

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

IN THE MATTER OF THE WAGE
CLAIM OF JAMES P. MILLIGAN,

Claimant,

vs.

MONTANA DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 1869-2022

**ORDER ON RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

Respondent, Montana Department of Corrections (DOC), filed a Motion for Summary Judgment arguing that it is entitled to judgment in its favor because the undisputed facts establish that Claimant, James P. Milligan (Milligan), is not entitled to any outstanding wages. DOC claims that Milligan's job title changed as a result of the Montana Department of Administration's move to Pay Plan 25, but that none of Milligan's job duties changed, and, as such, he was not owed any additional wages for moving into a new position as he claims. Milligan counters that, under the Collective Bargaining Agreement to which he belongs, he is entitled to back wages due to a change in his position title. This matter is now fully-briefed and ripe for disposition.

II. UNDISPUTED FACTS¹

I. Milligan was hired as a Mail Room Clerk at Montana State Prison on August 10, 2015.

¹ Facts related to the CBA or the transition to Broadband 25 were derived from the public documents submitted during the investigation into Milligan's wage claim. These documents consist of a December 13, 2019 email from Bonnie Shoemaker, who is the Classification Program Coordinator and who was primarily responsible for the transition from Broadband 20 to Broadband 25, and the Collective Bargaining Agreement that covered Milligan's bargaining unit during the relevant time period. The Hearing Officer hereby takes judicial notice of these documents, pursuant to Mont. R. Evid. 201. Further, since these documents are public documents, they fall within the public records exception to the hearsay rule. See Mont. R. Evid. 803(8).

2. On August 11, 2015, Milligan signed a job description for a Mail Room Clerk II position.

3. On January 23, 2018, Milligan signed a job description for a Mail Room Band 3 position.

4. At all material times herein, Milligan's position was part of a bargaining unit of the Montana Federation of Montana State Prison Employees Local 4700, and was covered by a collective bargaining agreement (CBA).

5. The CBA that covered Milligan's position for the relevant time period was ratified on January 16, 2020, and did not expire until the end of 2021.

6. Addendum A-2 of the CBA contained a list of the positions that were covered by the CBA and their respective pay ranges as of January 1, 2020. Included in that list of positions was Compliance Technician, which carried the class code of 436154. Addendum A-2 also contained a Mail Clerk position which had a class code of 439513.

7. Mail Room Clerks were paid a base rate of \$18.42 per hour.

8. At all times herein, Milligan was paid a base rate of \$18.42 per hour.

9. On December 2, 2019, Billie Reich sent an email to various DOC employees, including Milligan, wherein she advised those on the email that a new Technical Correctional Services Bureau (TCSB) Compliance Technician position was becoming available at Montana State Prison.

10. The TCSB Compliance Technician position was to act as a back-up to Ms. Reich and would involve handling all classification duties with "none of the mail duties."

11. Ms. Reich's email informed those included that, if they wished to apply for the TCSB Compliance Technician position, they would need to submit a resume and cover letter to Ms. Reich by December 9, 2019.

12. Milligan did not submit a resume or a cover letter to Ms. Reich by the December 9, 2019 deadline, and never applied for the TCSB Compliance Technician position.

13. Milligan did not interview for the TCSB Compliance Technician position.

14. As a result of his failure to apply, Milligan was never offered the TCSB Compliance Technician position.

15. Despite having never been offered the position, Milligan signed the TCSB Compliance Technician position description and dated it December 4, 2019, which was approximately five days prior to when the application period closed.

16. No signed job description for the TCSB Compliance Technician position exists in Milligan's personnel file.

17. In late 2020 through early 2021, the Montana Department of Administration (DOA) implemented a change from Broadband 20 to Broadband 25. The transition applied to all executive branch employees, including employees covered by collective bargaining agreements.

18. The job codes under Broadband 20 were to be eliminated as of March 26, 2021.

19. DOA sent guidance to various agencies and managers informing them that while the transition to Broadband 25 would result in changes to the titles of some positions, it was intended to be pay neutral, meaning that a change to an employee's job title would not result in a pay increase.

20. The transition from Broadband 20 to Broadband 25 was pay neutral because the duties performed by the employees did not change. Rather, the only change implemented was a change in job title.

