STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM OF TODD T. SCHULTZ,	)	Case No. 1873-2021
Claimant,	)	
vs.	)	**ORDER GRANTING SUMMARY JUDGMENT and FINAL AGENCY DECISION**
UNITED PARCEL SERVICE, INC.,	)	
Respondent.	)	

* * * * * * * * * *

I. INTRODUCTION

Claimant Todd Schultz (Schultz) filed this wage claim on December 16, 2019, claiming vacation pay for the period from September 27, 2018 to September 27, 2019. The Department's Wage and Hour Unit determined wages were owing. Respondent United Parcel Service, Inc. (UPS) appealed to a contested case hearing pursuant to ARM 24.16.7537. Prior to hearing, UPS made a motion for summary judgment and Schultz responded. Because UPS's motion is granted and is dispositive of the entire claim, this Order constitutes the Final Agency Decision.

II. FINDINGS OF FACT

1. While employed at UPS, Schultz was a member of the International Brotherhood of Teamsters, Local No. 2 (the Union) and subject to UPS's National Master Agreement with the International Brotherhood of Teamsters, the Joint Council No. 3 Rider, and the Western Region Supplement Agreement. These documents will collectively be referred to as the Collective Bargaining Agreement (CBA).

2. Article 17 in the Joint Council No. 3 Rider contains the agreement between UPS and the Union regarding vacation.[1] Ex. A, at 265-68. Article 17 contains the mechanisms for determining a Union member's vacation and contains the following

[1] The prior version of the CBA that Schultz submitted to the Department had the vacation provisions at Article 16. The CBA for the period after August 1, 2018 applies to this matter, and those provisions are found in Article 17.

sections: Section 1. Vacation Accrual, Section 2. Vacation Pay, Section 3. Option Week, Section 4. Eligibility, Section 5. Pro-rated Vacation, Section 6. Vacation Schedule, Section 7. Effects of Leaves of Absence, and Section 8. Effect of Unemployment Compensation.

3. Section 7. Effects of Leaves of Absence reads: Any employee who shall have been absent from work for provable illness for a total not to exceed sixty (60) calendar days, shall be considered for determining vacation privileges, as having been continuously employed. After sixty (60) days, time loss must be made up. Any employee who shall have been absent from work because of an industrial injury for a period not to exceed one hundred eighty (180) calendar days, shall be considered for determining vacation privileges, as having been continuously employed. After one hundred eighty (180) calendar days, time loss must be made up.

4. In Article 28 of the Western Supplement, the CBA contains a Grievance Procedure, which provides the process for resolving "all disputes, alleged contractual violations, and grievances." Ex. B, at 217. UPS and the Union agreed "to utilize and adhere to the guidelines set forth in Section l(a)" for all disputes other than discharges and suspensions, which are addressed in a different section.

5. Schultz was on a leave and was not working starting in February 2017. He asserts he is due vacation pay under the Article 17 terms of the CBA during the period of time he was not working.

III. STANDARD OF REVIEW

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). "The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Rule 56(c), Mont. R. Civ. P.

The moving party "must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law." *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A "material" fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material issues of fact are those which necessary to the substantive law which governs the claim. *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431 (overruled in part on

other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727).

"The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient." *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126. The "party opposing summary judgment must direct [the court's] attention to specific, triable facts." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). A court is "'not required to comb through the record to find some reason to deny a motion for summary judgment. . . .'" *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001). Summary judgment is proper if the opposing party fails to present a genuine issue of material fact of a substantial nature, not fanciful, frivolous, gauzy, or merely suspicious. *Cheyenne W. Bank v. Young v. Zastrow* (1978), 179 Mont. 492, 587 P.2d 401. A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

IV. DISCUSSION

UPS asserts Schultz's claim is preempted by federal law pursuant to Section 301 of the Labor Management Relations Act (LMRA). See 29 USC Section 185. Schultz asserts his claim is valid under state law. The issue of how a claim is characterized is a question of law. See for example *Edwards v. Cascade County Sheriff's Dep't*, 2009 MT 451, ¶ 49, 354 Mont. 307, 318, 223 P.3d 893, 901 (discussing how to determine where a claim can proceed). The question of law must be answered by reviewing the statutory right at issue versus the language of the CBA. In *Wright*, the Court began its clarification of Section 301 by noting that the analysis looks at whether the claim is a contractual right versus an independent statutory right. *Wright v. Universal Mar. Serv. Corp.*, 525 U.S. 70, 76 (1998).

If a claim is a contractual right, the Supreme Court has held these collective bargaining agreement contract violations are preempted by federal law and must proceed under the terms of the collective bargaining agreement. The court has further held that claims asserting state law rights can be preempted as well if the state law claim is grounded in the provisions of a collective bargaining agreement or requires interpretation of a collective bargaining agreement. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985). Once a claim is preempted, it must be pursued under the terms of the collective bargaining agreement. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987).

