

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

<b>IN THE MATTER OF THE WAGE CLAIM</b>	)	<b>Case No. 191-2004</b>
<b>OF MICHAEL KRONMILLER,</b>	)	
<b>Claimant,</b>	)	
	)	
<b>vs.</b>	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
	)	<b>AND ORDER</b>
<b>FLATHEAD VALLEY PAINTING,</b>	)	
	)	
<b>Respondent.</b>	)	

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**I. INTRODUCTION**

Flathead Valley Painting appeals a determination of the Wage and Hour Unit of the Montana Department of Labor and Industry which found that Flathead Valley Painting owed unpaid wages to Michael Kronmiller and penalty as provided by law.

Hearing Examiner Gregory L. Hanchett convened a contested case hearing by telephone in this matter by telephone on March 17, 2004.<sup>(1)</sup> Michael Kronmiller represented himself and testified under oath. William Paine, owner of Flathead Valley Painting, appeared for a portion of the hearing.

The parties stipulated to the admission of Documents 000001 through 000039.

At the beginning of the proceeding, the hearing examiner advised the parties of the course of the hearing. The hearing examiner explained that the claimant would present his evidence first, the respondent would have a chance to ask cross-examination questions, then the respondent would have an opportunity to present his evidence, and the claimant would have a chance to ask cross-examination questions. During Kronmiller's testimony, Paine repeatedly interrupted the proceeding in order to accuse Kronmiller of lying and to argue points with Kronmiller. The hearing officer repeatedly admonished Paine about the need to have an orderly proceeding in order to create an intelligible record to protect each party's right of appeal. Despite this, Paine continued to interrupt Kronmiller during Kronmiller's direct testimony and continued to interrupt the proceeding. The hearing examiner finally warned Paine that if he kept interrupting Kronmiller and kept interrupting the proceedings, Paine would be excluded from the proceedings. At that point, Paine hung up his telephone. Because Paine voluntarily chose to leave the proceeding by hanging up his telephone, the hearing examiner continued with the hearing in Paine's absence.

Based on the evidence adduced at the hearing, the hearing examiner makes the following findings of fact, conclusions of law, and final order.

## **II. ISSUE**

Does Flathead Valley Painting owe Kronmiller for unpaid wages and penalty as prescribed by law?

## **III. FINDINGS OF FACT**

1. Kronmiller moved to Montana with his fiancée who is also Paine's daughter.
2. Kronmiller worked for Paine as a painter between June 23, 2003 and July 15, 2003. Paine agreed to pay Kronmiller \$12.00 per hour for his work.
3. On July 8, 2003, Kronmiller and his fiancée bought a truck in the amount of \$1,500.00 from an acquaintance of Paine. The truck was for Kronmiller and his fiancée to use for transportation to their respective jobs. Kronmiller was responsible for making payments on the truck as evidenced by Document #000015.
4. On July 15, 2003, Paine, who had become upset with his daughter, discharged Kronmiller. At the time of the discharge, Paine still owed Kronmiller wages for 25 hours of work that Kronmiller had completed. Paine told Kronmiller that he would pay him his final wages the next day. Instead, Paine claimed that he had paid for the truck and that Kronmiller owed him money for the truck and new tires for the truck which more than offset the amount Paine owed to Kronmiller. Paine refused to pay Kronmiller any of the wages owed to Kronmiller.

## **IV. OPINION**

### *A. Flathead Valley Painting owes wages to Kronmiller.*

Montana law requires that employers pay employees wages when due, in accordance with the employment agreement, pursuant to Mont. Code Ann. § 39-3-204. Flathead Valley Painting does not dispute the number of hours which Kronmiller claims he worked and for which he claims he was not paid. The evidence presented by Kronmiller shows that Flathead Valley Painting did not pay Kronmiller for 25.5 hours of work. At \$12.00 per hour, Flathead Valley Painting owes Kronmiller \$306.00 in unpaid wages.

Flathead Valley Painting's sole defense to this action is a contention that it owes Kronmiller nothing because what is owed is more than offset by money Kronmiller owes to Paine for the truck. The facts as presented at the hearing in this matter do not support Flathead Valley Painting's alleged factual basis for offset. On that basis alone, the hearing examiner finds no merit to the defense.

Even if the facts were as claimed by Flathead Valley Painting, the law would not permit such an offset. An employer cannot withhold wages and apply such wages to an account which the

employee has with the employer unless the account existing between the employer and employee is for board, room, or other incidentals which the employee has agreed may be deducted as a condition to the employment. *See, e.g.*, Mont. Att. Gen. Op. 25-11 (1953). While Flathead Valley asserts that Kronmiller agreed to repay Paine for the truck, Flathead Valley has never asserted that any such agreement was a part of its employment agreement with Kronmiller. Thus, even if the hearing examiner had found that Kronmiller owed a debt to Paine for the truck, offset against wages would not be permissible.

#### *B. Flathead Valley Painting Owes Penalty.*

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. §39-3-206. For claims involving compensation other than minimum wage and overtime compensation, a penalty of 55% must be imposed. Admin. R. Mont. 24.16.7566. Applying this regulation, Flathead Valley Painting owes penalty in the amount of \$168.30 (55% of \$306.00) for the unpaid wages due to Kronmiller.

### **V. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint. Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.
2. Flathead Valley Painting owes Kronmiller \$306.00 in unpaid wages.
3. Flathead Valley Painting owes Kronmiller a 55% penalty in the amount of \$168.30.

### **VI. ORDER**

Flathead Valley Painting is hereby ORDERED to tender a cashier's check or money order in the amount of \$474.30, representing \$306.00 in wages and \$168.30 in penalty, payable to Michael Kronmiller, 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 7th day of April, 2004.

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.

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.

1. Mont. Code Ann. §39-3-216(3) permits these hearings to be held by telephone. In this case, the claimant now resides in Arizona. To require him to return to for an in-person hearing would create a cost prohibitive barrier to his exercise of rights guaranteed by Montana statute. Moreover, resolution of this case is not tied to a credibility judgment. As explained below in the opinion, even if the hearing examiner were to give credence to Flathead Valley's defense, the outcome of this matter would remain unchanged because the proffered defense is not a legal defense to this wage claim. *Cf.*, *State v. Megard*, 2004 MT 67, \_\_ Mont. \_\_, \_\_ P.3d. \_\_.