

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

IN THE MATTER OF THE WAGE CLAIM OF JOSEPH SALSGIVER,)	Case No. 225-2024
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	
)	
G&G GARBAGE, LLC,)	
)	
Respondent.)	

* * * * *

I. BACKGROUND

On May 8, 2023, Claimant Joseph Salsgiver (Salsgiver) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Respondent G&G Garbage, LLC (G&G) owed him \$2,000.00 in unpaid wages and \$1,021.88 in overtime for work performed during April 9, 2023, to April 22, 2023.

On July 24, 2023, the Wage and Hour Unit issued a determination finding G&G owed Salsgiver a total of \$1,819.04 in unpaid wages and overtime, with a total amount of \$795.64 in penalties. Mandatory mediation was unsuccessful, and G&G appealed. On September 27, 2023, the matter was transferred to the Office of Administrative Hearings.

Hearing Officer Joslyn Hunt convened a contested case hearing in the matter on January 23, 2024, via Zoom audio conference. Salsgiver represented himself. G&G was represented by attorney Allisha A. Vogel, with no representative from G&G present. At hearing, Salsgiver testified for his case-in-chief. Lisa Plaggemeyer (Plaggemeyer) and Sean Mackiewicz (Mackiewicz) testified on behalf of G&G. The parties agreed during the final pre-hearing conference that the administrative record, with documents numbered 1-166, would be admitted with no objection. The parties also agreed to the proposed stipulated facts filed by G&G with the Office of Administrative Hearings on January 9, 2024.

II. ISSUE PRESENTED

Whether G&G owes wages for work performed.

III. FINDINGS OF FACT

1. Salsgiver worked as an Operations Manager for G&G, having been hired by G&G on February 6, 2023. The last day Salsgiver actually worked for G&G was April 21, 2023. He was scheduled to work on April 24 and April 25, 2023.

2. Salsgiver received \$25.00 per hour for his pay as an Operations Manager. His pay rate for overtime was \$37.50 per hour.

3. Salsgiver indicated when he was hired he did not read the employee handbook; however, he agreed that he signed the employee handbook, indicating that he had read it and that he was bound by it. In particular, Salsgiver agreed with his signature that “it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.”

4. G&G’s Director of Human Resources, Plaggemeyer, indicated that Salsgiver was given the employee handbook and offered time within which to ask questions of its contents. Salsgiver had no questions.

5. On April 11, 2023, Salsgiver gave notice via voicemail to Plaggemeyer that he was resigning his position in two weeks. This made Salsgiver’s last intended day of work as April 25, 2023.

6. G&G’s employee handbook regarding resignation indicated: “An employee that . . . gives less than two weeks’ notice prior to termination of employment will be compensated at the minimum wage rate of the applicable state in which the employee is working for employee’s final pay period regardless of current pay rate[.]”

7. Mackiewicz is Salsgiver’s supervisor. He indicated that upon Salsgiver’s notification to him that Salsgiver wanted to leave G&G right away, Mackiewicz advised Salsgiver of G&G’s policy requiring two weeks’ notice. Mackiewicz did not specifically mention the provision in the employee handbook that changed the rate of pay based on the two weeks’ notice. Salsgiver indicated he gave G&G the benefit of not having to pay him two days into the next pay cycle by working his last day on April 21, 2023.

8. G&G paid Salsgiver \$1,052.21 on April 28, 2023, for the pay period of April 9, 2023, through April 22, 2023. For this pay period, he was paid a regular wage of minimum wage (\$9.95 per hour) and an overtime wage rate of \$14.93 per hour.

9. Salsgiver claimed he was owed \$3,021.88 in unpaid wages and overtime.

IV. DISCUSSION¹

A. Montana Wage Payment Act Requirements

The Montana Wage Payment Act obligates an employer to pay the wages earned by an employee. See Mont. Code Ann. § 39-3-204(1) (“every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee”). “Wages” include “any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly[.]” Mont. Code Ann. § 39-3-201(6)(a).

The Montana Supreme Court in *McConkey v. Flathead Elec. Coop.*, 2005 MT 334, 330 Mont. 48, 125 P.3d 1121, held that the rate of compensation for work performed is typically defined by the employment contract. *McConkey*, ¶ 24 (payment of 95 percent of the employees’ personal time was proper because the other 5 percent did not constitute wages that were part of the employees’ agreed-upon compensation). An “employer is free to set the terms and conditions of employment and compensation and the employee is free to accept or reject those conditions.” *Langager v. Crazy Creek Prods.*, 1998 MT 44, ¶ 25, 287 Mont. 445, 954 P.2d 1169 (citation omitted).

B. The Parties’ Arguments

Salsgiver argued that the law was clear G&G could not impose a policy on him that took away from him wages that were due. Salsgiver pointed to evidence that even Plaggemeyer did not construe the employee handbook as a legally binding contract, and that he had never before encountered a policy like G&G’s regarding resignation. Salsgiver contended he was owed the wages found due by the investigator.

G&G argued that Salsgiver failed to meet his burden of proving that he was owed wages by G&G. In particular, G&G contended that Salsgiver agreed he failed to work the entirety of the two weeks for which he gave notice, having left G&G on April 21, 2023; he was informed of G&G’s resignation policy contained within the employee handbook; he agreed he was bound by the policy; he chose not to show up to work on April 24 or April 25, 2023; his choice affected his pay because his rate of pay was a condition precedent that he failed to fulfill. Moreover, G&G argued it did not unilaterally reduce Salsgiver’s pay, and instead paid him minimum wage pursuant to the policy.