21. When an employee's job title was changed under Broadband 25, the employee was not notified because it did not materially affect the employee's pay or job duties.

22. With respect to positions covered by collective bargaining agreements, when the DOA implemented Broadband 25, it was intended that the new position titles and job codes would be updated in the collective bargaining agreements when new agreements were negotiated.

23. When the DOA implemented Broadband 25, Milligan's job title changed from Mail Clerk to Compliance Technician. However, his job duties did not change once his position was renamed to Compliance Technician, and he performed the same duties he did as a Mail Clerk. In fact, Milligan was not even aware of the change to his job title until August, 2021.

24. On August 31, 2021, Milligan discovered the change in job title, and inquired with Ann Cody as to his job classification code. More specifically, Milligan stated “I noticed that my title is (Compliance Technician I) on my pay stub. Is my classification code still 436154?”

25. Ms. Cody responded by asking Milligan where he was seeing his classification code, to which Milligan responded, “In my collective bargaining agreement” and provided a copy of his pay stub which showed his job title, but not his classification code.

26. Ms. Cody responded, “Yes, as far as I know nothing has changed on that. I know that the position title was updated for the position you are in. We will not know if anything like that changes until the new CBA is finalized.”

27. Milligan responded by asking “So, what I am hearing is my classification code is 436154?” Ms. Cody responded by stating, “Yes, it is the same. If the codes get updated it would be with the new CBA.”

28. On October 8, 2021, Milligan filed a wage claim alleging that DOC owed him a total of \$4,388.42 in wages for work performed during the period of January 1, 2021 through October 1, 2021 because his job title was changed to Compliance Technician, and Compliance Technicians are entitled to a higher wage under the CBA that was ratified prior to the transition to Broadband 25.

III. SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment may be granted only when there is a complete absence of genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c); *LaTray v. City of Havre*, 2000 MT 119, ¶ 14, 299 Mont. 449, 999 P.2d 1010. The party seeking summary judgment bears the initial burden of establishing a complete absence of genuine issues of material fact. *LaTray*, ¶ 14. To satisfy this burden, the moving party must “exclude any real doubt as to the existence of any genuine issue of material fact” by making a “clear showing as to what the truth is.” *Toombs v. Getter Trucking, Inc.*, 256 Mont. 282, 284, 846 P.2d 265, 266 (1993).

In determining whether genuine issues of material fact exist, all evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment. *LaTray*, ¶ 15. If there is any doubt as to whether a genuine issue of material fact exists, that doubt must be resolved in favor of the party

opposing summary judgment. *Newbury v. State Farm Fire & Cas. Ins. Co.*, 2008 MT 156, ¶ 14, 343 Mont. 279, 184 P.3d 1021.

If the moving party meets its burden of demonstrating a complete absence of genuine issues of material fact, the burden then shifts to the non-moving party to set forth specific facts, not merely denials, speculation, or conclusory statements, in order to establish that a genuine issue of material fact does indeed exist. Mont. R. Civ. P. 56(e); *LaTray*, ¶ 14. Finally, if no genuine issues of material fact exist, it must then be determined whether the facts actually entitle the moving party to judgment as a matter of law. Mont. R. Civ. P. 56(c).

IV. DISCUSSION

Montana law provides that “every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States. . . .” Mont. Code Ann. § 39-3-204(1). An employee seeking unpaid wages has the burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); *Garsjo v. Dept. of Labor and Industry*, 172 Mont. 182, 562 P.2d 473 (1977). In order to meet this burden, the employee must prove that “he has in fact performed work for which he was improperly compensated and [producing] sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.” *Garsjo*, 172 Mont. at 188-89, 562 P.2d at 476-477 (quoting *Anderson*, 328 U.S. at 687, 66 S.Ct. at 1192).

As previously stated, DOC argues that Milligan cannot meet his burden of establishing that he is owed wages because he cannot show that his job duties changed when his job title was changed from Mail Clerk to Compliance Technician with the transition to Broadband 25. DOC argues that because he was still performing the duties of the formerly-named Mail Clerk position, and was paid the applicable rate for Mail Clerks, he was properly compensated. Milligan counters that, under the CBA that covered his position, Compliance Technicians were paid more than Mail Clerks and he is entitled to the higher pay once his job title was changed to Compliance Technician. Based on the undisputed facts and arguments of the parties, DOC’s motion for summary judgment will be granted.

