

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM) Case No. 350-2010
OF LANCE R. HARRISON,)

Claimant,)

vs.)

UP NORTH ENTERPRISES CORPORATION,)
a Montana corporation d/b/a The Night Train)
a/k/a Boston's Sports Pub & Grill,)

Respondent.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND ORDER**

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I. INTRODUCTION

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on March 19, 2010. Claimant Lance Harrison appeared on his own behalf and announced that he was ready to proceed. Up North Enterprises Corporation failed to appear even though it had timely notice of the time and date of the hearing and its representative had agreed to the date and time of hearing during the scheduling conference. As a result of Up North Enterprises Corporation's failure to appear, this matter proceeded in its absence.

II. FINDINGS OF FACT

1. Up North Enterprises Corporation failed without good cause to appear at the hearing in this matter.

2. Because Up North Enterprises Corporation did not appear, it failed to demonstrate that the Wage and Hour Unit's determination was erroneous. In accordance with this tribunal's earlier order, Up North Enterprises Corporation's failure to appear constitutes good cause to default Up North Enterprises Corporation to affirm the determination below. The determination below found that Up North Enterprises Corporation owes Harrison additional regular wages in the amount of

\$4,659.60 and 55% penalty on those regular wages in the amount of \$2,562.78. In addition, the determination below found that the respondent owes Harrison overtime wages totaling \$6,659.10 and 110% penalty on those overtime wages in the amount of \$7,325.01.

3. The record provided to the Hearings Bureau (Documents 1 through 61) fully supports the finding that Harrison is owed the above amounts in unpaid regular and overtime wages as well as penalties on those unpaid wages as noted above. The total amount due to Harrison in both wages and penalty is \$21,206.49.

III. 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 appellant without good cause failed to appear at hearing and, by failing to appear and prosecute its appeal, has shown no basis for reversing the determination below.

3. A review of the Wage and Hour Unit determination shows no legal cause why the order should not be affirmed.

4. Up North Enterprises Corporation owes Harrison wages totaling \$11,318.70. In addition, Up North Enterprises Corporation owes Harrison \$9,887.79 in penalty.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Up North Enterprises Corporation owes wages and penalty to Lance Harrison is AFFIRMED. Up North Enterprises Corporation is hereby ORDERED to tender a cashier's check or money order in the amount of \$21,206.49, representing \$11,318.70 in unpaid wages and \$9,887.79 in penalty, made payable to Lance R. Harrison and mailed to the Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503, no later than 30 days after service of this decision. Up North

Enterprises Corporation may deduct applicable withholding from the wage portion but not the penalty portion of the amount due.

DATED this 22nd day of March, 2010.

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.

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.