

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIMS ) OF ALLEN W. WALDOW, DANNY R. ) CALDWELL, BRADLEY D. BENDER, ) DAVID F. DEAN AND GEORGE K. JASPER,)	)	Case Nos. 1758-2009, 1794-2009, 1799-2009, 1817-2009 & 228-2010
	)	
Claimants,	)	<b>FINDINGS OF FACT;</b>
	)	<b>CONCLUSIONS OF LAW;</b>
vs.	)	<b>AND ORDER</b>
	)	
SUSTAINABLE SYSTEMS, LLC, a Montana ) LLC d/b/a MONTOLA,	)	
	)	
Respondent.	)	

\* \* \* \* \*

**I. INTRODUCTION**

Hearing officer Gregory L. Hanchett held a contested case hearing in this matter on December 16, 2009. Claimants Allen Waldo, Danny Caldwell, Bradley Bender, David Dean and George Jasper each appeared on their own behalf and testified under oath. Peter Helland, attorney at law, appeared on behalf of the Respondent Sustainable Systems. Paul Miller, manager of Sustainable Systems, testified on behalf of the respondent.

The respondent admitted at hearing that the vacation pay amounts due to each of the claimants as alleged in their respective complaints was in fact due to them and had not been paid. The parties agreed that the sole issue in this hearing was the amount of penalty to be imposed on the respondent for failing to pay the wages found to be due and owing. In light of the evidence and arguments adduced at hearing, the hearing officer makes the following findings of fact, conclusions of law and final agency decision.

## II. ISSUE

What penalty is required based on the failure to pay wages due to the claimants?

## III. FINDINGS OF FACT

1. Sustainable Systems is a Montana Corporation doing business in Montana as Montola. Until April 2009, it engaged in agricultural business in the State of Montana.

2. In April, 2009, Montola became unable to pay its debts and could not secure an additional line of credit to pay those debts. As a result of this, the State of Montana seized all of its assets, including all of its cash reserves, in order to liquidate them in order to provide payment to creditors.

3. When the assets were seized, Montola ceased functioning and laid off all of its employees including the five claimants in this case. Waldow was owed \$1,614.33 in unpaid vacation pay. Caldwell was owed \$1,554.30 in unpaid vacation pay. Bender was owed \$75.80 in unpaid vacation pay. Jasper was owed \$3,696.55 in unpaid vacation pay.

4. David Dean initially claimed to be due wages for unpaid hours of work as well as unpaid vacation time. At the time of hearing, however, he agreed that he was claiming only to be due unpaid vacation hours. As Wage and Hour Documents Dean Exhibits 6 and 13 in the Dean case reveal, the amount of unpaid vacation wages due to Dean is \$2,229.16. In light of Dean's concessions at hearing, it is found that the respondent failed to pay Dean \$2,229.16.

5. Each of the claimants filed a wage claim seeking unpaid vacation wages. A determination was entered finding that the amounts due were owed and imposing a 110% penalty. After a timely request for redetermination, the Wage and Hour Unit affirmed the findings as to the amounts due but reduced the penalty after finding that the respondent in fact did cooperate with the investigation.

6. The respondent appealed the redetermination to this tribunal seeking reduction or elimination of the penalty amounts in light of the circumstances surrounding the failure to pay the claimants the wages due them which were due to the state's seizure of all of its assets.

7. 55% penalty on the amounts due to Waldow equals \$887.88 ( $\$1,614.33 \times .55 = \$887.88$ ). 55% penalty on the amounts due to Caldwell equals \$854.86 ( $\$1,554.30 \times .55 = \$854.86$ ). 55% penalty on the amounts due Bender equals \$41.69 ( $\$75.80 \times .55 = \$41.69$ ). 55% penalty on the amounts due to Dean equals \$1226.04 ( $\$2,229.16 \times .55 = \$1,226.04$ ). 55% penalty on the amounts due to Jasper equals \$2,033.10 ( $\$3,696.55 \times .55 = \$2,033.10$ ).

#### IV. DISCUSSION<sup>1</sup>

In this case, the Respondent seeks leniency from the imposition of the 55% penalty based on the fact that the State of Montana seized its assets which prevented it from paying its wage obligations. It does not dispute that the wages are owed as alleged by the claimants. In light of this, the hearing officer has no choice but to impose the 55% penalty in these matters.

A administrative tribunal is constrained by the statutes and regulations under which it operates. It has no power to deviate from those rules. *Auto Parts of Bozeman v. Uninsured Employers' Fund*, ¶ 38, 2001 MT 72, 305 Mont. 40, 23 P.3d 193 *quoting* *City of Polson v. Public Service Com'n* (1970), 155 Mont. 464, 473 P.2d 508, 511, *Gwynn v. Town of Eureka* (1978), 178 Mont. 191, 582 P.2d 1262, 1263.

Admin. R. Mont. 24.16.7566 is clear in its mandate. The penalty to be imposed in cases which do not involve minimum wage and overtime and which do not otherwise raise any of the special circumstances justifying imposition of the maximum penalty will be 55% of the wages found due. The penalty can be reduced to 15% but only if the wages due and a 15% penalty are paid within the time frame specified within the determination. Here, the respondent either could not or chose not to pay the 15% penalty within the time prescribed by the determination. Under these circumstances, the rule provides the hearing officer with no option but to impose the 55% penalty.

Similarly, the special circumstances rule requiring imposition of the 110% penalty has no application here. In the Waldow, Caldwell and Bender cases, the Wage and Hour Unit found in its redetermination that "The original assessment of the [110%] penalty would have been appropriate given the respondent did not

---

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

provide the information as requested, however, Mr. Miller requested a redetermination and accordingly responded to the claim. Therefore, imposition of the maximum penalty is no longer applicable.” In the Jasper and Dean case, no special circumstances justifying imposition of the 110% penalty were found in the first instance. Thus, imposition of the 55% penalty is required by the applicable rules.

## 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. The respondent owes Waldow \$1,614.33 in unpaid regular wages and 55% penalty in the amount of \$887.88.

3. The respondent owes Caldwell \$1,554.30 in unpaid regular wages and 55% penalty in the amount of \$854.86.

4. The respondent owes Bender \$75.80 in unpaid regular wages and 55% penalty in the amount of \$41.69.

5. The respondent owes Dean \$2,229.16 in unpaid regular wages and 55% penalty in the amount of \$1,226.04.

6. The respondent owes Jasper \$3,696.55 in unpaid regular wages and 55% penalty in the amount of \$2,033.10.

## VI. ORDER

Sustainable Systems , LLC, d/b/a Montola is hereby ORDERED to tender the following cashier's checks or money orders in the following amounts (1) a cashier's check or money order in the amount of \$2,502.21 representing \$1,614.33 in wages and \$887.88 in penalty, made payable to Allen W. Waldow, (2) a cashier's check or money order in the amount of \$2,409.16, representing \$1,554.30 in wages and \$854.86 in penalty, made payable to Danny R. Caldwell, (3) a cashier's check or money order in the amount of \$117.49 representing \$75.80 in wages and \$41.69 in penalty, made payable to Bradley D. Bender, (4) a cashier's check or money order in the amount of \$3,455.20, representing \$2,229.16 in wages and \$1,226.04 in penalty,

made payable to David F. Dean, and (5) a cashier's check or money order in the amount of \$5,729.65, representing \$3,696.55 in wages and \$2,033.10 in penalty, made payable to George Jasper. These checks and/or money orders must be mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision. Sustainable Systems , LLC, d/b/a Montola, may deduct applicable withholding from the wage portion but not the penalty portion of the amounts due.

DATED this 5th day of January, 2010.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: 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.