

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Jacob Munn, Jr., #226509,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)
 _____)

Docket No. 22-ALJ-04-0347-AP

ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by John Jacob Munn, Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department’s final decision finding Appellant was correctly paid the statutory prevailing wage while working as a machine operator for Shaw Industries Group (Shaw) as part of the Prison Industry Enhancement Certification Program (PIECP or program) at Tyger River Correctional Institution (TRCI).

Appellant filed a Request to Staff Member (RTSM) on October 30, 2022, asserting the Department was paying him less than the prevailing wage required under *Torrence v. South Carolina Department of Corrections*¹ and statutory law.² Appellant then filed a Step 1 Grievance on October 31, 2022, asserting similar claims. On November 7 2022, the Warden denied Appellant’s Step 1 Grievance and referred Appellant to SCDC Policy ADM-15.13, which requires that problems with inmate pay must be reported within fifteen (15) days of the payroll date error. The Warden also stated that Appellant had been provided with wages approved by the governing authority of South Carolina. On November 9, 2022, Appellant filed a Step 2 Grievance, in which he again requested to be paid the prevailing wage. The Department then denied the Step 2 Grievance.

¹ *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022).

² “In 1995, the South Carolina legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than ‘the prevailing wage for work of [a] similar nature in the private sector.’ Act No. 7, 1995 S.C. Acts 78. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102.” *Gatewood v. S.C. Dep’t of Corr.*, 416 S.C. 304, 309, 785 S.E.2d 600, 603 (Ct. App. 2016).

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SC Admin. Law Court

Appellant filed a Notice of Appeal on December 15, 2022. The case was assigned on January 17, 2023. Appellant filed his brief on April 4, 2023. The case initially was held in abeyance on May 18, 2023; but restored to the active docket on September 15, 2023. Appellant filed a supplemental brief on October 20, 2023.³ Thereafter, the Department filed the Record on Appeal and its brief.

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). Furthermore, in *Wicker v. South Carolina Department of Corrections*, the Supreme Court held that this Court has jurisdiction to hear inmate wage claim grievances in the limited circumstance where the state has created a statutory right to that wage. 360 S.C. 421, 423–24, 602 S.E.2d 56, 57 (2004) (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”).

DISCUSSION

Before I address the parties' arguments, a brief overview of the Court of Appeals' decision in *Torrence* is helpful.

In *Torrence*, inmate Torrence participated in a PIECP between June 1997 and November 2004. 433 S.C. at 637, 861 S.E.2d at 38. He first filed a class action with other inmates in the circuit court in 2001 seeking a declaratory judgment finding the Department had violated South Carolina law by, in part, paying inmates less than the prevailing wage under section 24-3-430(D) of the South Carolina Code. *Id.* at 637, 861 S.E.2d at 39. The South Carolina Supreme Court eventually dismissed the class action in 2007, finding the proper avenue for a wage claim was through the Department' internal grievance procedure. *Id.* at 637-38, 861 S.E.2d at 39. Consequently, Torrence filed a grievance with the Department in 2007, arguing he was entitled to the difference between his wage and the prevailing wage for his work performed in the PIECP. *Id.* The Department denied Torrence's grievance. *Id.*

³ Once the case was restored to the active docket, the Court gave Appellant the opportunity to file a supplemental brief if he wished to do so.

In the appeal, the Department argued Torrence's grievance was untimely because he did not file it within fifteen days of the date upon which the Department began paying him for his labor as required by Paragraph 13.1 of Policy GA-01.12. *Id.* at 643, 861 S.E.2d at 42. However, the Court of Appeals found the claim to be a timely challenge to the Department's grievance policy. *Id.* at 643-45, 861 S.E.2d at 42-43. Specifically, the Court of Appeals found that under Paragraph 13.9 of Department Policy GA-01.12, there is an exception to the requirement that an inmate file a grievance from an "incident" within fifteen days if the grievance involves a Department policy or procedure. *Id.* at 644-45, 861 S.E.2d at 42-43. Although Torrence never alleged his grievance implicated a policy or procedure, the Court of Appeals found Torrence's issue implicated a policy or procedure and thus the fifteen-day time limit did not apply because the Department's characterization of inmate wage grievances as an "incident" was arbitrary and capricious. *Id.* The Court of Appeals apparently reasoned that because the contracts that are negotiated between the Department and prison inmate employers are "enduring" and "have the same effect on numerous inmates," those contracts are a statement of Department policy.

