

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

<b>IN THE MATTER OF THE WAGE CLAIM</b>	) <b>Case No. 491-2001</b>
<b>OF LENNIE J. THOMPSON,</b>	)
<b>Claimant,</b>	)
	)
<b>vs.</b>	) <b>FINDINGS OF FACT;</b>
	) <b>CONCLUSIONS OF LAW;</b>
	) <b>AND RECOMMENDED ORDER</b>
<b>ALPINE LOG HOMES, INC.,</b>	)
<b>Respondent.</b>	)

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**I. INTRODUCTION**

Michael T. Furlong, Hearing Officer, conducted a telephone hearing in this matter on April 11, 2001. Claimant Lennie J. Thompson was present. Respondent Alpine Log Homes was represented by Debbie Shaffer, Controller. The claimant offered no exhibits. Respondent exhibits A through G were admitted into evidence without objection.

**II. ISSUE**

The issue in this case is whether Alpine Log Homes, Inc., owes wages for vacation time earned, as alleged in the complaint filed by Lennie J. Thompson.

**III. FINDINGS OF FACT**

1. Alpine Log Homes, Inc., hired Lennie J. Thompson as a construction worker in a full time capacity in February 1997. He was paid at an hourly rate of \$11.00.
2. The terms and conditions of Thompson's employment were set forth in an employee policy handbook provided by Alpine. Thompson signed a statement of acknowledgment that he had received and read the handbook. (Exhibit C-3).
3. Alpine employees receive paid vacation upon completing 52 weeks of service. An employee has to work 24 or more hours in a week to be credited with a complete week of service.
4. Employees are entitled to one week paid vacation after completing their first year and second year of service. Employees are entitled to two weeks of paid vacation upon completing three years of service
5. Employee paid vacation eligibility is determined as follows:

## Compensation and Benefits Generally

### Paid Vacations

Employee benefit eligibility is determined and extended upon the basis of length of service with the company; therefore, service requirements are included when explaining benefits of eligibility. Throughout these bulletins, service requirements are expressed in terms of "weeks," "quarters," and/or "years." For record keeping and administrative purposes they will be earned and accrued as follows:

Thirteen (13) credit weeks\* of service = One Quarter

Fifty-Two (52) credit weeks\* of service = One Year

\*Week in which an employee works 24 or more hours will qualify as a "credit week."

After 52 weeks, Alpine provides paid vacations and additional contributions toward health care programs.

(Exhibit E-9)

6. Thompson's anniversary date was established as April 3 of each year. During the course of his employment he accrued and was granted paid vacation leave in accordance with the guidelines set forth in the policy handbook.

7. Alpine paid Thompson for one week vacation leave accrued during the 52 credit weeks of service beginning April 3, 1997 to April 2, 1998. (Exhibit D-1).

8. Alpine paid Thompson for one week vacation leave accrued during the 52 credit weeks of service beginning April 3, 1998 to April 2, 1999. (Exhibit D-2). 9. On November 22, 1999, Thompson was injured in a job-related accident at Alpine which caused him to be under the care of a medical doctor. Thompson filed a claim and was awarded workers' compensation benefits as a result of the injury. He was unable after December 18, 1999.

10. Thompson worked and was credited with 34 weeks of service, in which he worked 24 hours or more, from April 3 through December 18, 1999 .

11. Thompson returned to work on February 8, 2000. However, after working his shift that day, he stopped reporting to work upon the advice of his treating physician. He did not return to work thereafter. He officially terminated his employment effective June 20, 2000, when advised by his doctor that he should no longer work as a construction worker.

12. On September 22, 2000, Thompson filed a claim with the department seeking vacation pay in the amount of \$440.00. On the claim where it asked for his calculations for the amount claimed, he wrote in: "I would have been eligible for two weeks vacation pay as of May 1, 2000 had I worked 'till then since I only worked ½ the year I should be paid 1 week."

#### **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, Montana law does not dictate the wages to be paid. That determination is left to the agreement between parties. "Wages" are any money due an employee by an employer, including vacation pay. *Langager v. Crazy Creek Products*, 287 Mont. 445, 954 P.2d 1169 (1998).

It is Thompson's position that he is entitled to vacation pay in the amount of \$597.00 for the portion of vacation benefits which he would have earned had he not sustained the work-related injury pursuant to §39-3-103 MCA, which states:

An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

In a 1949 opinion, which remains the valid authority for the resolution of vacation pay disputes, the Attorney General concluded that "vacation pay which has been earned and is due and owing must be considered in the same category as wages and is collectable in the same manner and under the same statutes as are wages." 23 Op. Att'y Gen. 151, 153 (1949). In *Langager*, the Supreme Court held that "[o]nce an employee has accrued paid vacation pursuant to the terms of his or her employment contract, an employer may not then impose conditions subsequent which would, if unmet, effectively divest an employee of that accrued vacation." In *Langager*, the Supreme Court also held that an employer has a right to set vacation policies and that an employer can establish the requisite conditions for eligibility.

Thompson maintains that a reading of *Langager* which would allow the employer to create almost any policy regarding compensation for vacation is an error and not consistent with §39-3-103, MCA.

The Supreme Court's ruling in *Langager* is not inconsistent with §39-3-103, MCA. However, *Langager* makes it clear that no benefit, full or partial, is due until an employee fulfills the terms for eligibility.

Alpine had its vacation policy in place at the time of Thompson's hire. Thompson was aware of the terms and conditions of the vacation policy and, in fact, used paid vacation under the policy guidelines. The policy is clear and unambiguous in defining employee benefit eligibility for paid vacation benefits. It specifically defines "credit week" and the number of credit weeks an employee must work in order to earn vacation pay. There is no provision in the policy that allows for pro-ration of vacation pay under any circumstances.

Thompson did not work the necessary qualifying credit weeks to become eligible for additional vacation pay beginning in April 2000. He did not meet the requirements set forth in the policy handbook to earn vacation because he did not accrue 52 weeks of service. Thompson is not entitled to wages in the form of vacation pay under the terms and conditions of employment.

## **V. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Thompson's claim for unpaid wages under § 39-3-201 et seq. MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).

2. Thompson is not entitled to wages for vacation pay under the Montana Wage and Hour Payment Act.

## **VI. ORDER**

The claim of Lennie J. Thompson is hereby DISMISSED.

DATED this 22nd day of May, 2001.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By:  
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.