In its final contentions, as it concerns G&G’s argument regarding a condition precedent, G&G elaborated that the “crux of this matter centers upon

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

whether G&G's Resignation Policy is valid and enforceable under Montana law." G&G argued that like the Montana Supreme Court held in *McConkey*, the employer who was only obligated to pay 95 percent of accrued personal time, G&G also was only obligated to pay Salsgiver an hourly rate of minimum wage for the pay period that Salsgiver gave notice to work and failed to complete the work. According to G&G, Salsgiver was free to negotiate the terms of his employment regarding the pay rate applicable upon two weeks' notice, and he did not do so. Additionally, G&G discussed the Montana Supreme Court decision in *Chipman v. Northwest Healthcare Corp.*, 2014 MT 15, 373 Mont. 360, 317 P.3d 182, which held the employee's completion of 25 years of service was a condition precedent, the benefit from which did not accrue until the employee completed 25 years of service. Likewise, G&G contended that "either not terminating employment during a pay period or giving a two weeks' notice and working the full two weeks prior to terminating employment, was a condition precedent to Mr. Salsgiver's receiving an hourly wage of \$25.00 per hour as opposed to minimum wage." Finally, G&G argued that unlike the Montana Supreme Court's decision in *Langager*, G&G's resignation policy was clear, did not divest Salsgiver's wages after the wages had been earned, and was not a condition subsequent.

C. Analysis

Here, Salsgiver agreed he was bound by the employee handbook, despite never having read it. Salsgiver's argument is that the resignation policy contained within the employee handbook violates the law because it takes away from him wages that he is owed. He also argues that per Plaggemeyer's testimony, the employee handbook is not a legally binding contract. The Hearing Officer notes from the outset that determination of what is or is not a legally binding contract is a question for the Hearing Officer to decide. See *Jarussi v. Sandra L. Farber Trust*, 2019 MT 181, ¶ 13, 396 Mont. 488, 445 P.3d 1226 (determining whether a contract exists is a combined question of fact and law). This is a wage and hour dispute based on an employee handbook that Salsgiver agreed he was bound to. The question in this case becomes whether Salsgiver is contractually bound by G&G's resignation policy contained within the employee handbook as a condition precedent. A condition precedent includes an event that must occur before a right arises. A condition subsequent includes an event that takes effect after a right has already vested. The Hearing Officer agrees with G&G that the resignation policy is a condition precedent as the following details.

In particular, a "condition precedent" "is to be performed before some right dependent thereon accrues or some act dependent thereon is performed." Mont. Code Ann. § 28-1-403. Unlike the plaintiffs in *Langager*, whose sick leave hours they accumulated were retained for use during their employment contract, Salsgiver did not accrue wages at a regular rate of \$25.00 per hour unless and until he worked the entire two weeks for which he gave notice. Salsgiver agreed that he failed to work the full two weeks. Instead, his last day

was April 21, 2023, and he was scheduled to work April 24 and April 25, 2023. The policy in *Langager* contained a condition subsequent because it required the employees to work after their paid vacation periods accrued or lose their vacation pay, thereby taking away from the employees vacation pay they had already earned. G&G's resignation policy does not take away from Salsgiver money he already earned, because he does not obtain the regular rate of \$25.00 per hour, again, unless and until he completes the entire two weeks' notice. The resignation policy indicated as much and is a provision that Salsgiver was contractually bound to by his signing. In that regard, this case is more akin to *McConkey* and *Chipman* because the resignation policy is not preventing him from earning \$25.00 per hour. See *McConkey*, ¶ 25; *Chipman*, ¶ 27 (plaintiffs were not entitled to compensation for their unused continued illness bank hours upon termination until they reached 25 years of service). Rather, to earn \$25.00 per hour, Salsgiver must have worked the entirety of his two weeks' notice. Salsgiver failed to do so. Because Salsgiver did not read the employee handbook, he was not aware of the requirement to work the time remaining in his notice period. However, Salsgiver agreed by signing the employee handbook that he understand the policies contained within it, had read the policies, and would comply with the policies. He only believed he had to give two weeks' notice, but did not have to work all that time. The facts indicate he did not work as a courtesy to his employer. Had he confirmed that the employer accepted this courtesy, he would have learned of the requirement to work those days.

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 Co.*, 176 Mont. 31, 575 P.2d 923 (1978).
2. G&G's resignation policy contained a condition precedent to Salsgiver's right to receive \$25.00 per hour in regular wages and \$37.50 per hour in overtime wages pursuant to his two weeks' notice.
3. Salsgiver failed to work the entirety of the two weeks to receive the \$25.00 per hour in regular wages and \$37.50 per hour in overtime wages.
4. G&G paid Salsgiver for the pay period of April 9, 2023, through April 22, 2023, the amount he earned by failing to meet the condition precedent, which was \$1,052.21.
5. Salsgiver failed to prove he is owed \$3,021.88 in unpaid wages and overtime.

VI. ORDER

Based on the foregoing, G&G does not owe Salsgiver wages for work performed, nor is G&G obligated to pay penalties as provided by law. This matter is dismissed with prejudice.

DATED this 14th day of March, 2024.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT
JOSLYN HUNT
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