However, not every dispute involving employment terms or a provision of a collective bargaining agreement is preempted by Section 301. Rather, a two part test is generally used to analyze Section 301 preemption of state law claims. *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1032-37 (9th Cir. 2016). First, a court must determine "whether the asserted cause of action involves a right conferred upon an employee by virtue of state law, not by a CBA. If the right exists solely as a result of the CBA, then the claim is preempted, and [the] analysis ends there." *Id.* at 1032. If the court determines that the right underlying the plaintiff's state law claims "exists independently of the CBA," it moves to the second step, asking whether the right "is nevertheless 'substantially dependent on analysis of a collective-bargaining agreement.'" *Id* (quoting Caterpillar, 482 U.S. at 394). Where the interpretation of the claim is substantially dependent on the terms of a collective bargaining agreement, the state law claim is preempted by Section 301. *Id*. Where it is not, the claim proceeds under state law. *Id.* Compare *Klein v. State*, 2008 MT 189, ¶ 11, 343 Mont. 520, 185 P.3d 986 (Grievance procedures must be followed to exhaust a dispute under a collective bargaining agreement, however such agreements do not always preclude independent causes of action.)

Regarding the first prong, Schultz has asserted a claim for unpaid vacation wages against his employer, UPS, under Montana state law. UPS asserts Schultz has no right under state law to bring an action for vacation pay because there is no statutory requirement to pay vacation. UPS is incorrect. Here, Schultz's entitlement to vacation pay does not exist solely by virtue of the CBA. Schultz has a state law avenue to claim that he is entitled to vacation pay, which he has asserted in this claim. While there is no requirement that employees be paid vacation under state law, Schultz can properly bring a claim for vacation pay under Section 39-3-211, MCA. Montana law requires the payment of wages for wages earned by the employee for work performed. Mont. Code Ann. § 39-3-204. "Wages" are defined as "any money due an employee from the employer . . . for services rendered by them. . . ." Mont. Code Ann. § 39-3-201(6)(a). ARM 24.16.7521(1) provides, "Wage claims may be filed whenever an employee has not received wages that are due. These wages can be, but are not limited to, vacation pay, overtime pay, or regular wages." Finally, *Langager* noted that when an employer decides to grant paid vacation, the employer is obligated to pay the vacation as wages which are due and owing. *Langager v. Crazy Creek Prods.*, 1998 MT 44, P24, 287 Mont. 445, 453, 954 P.2d 1169, 1174. Because Schultz can bring an action for vacation pay under Montana law, his right and his cause of action is not one which was conferred entirely by the CBA. Therefore, Schultz's claim is not preempted under the first prong of the test.

Turning to the second prong, however, Schultz's claim must be considered preempted. His claim requires an interpretation of multiple provisions of the CBA.

He alleges UPS has established a course of performance with his pay, and with the pay of similarly situated employees. Schultz further argues the language of Article 17, and in particular Section 7. Effects of Leaves of Absence, entitled him to vacation pay for the time he was on leave. In order to resolve that dispute, the provisions under Article 17 must be interpreted to determine if he is due vacation pay. The provisions include Section 1. Vacation Accrual, Section 2. Vacation Pay, Section 3. Option Week, Section 4. Eligibility, and Section 7. Effects of Leaves of Absence. As a result, numerous clauses must be interpreted to resolve the dispute over whether Schultz is due that vacation pay during the period of time he was not working. Schultz's claim in particular rests on the CBA, because it involves the negotiated agreement on the effect of a leave of absence on vacation pay earned while not working, a question that is dependent on the contractual language. Because an extensive interpretation of the CBA is required in order to determine if he is due wages as vacation pay, his claim is bound by the contractual terms of the CBA, which in turn requires that his claim is preempted. The proper procedure for this dispute must be carried out as a grievance under Article 28 of the CBA.

In light of the foregoing, Schultz's state law wage claim is dismissed with prejudice because it is preempted by Section 301 of the LMRA. Because there is no way to determine whether or how much vacation pay to which Schultz might be entitled when he was not working, without interpreting disputed terms of the collective bargaining agreement between UPS and the Union, Schultz's required remedy is under the CBA's grievance procedure. Because the question of what forum his claim can proceed in is a question of law, and there are no genuine issues of material fact associated with that question, UPS is entitled to judgment as a matter of law.

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*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Schultz's wage claim is preempted by Section 301 of the LMRA and this dispute must be carried out as a grievance under the CBA. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985).

3. There is no genuine issue as to any material fact and UPS is entitled to judgment as a matter of law.

4. Due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute. *In the Matter of Peila*, 249 Mont. 272, 280-281, 815 P.2d, 144 (1991).

VI. ORDER

IT IS THEREFORE ORDERED that UPS's motion for summary judgment is hereby GRANTED. Schultz's wage and hour claim is hereby DISMISSED in its entirety.

DATED this 3rd day of February, 2022.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JUDY BOVINGTON
JUDY BOVINGTON
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 the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59620-1503