

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2381-2005
OF KENNETH L. DONEY, JR.,)	
)	
Claimant,)	
)	
vs.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	ORDER AND
HAYS LODGE POLE K-12 SCHOOL)	NOTICE OF RIGHT TO SEEK
DISTRICT NO. 50,)	JUDICIAL REVIEW
)	
Respondent.)	

* * * * *

I. INTRODUCTION

The respondent Hays Lodge Pole School District No. 50 appealed a determination of the Wage and Hour Unit which found that it owed claimant Kenneth L. Doney, Jr., wages of \$2,010.84 plus applicable penalties for work performed from December 5, 2004, to February 26, 2005.

Hearing Officer Terry Spear convened a telephonic contested case hearing in this matter on March 31, 2006.¹ Claimant Kenneth L. Doney appeared by telephone and represented himself. Respondent Hays Lodge Pole K-12 School District No. 50 appeared through its counsel, Michael Dahlem, by telephone.

Doney testified by telephone and indicated that his other witnesses were unavailable but that he wanted to proceed without them. Wage and Hour Unit Documents 26-35 were admitted into evidence without objection. Additional Documents Exhibits A, B and E were admitted into evidence without objection.

The district requested that Hearing Officer take administrative notice of Exhibit C. Doney objected to its application to his case, but did not challenge its authenticity. The Hearing Officer took administrative notice of Exhibit C, with any

¹ The hearing was scheduled for 11:30 a.m. The claimant was not available at that time, and the respondent agreed to delay the hearing until 1:30 p.m., when it was actually held.

ruling upon its applicability to this case appearing in the final decision. The district, after admission of its offered exhibits, did not offer any testimony.

Based on the evidence adduced at the hearing and the arguments presented in closings, the hearing officer makes the following findings of fact, conclusions of law and final order in this matter.

II. ISSUE

Did Doney perform work for the district from December 5, 2004, to February 26, 2005, for which unpaid wages and a statutory penalty are due?

III. FINDINGS OF FACT

1. Hays Lodge Pole K-12 School District No. 50 hired Kenneth L. Doney, Jr., on September 30, 2004, as a special education aide for Doney's son who attended the district as a 5th grade student.

2. Another son of Doney was a member of the district's high school boys' basketball team during the 2004-2005 school year.

3. Before the 2004-2005 high school basketball season began, Doney asked the district's athletic director, James Martinez, for permission to ride on the team bus to attend basketball games. Doney explained that he was having difficulties with his personal vehicle and riding the bus would allow him to attend his son's games.

4. Martinez gave Doney permission to ride on the team bus as a chaperone and told Doney that he would not receive compensation for acting as a chaperone.

5. At no time did the district agree through any authorized representative to pay Doney any compensation for acting as a chaperone.

6. Doney volunteered, of his own free will and without inducement from the district, to act as a chaperone, in order to ride the team bus to and from games.

7. Doney did ride the team bus to and from games in December 2004 through February 2005, as a volunteer chaperone.

8. The district did not reimburse Doney for meals, hotel rooms or game admission costs Doney incurred during the times he traveled on the team bus and attended games.

9. Doney's services as an employee of the district did not include and were substantially different from the volunteer services he performed as a chaperone.

10. After the season ended, Doney submitted a claim for \$2,010.84, as wages of \$10.36 per hour for 194 hours worked, including time riding the team bus and time attending his son's basketball games. Doney's normal hourly wages as a special education aide at the district were \$10.36 per hour.

IV. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this case. Mont. Code Ann. § 39-3-201 *et seq.*; *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Doney's wage claim as a district employee is subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 203(d) and (x). *Garcia v. San Antonio M.T.A.* (1985), 469 U.S. 528; *Phillips v. Lake County* (1986), 222 Mont. 42, 721 P.2d 326.

3. A school district employee may serve as a volunteer without compensation when the employee (1) performs services for civic, charitable or humanitarian reasons without promise, expectation or receipt of compensation for the services, (2) offers the services freely and without coercion (direct or implied) from the employer and (3) does not perform the same services for wages that are now volunteered. 29 U.S.C. 203(e)(4)(A); 29 C.F.R. 553.101 and 103.²

4. Because of his volunteer status, under applicable FLSA authority, Doney did not perform work for the district as a chaperone on road trips of the high school boys' basketball team from December 5, 2004, to February 26, 2005. Therefore, he did not earn unpaid wages during the times he spent on those trips, and is not entitled to an award for unpaid wages and a statutory penalty upon those wages.

² *See also* the Wage and Hour Division guidance, Exhibit C at hearing, regarding volunteer activities, such as a parent of a team member driving a team bus, which are not deemed employment for wages even if the parent drives a school bus for the district in regular employment.

V. ORDER

The wage claim of Kenneth L. Doney, Jr., that Hays Lodge Pole School District No. 50 owes him wages of \$2,010.84 plus applicable penalties for work performed from December 5, 2004, to February 26, 2005, is dismissed.

DATED this 6th day of June, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ TERRY SPEAR
Terry Spear
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.