

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2380-2005
OF CASEY J. SORENSON,)	
)	
Claimant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	AND ORDER
)	
ANCHOR RANCH., INC., a Montana)	
Corporation,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On May31, 2005, Casey J. Sorenson (Sorenson) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry, alleging that Anchor Ranch, Inc., owed her \$2,077.86 in unpaid wages for work performed during the period beginning December 15, 2004, and ending May 7, 2005. On July 7, 2005, the Wage and Hour Unit issued a determination finding that Anchor Ranch owed Sorenson \$1,560.62 in unpaid wages for the period beginning April 16, 2005, and ending May 7, 2005, plus a penalty of \$234.09.

Anchor Ranch appealed the determination and on August 2, 2004, the Wage and Hour Unit issued a redetermination finding that Anchor Ranch owed Sorenson \$222.53 in unpaid wages for the period beginning May 1, 2005 and ending on May 7, 2005, plus a penalty of \$33.38, for a total of \$255.91. On August 19, 2005, Anchor Ranch paid Sorenson \$255.91 by check.

During the pre-hearing conference on October 14, 2005, both parties agreed to allow the Hearing Officer to expunge duplicate documents from the record.

On November16, 2005, the Hearing Officer held an in-person hearing in this matter at the Walt Sullivan Building in Helena. All parties participated in-person. Sorenson was present. Austin Sorenson, Sorenson's husband, appeared as a witness in her behalf. Charles R. Johnson, Attorney at Law, represented Anchor Ranch.

Veronica Jo Robinson, co-owner, appeared as a witness for Anchor Ranch. William Robinson observed for Anchor Ranch.

Documents 1 through 73 were provided to the parties prior to the hearing. Documents 5 and 7 were excluded from the record on the basis that they are not relevant. Documents 20 and 21 were excluded from the record on the basis that they are duplicates of Documents 68 and 69. Documents 30 and 48 were excluded from the record on the basis that they are duplicates of Document 58. Document 31 was excluded from the record on the basis that it is a duplicate of Document 66. Documents 50 through 52 were excluded from the record on the basis that they are not relevant. Document 59 was excluded from the record on the basis that it is a duplicate of Document 47. Document 60 was excluded from the record on the basis that it is a duplicate of Document 11. Document 65 was excluded from the record on the basis that it is a duplicate of Document 18. Document 67 was excluded from the record on the basis that it is a duplicate of Document 49.

Documents marked A through M were offered by Sorenson. Documents A and B, duplicates of Documents 5 and 8, were withdrawn after objections by Anchor Ranch. Document C was excluded from the record on the basis that it is a duplicate of Document 58. Document D was excluded from the record on the basis that it is a duplicate of Document 32. Document E was excluded from the record on the basis that it is a duplicate of Document 28. Document F was excluded from the record on the basis that it is a duplicate of Document 46. Document G was excluded from the record on the basis that it is a duplicate of Document 34. Document H was excluded from the record on the basis that it is a duplicate of Document 35. Document I was admitted into the record without objection. Document J was excluded from the record on the basis that it is a duplicate of Document 70. Document K was admitted into the record without objection. Five Documents marked as L were excluded from the record on the basis that they are duplicates of Documents 60 through 63 and 19. Document M was excluded from the record on the basis of the respondent's objection that it was not properly identified, was not relevant and was hearsay.

II. ISSUE

Whether Anchor Ranch owes wages for work performed as alleged in Sorenson's complaint and penalties or liquidated damages as provided in Mont. Code Ann. §39-3-206.

III. FINDINGS OF FACT

1. Anchor Ranch hired Sorenson and her husband, Austin, on October 4, 2004, and agreed to pay them \$2,000.00 per month as a team, based upon Austin's skills as a ranch hand. When they started work, Veronica and Bill offered to split their pay and pay Casey \$500.00 per month and Austin \$1,500.00 per month, in order to provide Casey with worker's compensation insurance coverage. Robinson agreed to pay them on the 1st and 15th of each month.

2. On November 15, 2004, Bill Robinson paid Sorenson \$461.75 based upon the agreement to pay her \$500.00 per month, for the period beginning November 1, 2005, and ending November 15, 2005. The Robinsons offered Sorenson a part-time position, to be paid at \$450.00 per month for part-time work and to pay Austin \$2,000.00 per month for his full time work, resulting in a raise in pay for the two of them combined. Sorenson agreed to the conditions.

3. On November 20, 2005, Veronica Robinson paid Sorenson \$623.37 based upon the agreement to pay her \$500.00 per month, for the period beginning November 1, 2005, and ending November 20, 2005. Veronica did not know that Bill had already paid Sorenson for November 1st through the 15th.

