

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

<b>IN THE MATTER OF THE WAGE CLAIM</b>	)	<b>Case No. 307-2001</b>
<b>OF JASON S. REEVE,</b>	)	
<b>Claimant,</b>	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
<b>vs.</b>	)	<b>AND ORDER</b>
	)	
<b>MIKE DECKER, d/b/a MAD AUTO BODY,</b>	)	
<b>Respondent.</b>	)	

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**I. INTRODUCTION**

This matter came to hearing before David H. Frazier, Hearing Officer, on April 12, 2001, at 9:00 AM, MST. Both parties stipulated to proceeding by telephone. The claimant was present. Mike Decker, president, represented the employer.

Exhibits 1 through 5, provided to the parties with the Notice of Hearing, were admitted into the record without objection. Exhibits 6 through 12, offered by the employer, were admitted into the record over the claimant's objections on the basis that he had not taken the time to review the documents.

**II. ISSUES**

1. Whether Mike Decker, d/b/a MAD Auto Body, owes wages to Jason Reeve for work performed during the period beginning March 12, 2000 and ending June 30, 2000, pursuant to §39-3-204, MCA.
  
2. Whether MAD Auto Body owes Jason Reeve a penalty for unpaid wages pursuant to §39-3-206, MCA.

**III. FINDINGS OF FACT**

1. On May 15, 2001, the claimant filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry alleging that the employer owed him \$895.38 in overtime wages based upon 210.50 hours of overtime.
2. On March 14, 2000, the claimant went to Decker with a work permit from a pre-release center indicating that he had experience in auto body work and painting. Decker hired him to work as a painter helper and to do general body work on a full-time basis. He told the claimant he would pay him based upon the hours required to do any given job, as indicated in the shop repair manual, at the rate of \$8.00 per hour. He told the claimant to complete time cards to verify the actual hours he spent in the shop. The claimant agreed to those conditions and completed the time cards by hand (Exhibits 7 through 12).
3. The employer changed its payroll procedure between March 26 and April 8, 2000. Prior to the change, the employer's one week pay periods began on Sunday of each week and ended on the following Saturday. After the change, the employer's one week pay periods begin on Saturday and end on the following Friday. As a result of the change, the claimant did not receive a paycheck on Saturday, April 1 (Exhibit 4-D). The employer paid him for 51.25 hours for the two week period beginning March 26, 2000 and ending April 7, 2000 (Exhibit 4-D). The claimant completed time cards for the weeks ending April 1 and April 8, 2000 (Exhibits 7 and 8). On May 8, 2000, Decker increased the claimant's rate of pay from \$8.00 per hour to \$9.00 per hour (Exhibit 4-E).
4. The claimant last worked on July 7, 2000. He maintains he quit because the employer refused to pay him overtime wages. Decker maintains that he discharged the claimant because the claimant's attitude caused problems.
5. When he filed his wage and hour claim, the claimant provided copies of his pay stubs (Exhibits 4-D through 4-H). Prior to the hearing, Decker submitted copies of the claimant's time cards (Exhibits 7 through 12). The claimant has not submitted the pay stub for his final paycheck. The employer has not submitted the time card for the pay period ending June 3, 2000.
6. The information contained on Exhibits 4-D through 4-H and 7 through 12 is summarized in the table below:

<b>Pay Period ending</b>	<b>Time Card Hours</b>	<b>Paycheck Stub Hours</b>	<b>Gross Pay for Period</b>
<b>03/18/00</b>	<b>35.00</b>	<b>45.00</b>	<b>\$360.00</b>
<b>03/25/00</b>	<b>42.50</b>	<b>63.50</b>	<b>508.00</b>
<b>04/01/00</b>	<b>36.25</b>	<b>not available</b>	<b>not available</b>
<b>04/07/00</b>	<b>38.50</b>	<b>51.25</b>	<b>410.00</b>
<b>04/14/00</b>	<b>37.75</b>	<b>47.50</b>	<b>380.00</b>
<b>04/21/00</b>	<b>45.25</b>	<b>55.75</b>	<b>446.00</b>
<b>04/28/00</b>	<b>33.25</b>	<b>64.25</b>	<b>514.00</b>
<b>05/05/00</b>	<b>35.50</b>	<b>56.50</b>	<b>452.00</b>
<b>05/12/00</b>	<b>40.00</b>	<b>53.50</b>	<b>481.50</b>
<b>05/19/00</b>	<b>38.75</b>	<b>58.00</b>	<b>522.00</b>
<b>05/26/00</b>	<b>36.75</b>	<b>59.00</b>	<b>531.00</b>
<b>06/02/00</b>	<b>not available</b>	<b>51.75</b>	<b>465.75</b>
<b>06/09/00</b>	<b>35.75</b>	<b>52.75</b>	<b>474.75</b>
<b>06/16/00</b>	<b>43.00</b>	<b>47.75</b>	<b>429.75</b>
<b>06/23/00</b>	<b>37.50</b>	<b>61.50</b>	<b>553.50</b>
<b>06/30/00</b>	<b>17.00</b>	<b>42.50</b>	<b>398.25</b>
<b>07/07/00</b>	<b>32.50</b>	<b>not available</b>	<b>not available</b>

