

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1236-2009
OF ROBERT FRENCH,)	
)	
Claimant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	AND ORDER
)	
VAL HOLMS d/b/a)	
SUMMIT RESTORATION,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

In this matter, Robert French appeals from a determination by the Wage and Hour Unit finding he was not due additional wages as a result of his employment with Summit Restoration, LTD. Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter in Helena, Montana on July 24, 2009. French appeared and represented himself. Thomas Johnson, Attorney at Law, represented Summit Restoration. Documents 5 through 13, 15, 17 through 22, 25, 26, 28, 29 through 33, 37, 38 through 43, 45, 46, 49, 50 through 60, 62 and the Summit Restoration corporate documents, which were marked as Exhibit 63, were all admitted into evidence. French and Val Holms, owner of Summit Restoration, both testified under oath. Based on the evidence, exhibits and arguments presented at the hearing, the hearing officer makes the following findings of fact, conclusions of law, and final order.

II. ISSUE

Is French due additional wages as alleged in his complaint?

III. FINDINGS OF FACT

1. Between November 14, 2007 and December, 2008, Val Holms was the proprietor of Summit Restoration, LTD, a Montana corporation. Summit Restoration ceased to exist as a corporation at the end of December, 2008.

2. At no time during its existence did Summit's gross income exceed \$110,000.00 per year. Because this is so, the minimum wage that would be due to French is \$4.00 per hour. His overtime rate would be \$6.00 per overtime hour worked.

3. French began working at Summit Auto Restoration in August, 2008. His last day of work was January 12, 2009.

4. French came to Holms seeking to rent a stall in the Summit Auto Restoration shop. The parties entered into an agreement whereby Holms agreed to rent a stall to French for his use. Under this agreement, French would work on jobs he solicited and pay the stall rental to Holms out of the proceeds from the jobs French had solicited. In addition, French and Holms agreed that Holms would pay a commission to French for work that French did on business brought in by Holms.

5. Holms and French did not have a formal employment agreement nor did they discuss anything about an hourly wage being paid to French for his work at Summit. Holms did, however, suffer French to work on projects which Holms had brought into the restoration shop for Holms' monetary benefit. This created an employment arrangement even though no explicit employment agreement existed between French and Holms.

6. French had his own body shop before working at Summit Restoration. As a proprietor of his own shop, French charged \$45.00 per hour for his labor.

7. Prior to French working at Summit, Holms had a business partner in the operation, Nick Novotny. Novotny worked in the partnership until such time as the business began to lose money. Because Novotny was not making any money in the business, he sold his shares of the company back to Holms and left.

8. French worked the following hours during the following weekly periods during the time he was employed:

Week	Total Hours	Reg Hours	OT Hours	Reg Rate	OT Rate	Wages Due	Amt Paid
9/06/08	65.5	40	25.5	\$4.00	\$6.00	\$313.00	
9/13/08	64.25	40	24.25	\$4.00	\$6.00	\$305.50	
9/20/08	74.50	40	34.50	\$4.00	\$6.00	\$367.00	
9/27/08	57.00	40	17.00	\$4.00	\$6.00	\$262.00	
10/04/08	32.50	32.5	0	\$4.00	\$6.00	\$130.00	
10/11/08	0	0	0	\$4.00	\$6.00	\$ 0	
10/18/08	0	0	0	\$4.00	\$6.00	\$0	
10/25/08	0	0	0	\$4.00	\$6.00	\$0	
11/01/08	0	0	0	\$4.00	\$6.00	\$0	
11/08/08	64.00	40	24	\$4.00	\$6.00	\$304.00	
11/15/08	58.5	40	18.5	\$4.00	\$6.00	\$271.00	\$1,200
11/22/08	54.00	40	14	\$4.00	\$6.00	\$244.00	
11/29/08	43.00	40	3	\$4.00	\$6.00	\$178.00	\$200
12/06/08	39.00	39	0	\$4.00	\$6.00	\$156.00	
12/13/08	32.00	32	0	\$4.00	\$6.00	\$128.00	\$852
12/20/08	0	0	0	\$4.00	\$6.00	\$0	
12/27/08	0	0	0	\$4.00	\$6.00	\$0	
01/03/09	6	6	0	\$4.00	\$6.00	\$24.00	
01/10/09	8	8	0	\$4.00	\$6.00	\$32.00	
01/17/09	0	0	0	\$4.00	\$6.00	\$0	\$500

9. The above table reflects that French was due a total of \$2,714.50 for work he completed for Holms. Holms paid French a total of \$2,752.00. Holms does not owe French any additional hourly wages for work French completed.

