STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF LEVI M. VANTHUYNE,	)	Case No. 8-2007
Claimant,	)	**FINDINGS OF FACT; CONCLUSIONS OF LAW; AND ORDER**
vs.	)	
JACKPOT ON MAIN d/b/a TWELFTH PLANET,	)	
Respondent.	)	

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I. INTRODUCTION

On July 3, 2006, Levi M. Vanthuyne filed a claim with the Wage and Hour Unit alleging that Jackpot on Main, d/b/a Twelfth Planet (Twelfth Planet) owed him $1,094.00 in unpaid wages. Twelfth Planet failed to respond. On July 24, 2006, the Wage and Hour Unit issued a determination which awarded Vanthuyne $1,094.00 in wages and $1,203.40 in penalties. On July 27, 2006, Twelfth Planet responded with documentation. On August 22, 2006, the Wage and Hour Unit issued a redetermination which dismissed Vanthuyne's claim on the basis that Vanthuyne had failed to respond or provide sufficient evidence to prove his claim.

The Hearing Officer held a contested case hearing by telephone on November 15, 2006. Vanthuyne was present. Delton Clark, former bartender, appeared as a witness for the claimant. Phillip Keith, president, represented the respondent.

The parties stipulated to the admission of Documents 1 through 31 provided by the Employment Relations Division.

Based upon the testimony presented during the hearing as well as the documents contained in the file, the Hearing Officer makes the following findings of fact, conclusions of law, and final order in this matter.

II. ISSUE

The issue in this case is whether Twelfth Planet owes wages, as alleged in the complaint filed by Vanthuyne, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Twelfth Planet employed Vanthuyne as a bartender from March 13, 2006, through June 6, 2006, and agreed to pay him $7.50 per hour for a 40 hour week.

2. During a meeting on May 16, 2006, to discuss management of the bar, Michael Keith, the owner's son and supervisor, and Brad Kindfather, a supervisor, suggested that Vanthuyne act as manager of the bar until another manager could be hired. They suggested that he would receive a raise in pay to $12.00 per hour while acting as bar manager. Although Vanthuyne was supervised by them, they did not have the authority to promote him or to offer him a raise in pay. As a result, Keith, who was not at the meeting and who authorizes promotions and raises, was not aware of the offer and had not authorized it.

3. Vanthuyne may have taken on some minor management duties after the May 16 meeting. However, there is no evidence that he took the position of bar manager and functioned in that position for any length of time during the three week period beginning May 16, 2006 and ending June 6, 2006. He worked a schedule directed by the employer. He did not go to a salaried position and had no authority to establish his own schedule.

4. None of Vanthuyne's subsequent payroll checks included a raise in pay. Twelfth Planet continued to pay him at the rate of $7.50 per hour. Vanthuyne did not ask Phillip Keith about the promotion and raise at any time. Although Vanthuyne may have thought Michael Keith and Kindfather had the authority to promote him and offer him a raise in pay, he did not pursue the matter with them. He did not take on the responsibility of pursuing any raise in pay which he thought he had coming with anyone at any time during his employment.

5. On June 6, 2006, Steve Anderson, the new general manager, laid Vanthuyne off.

IV. DISCUSSION AND ANALYSIS[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* (1978), 176 Mont. 31, 575 P.2d 925.

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. To meet this burden, the employee must produce evidence to "show the extent and 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; s*ee also, Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494,

[1]Statements of fact in this discussion are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

495 (holding that lower court properly concluded that the plaintiff's wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, "the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee. And if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation.' * * *." *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell, supra*, 359 Mich. at 576, 103 N.W. 2d at 497.

Vanthuyne relied on the suggestions of those who were not in proper authority to promote or give raises in pay in order to justify his claim. His claim cannot be justified on such a faulty basis. In addition, he did not pursue any raise in pay he may have thought he had coming at the time he thought he had it coming.

Moreover, the documentation submitted by Vanthuyne includes days and hours worked when the business was not open. Since Vanthuyne was not a salaried manager with authority to establish his own hours and since there was no authorization to work overtime hours during scheduled days off, this documentation is not credible. Twelfth Planet has, in response, submitted documentation to show that Vanthuyne worked appropriately scheduled hours and was paid appropriately for all hours worked.

Vanthuyne has not shown by just and reasonable inference that he was not paid according to the employment agreement. He has failed to meet that burden because the employer has met its burden of negating the reasonableness of the inference to be drawn.

V. PENALTY

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Since Twelfth Planet paid all accrued wages when due, no penalty can be assessed.

VI. 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. Twelfth Planet has paid all accrued wages which were due. Vanthuyne's claim is dismissed .

VII. ORDER

1. Vanthuyne's claim for unpaid wages is dismissed.

DATED this 11th day of January, 2007.

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.

Vanthuyne FOF dfp