

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 370-2008
OF TINA M. WILSON,	)	
	)	
Claimant,	)	
	)	
vs.	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
	)	<b>AND ORDER</b>
	)	
ANN GREYN MACDONALD,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

In this matter, Ann Greyn MacDonald (MacDonald) appealed from an order finding that she owes Tina M. Wilson (Wilson) wages totaling \$359.17 and a statutory penalty of 110% of the wages due, amounting to \$395.09.

The Hearing Officer held a contested case hearing in this matter by telephone on February 6, 2008. Tina Wilson appeared and represented herself. William Wesley Wilson, Tina's husband, appeared as a witness in her behalf. Ann Greyn MacDonald represented the respondent.

During the opening of the hearing, MacDonald stated that Wilson's complaint was filed against her and not against the corporation: Greyn Management, Inc. She further stated that Wilson did not work for the corporation but for her personally. Further, the Hearing Officer takes administrative notice that Greyn Management, Inc. was involuntarily dissolved on December 4, 2007, and its status with the Secretary of State became inactive on December 4, 2007. Under these conditions, the Hearing Officer finds a basis for changing the caption in this matter to show that MacDonald may be personally liable for any unpaid wages, penalties, or liquidated damages.

During the scheduling conference which took place on January 7, 2008, Exhibits 1 through 39 were admitted into the record without objection.

Based upon testimony presented during the hearing, and the exhibits entered into the record, the Hearing Officer makes the following findings of fact, conclusions of law, and final order in this matter.

**II. ISSUE**

The issue in this matter is to determine if Ann Greyn MacDonald owes wages for work performed, as alleged in the complaint filed by Tina M. Wilson, and owes penalties or liquidated damages, as provided by law.

### III. FINDINGS OF FACT

1. Wilson responded to a classified advertisement for a live-in care giver which ran in the Great Falls Tribune from July 25, 2007 through July 31, 2007.

2. When MacDonald hired Wilson, Wilson's husband, William, was present. MacDonald offered to pay her \$78.00 per day plus room and board. She asked Wilson to start right away. They did not discuss a regular pay schedule. Wilson accepted the offer and asked for an advance on her pay to buy fuel for her vehicle, to get to work. MacDonald gave her \$40.00 at that time. Wilson started work on August 16, 2007.

3. During the following seven days, Wilson found that she was at MacDonald's beck and call, 24 hours a day. During that time, MacDonald had two dinner parties and Wilson found she was expected to cook for them.

4. During those seven days, MacDonald gave Wilson a total of \$58.92 for incidentals, including \$30.00 for gasoline. Including the original advance of \$40.00, MacDonald had paid Wilson a total of \$108.92 by August 22, 2007.

5. By August 22, 2007, Wilson had been working for seven days straight and had not been paid. She calculated that MacDonald owed her \$78.00 per day for seven days, or \$546.00, minus the advances of \$108.92, leaving \$437.08.

6. On August 22, 2007, Wilson told MacDonald that she had an appointment to see her doctor on August 23 and would not be available to help her. MacDonald got upset. Wilson asked for her pay. MacDonald gave her a check for \$40.00 and told her to cancel her doctor's appointment. Wilson refused to do so and MacDonald told Wilson she would replace her. Wilson told MacDonald that was fine and walked out. She went to the local grocery store and cashed the check.

7. The claimant is owed \$397.08 in unpaid wages. This is based upon \$437.08 minus \$40.00 paid on August 22, 2007.

8. The claimant is also owed a penalty in the amount of \$436.78, which is based upon 110% times \$397.08.

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

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

Montana law requires that employers pay wages when due, in accordance with the employment agreement, pursuant to Mont. Code Ann. § 39-3-204. Except to set a minimum wage, the law does not set the amount of wages to be paid. That determination is left to the agreement between the parties. “Wages” are any money due an employee by the employer. Mont. Code Ann. § 39-3-201(6).

An employee seeking unpaid wages has the burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Dept. 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.” *Garsjo* 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; *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 28 P.3d 494.

MacDonald agreed to pay Wilson \$78.00 per day. Wilson worked for seven days straight, between August 16 and 22, 2007. During that period of time, MacDonald advanced Wilson over \$108.00 for gasoline and incidentals. The claimant maintains that MacDonald gave her a check for \$40.00 before she left on August 22. MacDonald maintains that, to the best of her recollection, she gave Wilson a check for \$425.17 before she left that day. However, MacDonald has not produced any evidence to support her contention.

Under these conditions, the claimant has proved her claim. Having done so, it was the respondent’s burden to show that the wages had been paid. MacDonald has not produced a copy of the final check to establish her contention. Having failed to do so, she has failed to meet her burden.

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Because the respondent has failed to pay the wages when due, and has failed to respond appropriately to the claim, a penalty of 110% must be imposed. The penalty to be assessed is \$436.78, based upon unpaid wages of \$397.08 times 110%.

## 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. Ann Greyn MacDonald owes Tina M. Wilson wages of \$397.08 and a penalty of \$436.78 for a total of \$833.86.

## VI. ORDER

Ann Greyn MacDonald is hereby ORDERED to tender a cashier’s check or money order in the amount of \$833.86, representing \$397.08 in unpaid wages and \$436.78 in penalty, made payable to Tina M. Wilson, 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. Ann Greyn

MacDonald may deduct applicable withholding from the wage portion but not from the penalty portion of the amount due.

DATED this 28th day of February, 2008.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ DAVID H. FRAZIER  
DAVID H. FRAZIER  
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.