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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Shirley C. Robinson

ALC Case No. 22-ALJ-04-0305-AP
Appellate Case No. 2023-000848

RONALD CEO, # 258464,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF THE ISSUE ON APPEAL1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....6

TABLE OF AUTHORITIES

CASES

Hendley v. S.C. Budget & Cntrl, 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996) ... 3

Wicker v. South Carolina Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004)..... 5

STATUTES AND RULES

S.C. Code § 1-23-380 3

S.C. Code § 1-23-610..... 3

S.C. Code § 24-1-290 4

S.C. Code § 24-1-295..... 4, 5, 6

S.C. Code § 24-3-430 4, 5

STATEMENT OF ISSUE ON APPEAL

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED IN A PRISON INDUSTRIES SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND THE PRISON INDUSTRIES SERVICE PROEJCT JOB IS NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Ronald Ceo (“Appellant”), an inmate in the South Carolina Department of Corrections (“SCDC”). On May 30, 2022, Appellant filed a Step One grievance seeking to be paid pursuant to the prevailing wage statute for work performed as a baler for Carolina Textiles. This grievance was processed and returned as being untimely. Appellant attempted to file a Step Two grievance, and subsequently a Notice of Appeal. On July 20, 2022, the Administrative Law Court issued an Order to remand the case back to Department for processing of Appellant’s grievance. Thereafter, SCDC investigated Appellant’s Step One grievance and denied the same on August 24, 2022. Appellant then filed a Step Two grievance again seeking to be paid prevailing wages for work performed for Carolina Textiles. This grievance was investigated and denied on September 29, 2022. Appellant submitted a Notice of Appeal to the Administrative Law Court on October 17, 2022. On May 2, 2023, the Administrative Law Court issued an Order of Dismissal. In that Order, Judge Shirley C. Robinson found that Appellant’s grievance did not implicate a state-created liberty or property interest because the work Appellant performed was not subject to the prevailing wage statute since the program he worked in was created under a different statutory scheme. (See R. p. 1-2). This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED IN A PRISON INDUSTRIES SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND THE PRISON INDUSTRIES SERVICE PROEJCT JOB IS NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

Despite Appellant's allegation that he was denied a prevailing wage under S.C. Code 24-3-430 (d), the job Appellant actually worked was not subject to the prevailing wage statute. Accordingly, the Administrative Law Court properly dismissed the appeal as not implicating a state-created liberty or property interest.

There are three types of prison industries programs in the South Carolina Department of Corrections: (1) Prison Industries Enhancement Programs (commonly referred to as "PIE or PIECP"); (2) Prison Industries Service Projects; and (3) traditional prison industries. Only "PIE" or "PIECP" programs are subject to the prevailing wage statute, S.C. Code 24-3-430(d).

Appellant performed service work for a Prison Industries Service Project working as a baler for Carolina Textiles. (See R. p. 3-21.) Prison Industries Services Projects are governed by S.C. Code § 24-1-290 & -295. S.C. Code 24-1-295, which governs service work, states in relevant part:

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry *service work and export work that involves exportation of products*. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, *service work is defined as any work that includes* repair, replacement of original manufactured items, packaging, *sorting, recycling, labeling, or similar work that is not original equipment manufacturing*. The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and *these wages may be less*

than the prevailing wage for work of a similar nature in the private sector.....

S.C. Code Ann. § 24-1-295 (emphasis added).

The Carolina Textiles project was a Prison Industries Service Project, and its purpose was “to fulfill the intent of South Carolina Code of Laws, Title 24, Chapter 3 and Section § 24-1-295, as amended.” (See R. p. 12-21.) The contract further provides that “[Carolina Textiles] intends to engage in the business of reclaiming cotton components and additional recycling projects provided at MacDougall Correctional Institution.” (See R. p. 12-21.) Appellant’s participation included sorting clothing and rags, and then baling the items. (See R. p. 3-21.) Appellant did not participate in any manufacturing; instead, he provided a service consistent with the statute authorizing service work. See S.C. Code Ann. § 24-1-295 (“[s]ervice work is defined as any work that includes ... *sorting, recycling*, ... or similar work that is not original equipment manufacturing...”) (emphasis added). Since Appellant did not manufacture any goods but instead provided services for the reclaiming/recycling project, Appellant worked for a Prison Industries Service Project. This service project is not subject to the prevailing wage requirement of S.C. Code 24-3-430(d), which governs inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise. Compare Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that the ALC could properly entertain a grievance regarding payment of a prevailing wage for work performed under S.C. Code 24-3-430, and that the statute required payment of a prevailing wage to Wicker for such work). More importantly, the statute governing service work **specifically states** that the wages may be less than the prevailing wage for work of a similar nature

in the private sector. See S.C. Code §24-1-295. Because Appellant worked for a Prison Industries Service Project governed by S.C. Code Ann. § 24-1-295, he is not entitled to be paid pursuant to the prevailing wage statute, and the lower court should be affirmed.

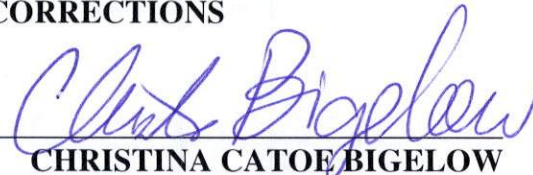
CONCLUSION

For the reasons discussed above, Respondent respectfully requests that this Court affirm the determination of the Administrative Law Court.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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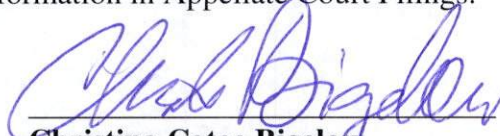
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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