzl, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision.

DATED this 21st day of November, 2003.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

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.