4. When The Robinsons paid the Sorensens on December 1, 2005, they told the Sorensens that Casey had been overpaid during the period beginning November 1st and ending November 15th. They told the Sorensens that they would not ask for the overpayment back at that time because it was so close to Christmas.

5. On December 15, 2004, Veronica temporarily left the ranch to visit her family for Christmas. Bill stayed at the ranch. Austin continued to feed and water the livestock on a daily basis and Casey helped him by breaking the ice off the water. Veronica returned to the ranch on January 22, 2005. While she was away, Bill paid Casey based upon her part-time status at the rate of \$450.00 per month. He paid Austin based upon the rate of \$2,000.00 per month. The Sorensens did not indicate that they had any problem with the pay.

6. On March 1, 2005, Sorenson and Austin had a disagreement. Austin was upset when he went to work that morning and had a disagreement with the Robinsons, after which he was discharged or quit. The Robinsons instructed him to leave and he did so. Sorenson decided not to go with him. The Robinsons offered her a full-time position to be paid at the rate of \$1,500.00 per month. Sorenson accepted the offer.

7. Between March 1, 2005, and May 7, 2005, Sorenson worked full-time. During the morning of May 7, 2005, she had a disagreement with the Robinsons and decided to quit. She called the local Sheriff's office and asked for assistance and moved out that morning.

IV. DISCUSSION AND ANALYSIS

Anchor Ranch owes wages and penalties.

UNPAID WAGES

Montana law requires that employers pay employees wages within 10 days of when they become due in accordance with the employment agreement. Mont. Code Ann. § 39-3-204.

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680, *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. An employee can meet this burden by producing evidence that shows the extent and the amount of work "as a matter of just and reasonable inference." *Id. 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.

The claimant is claiming full time wages during the period beginning December 15, 2004 and ending January 25, 2005. During that period of time the employer paid her based upon the agreement for part-time work. Sorenson maintains she fed the employer's house animals during that period of time and that she saw Bill Robinson only 2 times during that period of time. However, Bill was home to feed the animals. The addition of these duties to her part-time duties would not, in and of themselves, turn part-time work in to full-time work. In addition, winter work on a ranch is part-time work. Overall, the claimant's position was considered and found to be less credible than the employer's position that she was paid her full wages during the period beginning December 15, 2004 and ending January 25, 2005.

Further, the respondent and the claimant stipulated that the claimant worked through May 7, 2005. However, Sorenson left work on the morning of May 7, 2005, and did not do more than an hour of work that day. The employer maintains that Sorenson only worked 4.5 days during the week beginning May 1, 2005, but has provided no documentation to verify that. In *Garsjo v. Department of Labor and*

Industry (supra), the Supreme Court found that in cases where the employer has not produced a record of hours worked or wages earned, the employee's records must be considered accurate. Neither the employer nor the claimant produced records, but both parties stipulated that Sorenson worked through May 7, 2005. There has been no finding or evidence produced that shows that Sorenson did not work a full week during the period beginning May 1, and ending May 6, 2005.

The period between May 1 and May 6, inclusive, is 6 days. Anchor Ranch has already paid Sorenson \$222.52 for 4.5 days of work during that week. That leaves 1.5 days and 1 hour unpaid. The Wage and Hour unit has correctly calculated Sorenson's daily rate to be \$49.45, which is a minimum wage of \$5.25 for a 9.42 hour day. 1.5 times \$49.45 equals \$74.18. \$74.18 plus \$5.25 for 1 hour of work on May 7 is \$79.43.

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 Sorenson for the total number of hours she worked during the period beginning May 1, 2004, and ending May 7, 2005, Anchor Ranch failed to pay Sorenson her wages when they were due. The respondent is, therefore, subject to the penalty. Based upon Admin. R. Mont. § 24.16.7551(2), and § 24.16.7566 (1) the penalty is 55% on the unpaid wages, or \$43.69.

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. Anchor Ranch owes Sorenson \$79.43 in unpaid wages for work performed between May 1, 2005 and May 7, 2004, and \$43.69 in penalties for unpaid wages.

VI. ORDER

Anchor Ranch is hereby ORDERED to tender a cashier's check or money order in the amount of \$123.12 , representing \$79.43 in unpaid wages and \$43.69 in penalty, made payable to Casey Sorenson, 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. Anchor Ranch may withhold appropriate deductions for income taxes and social security on the wage portion but not the penalty portion.

DATED this 23rd day of December, 2005.

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.