#### **IV. DISCUSSION**

##### A. OVERTIME WAGES

Montana law 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. §39-3-405, MCA. By comparing the hours of work which the claimant reported on his time cards to the hours for which the employer paid him, as indicated on his pay stubs, it is obvious that the employer paid the claimant for more hours than he actually worked. The inference drawn from this must be either that the employer

consistently paid the claimant on an hourly basis for hours which he did not work or that the employer paid the claimant based upon the number of hours required to do a given job, as indicated in the shop repair manual, regardless of the number of hours he actually worked. Because of the significant difference between the hours which the claimant actually worked and the hours for which he was actually paid, it is clear that the employer paid the claimant based upon the number of hours required to do a job, as indicated in the shop repair manual, and that the hours actually required to do any given job were usually fewer than the hours indicated for the job in the shop repair manual. This conclusion is consistent with the industry standard.

The facts reveal that the claimant worked more than 40 hours per week in only three pay periods. During the pay period ending March 25, 2000, the claimant worked 42.50 hours. At \$8.00 per hour, he would have earned \$320.00 during the first 40 hours. His overtime rate of pay based upon \$8.00 per hour would be \$12.00 per hour. His overtime pay for 2.50 hours would be \$30.00. His gross pay based upon 40 hours at \$8.00 per hour plus 2.50 hours at \$12.00 per hour would equal \$350.00. He was actually paid for 63.50 hours at \$8.00 per hour for a gross pay of \$508.00, or considerably more than he was entitled to based upon an overtime rate of pay.

During the pay period ending April 22, 2000, the claimant worked 45.25 hours. His overtime rate of pay for 5.25 hours at \$12.00 per hour would be \$63.00. His gross pay for that pay period, based upon his overtime pay, (\$320.00 plus \$63.00) would be \$383.00. The employer actually paid him for 55.75 hours at \$8.00 per hour for a gross pay of \$446.00, or considerably more than he was entitled to based upon his overtime rate of pay.

During the pay period ending June 17, 2000, the claimant worked 43 hours. At \$9.00 per hour, he would have earned \$360.00 during the first 40 hours he worked. His overtime pay for 3 hours of work, at the rate of \$13.50, would amount to \$40.50. His gross pay based upon overtime pay would be \$360.00 plus \$40.50, or \$400.50. The employer actually paid him for 47.75 hours at \$9.00 per hour for a gross pay of \$429.75, or \$29.25 more than he would have been entitled to based upon an overtime rate of pay.

## B. UNPAID WAGES

Montana law also requires employers to pay wages when due, and in no event later than 15 days following termination of employment. §§39-3-204 and 39-3-205, MCA. Because of the employer's change in payroll procedure, there is no evidence that the employer paid the claimant for the total number of hours he actually worked during the pay periods ending April 1, and April 7, 2000. The facts establish that the claimant worked a total of 74.75 hours during those two pay periods (36.25 hours plus 38.50 hours) and that the employer paid him for a total of 51.25 hours, based upon the shop manual, at the rate of \$8.00 per hour. This yielded a gross pay of \$410.00 for the two pay periods. As a result, the employer did not pay the claimant for 23.50 hours of work (74.75 hours minus 51.25 hours) at \$8.00 per hour, or wages of \$188.00.

Further, the claimant has not shown that he worked more than 40 hours during the pay period ending June 3, 2000. The employer paid him for 51.75 hours at the rate of \$9.00 per hour for a gross pay of \$465.75 during that pay period, based upon the number of hours indicated in the shop repair manual for the work he did. In all other weeks, with the exception of the pay period ending April 7, the employer paid the claimant for more hours than he actually worked. As a result, the claimant has not shown that he was not adequately compensated for the work he did during the pay period ending June 3, 2000.

### C. PENALTY

Montana law assesses a penalty when an employer fails to pay wages when they are due. §39-3-206, MCA. By failing to pay Reeve for the total number of hours he worked during the pay periods ending April 1 and April 7, 2000, MAD Auto Body failed to pay Reeve his wages when they were due and is, therefore, subject to the penalty. Based upon ARM 24.16.7566, the penalty is 55%, or \$103.40.

## **IV. 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. Based upon the foregoing discussion, the employer does not owe the claimant any wages based upon overtime. The employer does owe the claimant \$188.00 for unpaid wages which were not paid and \$103.40 in penalty, or \$291.40.

**V. ORDER**

Mike Decker, d/b/a MAD Auto Body is hereby ORDERED to tender a cashier's check or money order in the amount of \$291.40, representing \$188.00 in wages and \$103.40 in penalty, made payable to Jason Reeve, 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 5th day of September, 2001.

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 § 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.