

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 1864-2001
OF GARY L. RATHBONE,	)	
Claimant,	)	
	)	FINDINGS OF FACT;
vs.	)	CONCLUSIONS OF LAW;
	)	AND ORDER
MIKE CHURCH,	)	
d/b/a CHURCH JEWELERS, INC.,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

Michael T. Furlong conducted a telephone hearing in this matter on November 27, 2001. Gary L. Rathbone, claimant, appeared and testified (pro se). Barb Schiebemayer appeared as a witness for the claimant. Respondent was represented by Mike Church, corporation president, who also provided testimony.

File Exhibits 1 through 84, provided to the parties with the notice of hearing, were admitted into evidence by stipulation of the parties.

**II. ISSUE**

Whether Mike Church, d/b/a Church Jewelers, Inc., owes wages to Gary L. Rathbone, pursuant to §39-3-205, MCA.

**III. FINDINGS OF FACT**

1. Mike Church operated Church Jewelers, a jewelry store which operated in Missoula, Montana, until the business closed in March, 2001.
  
2. On April 20, 1998, Church hired Gary L. Rathbone to work in the Jewelry store. Rathbone continued to work through March 2001, when his employment was terminated upon the closing of the business.

3. Rathbone was initially hired under an on-the-job training program sponsored by the Montana Department of Public Health and Human Services (DPHHS), which included a six month probationary training period.

4. There were no written contracts between Rathbone and Church Jewelers regarding the terms of employment. Initially, however, Church had a written agreement with DPHHS that the claimant would be considered for an apprenticeship program through the Department of Labor and Industry which would pay apprenticeship scale.

5. Church submitted progress reports to DPHHS during the initial six month probationary period indicating that Rathbone was doing well, showed initiative, and possessed the intelligence and qualifications necessary to succeed with the training, and was satisfactorily completing the requirements to be placed in the apprenticeship program.

6. Following the initial six month training period, Church did not apply through the Department of Labor and Industry to have Rathbone enrolled into the apprenticeship program. He continued thereafter to pay Rathbone wages which were not consistent with the regulated wage schedule for the apprenticeship program. Rathbone knew that he was not receiving wages consistent with the schedule.

7. The chart below details wages Rathbone received and the apprenticeship wage scale for the period of his employment:

**ACTUAL AMOUNT PAID**

<b>DATES</b>	<b>DURATION</b>	<b>HOURLY WAGE</b>	<b>AMOUNT PAID</b>
04/20/98-10/20/98	26 weeks	\$ 8.50	\$ 8,840.00
10/20/98-12/28/98	10 weeks	8.75	3,500.00
12/28/98-03/08/99	10 weeks	9.25	3,700.00
03/08/99-11/14/00	88 weeks	9.50	33,440.00
11/14/00-03/08/01	17 weeks	10.50	7,140.00
<b>TOTAL</b>			<b>\$56,620.00</b>

**PAY IF ON APPRENTICESHIP WAGES**

<b>DATES</b>	<b>DURATION</b>	<b>HOURLY WAGE</b>	<b>AMOUNT</b>
04/20/98-10-20-98	26 weeks	\$ 8.50	\$ 8,840.00
10/20/98-04/20/99	26 weeks	10.50	10,920.00

04/20/99-10/20/99	26 weeks	10.85	11,284.00
10/20/99-04/20/00	26 weeks	11.20	11,648.00
04/20/00-10/20/00	26 weeks	11.55	12,012.00
10/20/00-03/08/01	20 weeks	11.90	9,520.00
TOTAL			\$64,224.00

8. At the hourly rate based on the Montana Department of Labor and Industry apprenticeship program guidelines, Church would owe Rathbone \$7,604.00. 9. Church never agreed to pay Rathbone at the apprenticeship scale.

#### **IV. DISCUSSION/RATIONALE**

Montana law requires that employers pay employee wages when due in accordance with the employment agreement, §39-3-204, MCA. Except to set a minimum wage, the law does not set the amount of wages to be paid. The amount is left to the agreement between the parties.

Rathbone alleges that he should have been paid wages according to the hourly wage paid by the apprenticeship program of the State of Montana. Therefore, he should have received an additional wage differential of \$7,604.00 of pay during the period from October 20, 1998, through March 8, 2001.

Church Jewelers maintains that while the claimant was originally hired through a state program and the apprenticeship program was discussed, the transition to the program never occurred. It argues, therefore, that under the terms and conditions of hire, Rathbone is not entitled to wages over and above those he received during his course of employment of nearly 2½ years duration.

The evidence does not support a finding that Rathbone is entitled to additional wages for services performed during the period from October 20, 1998, through March 8, 2001. Church never agreed to pay Rathbone at the apprenticeship scale. While Rathbone initially was in the process of entering an apprenticeship program, the record shows that he was never enrolled in such a program through the Department of Labor and Industry. Rathbone was aware that he was never enrolled in the apprenticeship program and knew that no agreement had been entered into with Church concerning raising his pay to the apprenticeship rate. He worked for a period of nearly 2½ year's duration with that understanding, and with no assurances from Church that he would receive the apprenticeship rate. Under the circumstances, the claimant was paid appropriately under the terms and conditions of employment and is not due any additional wages.

#### **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 § 39-3-201 et seq. MCA. *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. The claimant is not entitled to wages under the Montana Wage Payment Act.

**VI. ORDER**

The wage claim of Gary L. Rathbone is hereby DISMISSED.

DATED this 27th day of December, 2001.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ Michael T. Furlong

Michael T. Furlong  
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with § 39-3-216(4), MCA, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also § 2-4-702, MCA.