10. French provided no evidence at hearing that he was due commissions for work done. Because Holms has paid French all money he would be due as an employee, French has not proven that he is due any additional wages.

IV. DISCUSSION¹

¹Statements 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.

Montana law requires that employers pay wages when due, in conformity with the employment agreement. Mont. Code Ann. §39-3-204. Except to set a minimum wage, the law does not set the amount of wages to be paid. That determination is left to the agreement between the parties. French bears the burden of persuading the trier of fact that he is entitled to the wages he claims he is due. *Berry v. KRTV Communications* (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112. *See also, Marias Health Care Services v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

As a preliminary matter, Holms contends that French was never his employee but rather, that he simply leased out his shop to French. There is some support for this argument in the fact that French came to work for Holms from his own shop. However, it is clear from the testimony of the parties and the documentation provided that French in fact completed work on behalf of Holms for Holm's customers. Holms controlled at least some of the work that French did, directing him to complete certain assignments. In light of these facts, the hearing officer finds that an employer-employee relationship existed which would necessitate payment of a minimum hourly wage and overtime for work completed.

The evidence fails to preponderantly demonstrate that any written or oral employment agreement specifying a specific hourly wage ever existed in this case. While French has argued strenuously that he and Holms agreed to a specific hourly rate of remuneration, the substantial evidence does not support his contention. It is far more likely that, as contended by Holms, French rented the shop space and Holms sent work toward French for which Holms would receive a cut. French does not dispute that he was permitted to complete work for his own purposes in the shop. It is also clear that at least one client paid both French and Summit Restoration for work done to that client's truck, suggesting that French in fact provided service to his own customers at the body shop and lends credence to Holm's contention that there was no discussion of a specific hourly wage.

Two additional factors also persuade the hearing officer that no agreement as to an hourly rate existed in this case. First, it is far more likely that French, who had come from his own business as a body shop proprietor making \$45.00 per hour, intended to rent out Holm's shop so that he could continue to be his own proprietor and gain additional spin off work from Holms. Also, the fact that the only other person to work with Holms, Novotny, was a business partner, not an employee, reinforces Holm's position that French was not brought on as an employee at a specific hourly wage (although the relationship ultimately became one of employment that would require Holms to reimburse French at a minimum wage rate). French has failed to demonstrate that any agreement existed between the parties as to an hourly wage.

In the absence of a specific agreement regarding the amount of wages to be paid to French, this tribunal only has power to enforce the minimum wage and overtime requirements of the Montana Wage and Hour Act. Mont. Code Ann. §39-3-404. The Act requires only that

an employee be paid a minimum hourly wage and an overtime rate based upon that minimum hourly wage. French has not challenged Summit restoration's evidence that its gross annual sales did not exceed \$110,000.00. As such, the minimum hourly wage required by the Montana Wage and Hour Statutes is \$4.00 per hour. Mont. Code Ann. §39-3-409. Within the facts of this case, that means that French is entitled to \$4.00 for each regular hour worked and \$6.00 per hour for each overtime hour worked ($\$4.00 \times 1.5 = \6.00).

Applying these values to all regular and overtime hours which French worked shows that he was due a total of \$2,714.50 for the hours he worked. Holms paid French a total of \$2,752.00. As the amount equals or exceeds the amount due to French, French has failed to prove he is due additional hourly wages.

French failed to produce any evidence at hearing regarding any commissions he claimed to be due. Because he has not shown that he is due additional hourly wages or any commission, he has failed to prove any portion of his wage claim.

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. French has failed to demonstrate by a preponderance of the evidence that he is due additional wages.

VI. ORDER

As French has failed to demonstrate that he is due additional wages, his claim fails and must be dismissed.

DATED this 3rd day of September, 2009.

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.

FRENCH.FOF.GHP