Summary judgment is proper in this case because the undisputed facts establish that Milligan cannot meet the aforementioned burden of proving that he was owed wages for work performed. As set forth above, there is no dispute that Milligan’s job title changed from Mail Clerk to Compliance Technician with the transition from Broadband 20 to Broadband 25. However, the change to Milligan’s job title did not result in a corresponding change in his job duties. Without a change

in job duties or responsibilities, Milligan cannot claim that he was improperly compensated because he was paid in accordance with the position that he held and duties that he performed irrespective of his title.

Milligan's entire claim is predicated on his mistaken belief that the change in his job title, with no corresponding change in job duties, entitles him to wages for a position that he did not occupy. Milligan does not offer any evidence or argument regarding the duties of a Compliance Technician or that he took on the duties of a Compliance Technician upon the change to his job title. Rather, he erroneously assumes that because his job title changed to Compliance Technician, he should have been paid in accordance with the pay range for that position set forth in the CBA governing the bargaining unit to which he belonged. However, Milligan neglects to acknowledge the fact that the CBA was not changed to reflect the new job titles utilized under Broadband 25, and would not be changed to reflect the new job titles until after a new CBA was negotiated and ratified. Therefore, he was not a Compliance Technician under the existing CBA because it had not been updated. Further, as a matter of law, having his title changed as part of the transition from Broadband 20 to Broadband 25 did not entitle him to different pay under the CBA.

Further, there can be no argument that Milligan received the TCSB Compliance Technician position and was entitled to the pay increase associated with that position. Milligan readily admitted in discovery that he was aware of the TCSB Compliance Technician position when that position became available in December, 2019. Milligan also admitted that he never applied for, was never interviewed, and was never offered the TCSB Compliance Technician position. Milligan's signing of the TCSB Compliance Technician position description does not create an inference that he moved to that position because all evidence indicates that he was never offered the position and never performed the work of a TCSB Compliance Technician. His signature on a document is no more than speculation, given that he admitted he never applied and signed it on his own accord. Simply put, these undisputed facts establish that Milligan never transitioned to the Compliance Technician position, and remained in his Mail Clerk position throughout the remainder of his tenure at Montana State Prison.

Furthermore, the email exchange between Milligan and Ms. Cody cannot be relied upon to create a genuine issue of material fact because it is based upon inaccurate information and misrepresentations. When he requested that Ms. Cody confirm his classification code, he represented to Ms. Cody that his classification code was that of a Compliance Technician, which was not the job that he held prior to the Broadband 25 transition. He stated, "Is my classification code still 436154," (emphasis added), when, in actuality, Milligan never held a position with that classification code. Rather, he was a Mail Clerk, which carried an entirely different

classification code. Apparently, Ms. Cody did not detect this discrepancy and mistakenly agreed with Milligan. Regardless of whatever was conveyed in this email exchange, Milligan never held a position with a classification code of 436154 and any attempt to claim that he did runs contrary to the undisputed facts of this case.

In summary, Milligan has failed to offer any evidence to establish that he transitioned to a new position or otherwise took on additional job duties or responsibilities with the change to his job title. Milligan was still performing the duties of a Mail Clerk after his job title changed to Compliance Technician. Milligan was paid \$18.42 per hour in 2021, both before and after the job title was changed, which was the appropriate pay rate for Mail Clerks under the CBA. Since Milligan has failed to show that his job duties changed, the facts establish that he was properly compensated based upon the work that he was actually performing as a Mail Clerk, and, later, as a Compliance Technician. Therefore, summary judgment is proper as Milligan was compensated in accordance with the position he held, and is not owed additional wages for a position that he never held.

V. ORDER

Based upon the foregoing, DOC's Motion for Summary Judgment is hereby granted as the undisputed facts establish that Milligan is not owed any additional wages. It is further ordered that the scheduling order, along with the contested case hearing set for April 25-26, 2023, is vacated.

DATED this 6th day of March, 2023.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JEFFREY M. DOUD
JEFFREY M. DOUD
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