Thus, pursuant to the Court of Appeals' decision in *Torrence*, Torrence was permitted to claim the difference between the wage he was paid and the prevailing wage, beginning in 1997, even though he did not initially challenge his wage until the class action in 2001 and did not file his first grievance with the Department until 2007. *Id.* at 637, 861 S.E.2d at 38. The decision therefore potentially suggests that when an inmate files a grievance that implicates a Department policy or procedure, he is not bound by any time limits to initiate the grievance. *See also Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 421, 782 S.E.2d 757, 762 (Ct. App. 2016) (holding inmates wages under a PIECP contract fall within the "policies/procedures" as contemplated 13.9 of Policy GA-01.12. and are not subject to the fifteen-day time limit for filing). It is this finding that has set in motion the difficulty of discerning if there is any timeframe limiting an inmate's challenge to the previous payment of wages. In other words, since there is no time limit for challenging the Department's policies, the *Torrence* decision leaves open the question of whether an inmate can claim reimbursement for unlimited years of work for which he was not paid the prevailing wage.

Torrence does not expressly authorize or forbid the retroactive application of the decision to inmate labor performed before the decision was issued. *Id.* at 633-50, 861 S.E.2d at 36-46. However, the Court of Appeals acceptance of Torrence's grievance, which was not filed with the Department until 2007—well after he concluded working in the PIECP in 2004—certainly begs

the question as to when an inmate would be precluded from questioning their wages. Indeed, despite his delay in filing any claim for a number of years, the Court of Appeals did not address any barrier, such as a statute of limitations or otherwise, that would bar Torrence's claim for reimbursement/back pay for the time he worked before he filed his grievance. *See also Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 416, 782 S.E.2d 757, 759 (Ct. App. 2016) (addressing no timeliness issues where inmates filed their respective Step 1 Inmate Grievance Forms with the Department on various dates in late September 2004 to request the prevailing wage for their labor from 1999 through June 30, 2001). Nonetheless, *Torrence* does not compel the Department to remit retroactive backpay to any inmate who makes a PIECP pay claim. Therefore, this Court's review of Appellant's claim is made within this context.

Here, Appellant requests to be paid the prevailing wage for his work in the program beginning on March 2, 2017. There is no dispute that Appellant is entitled to the statutory prevailing wage under section 24-3-430(D) of the South Carolina Code as it was defined in *Torrence* for his work going forward. Rather, the question is whether Appellant can claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the PIECP or whether some of his claim is barred under SCDC policies.

SCDC Policy

SCDC Policy ADM-15.13 Section 12.1 addresses problems with pay and is not part of the general policies governing inmate grievance procedures. The current version of this policy, which has been in effect since June 2014, provides the following:

12. PROBLEMS WITH PAY:

12.1 Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13, Section 12.1 (June 3, 2014). This policy has been in place at the Department since January 20, 1998. Appellant began participating in the project operated by SCDC on March 2, 2017. Therefore, the policy in effect regarding inmate pay only includes the current version of SCDC Policy ADM-15.13. *See* SCDC Policy ADM-15.13.⁴

Here, the Department asserts that pursuant to this policy, Appellant's claim for back pay is foreclosed because Appellant failed to notify the Department of any problems with his prison industries pay within fifteen days.⁵ Appellant, however, argues that under *Torrence*, the Department must compensate Appellant with back wages for all hours performed when he was paid below the prevailing wage.

Although Policy ADM-15.13 (the agency's inmate pay policy) was in effect at the time Torrence filed his Step 1 grievance, the Court of Appeals did not analyze the implications of that policy regarding wage disputes in *Torrence*. Nevertheless, as explained above, Section 12.1 of Policy ADM-15.13 directly addresses when an inmate may question their inmate pay, and specifically wages earned through PIECP. Therefore, the need to resort to the policy exception in Section 13.09 (or Section 13.10 in the current version of the policy), like the Court of Appeals did in *Torrence*, is unnecessary as Section 12.1 of Policy ADM-15.13 specifically applies to pay incidents or errors. Thus, if an inmate has a question about their pay or believes there is an error in their pay, they must timely file an initial claim under this policy. If the pay error is not resolved, the inmate may then appeal the Department's decision.

Pursuant to SCDC Policy ADM-15.13, Appellant was required to notify SCDC through the ARTSM, of any problems with his prison industry's pay within fifteen days of the payroll error. Appellant notified SCDC of a problem with his prison industries pay on October 30, 2022, when he filed a RTSM. Under the applicable edition of Policy ADM-15.13, Section 12.1, he is

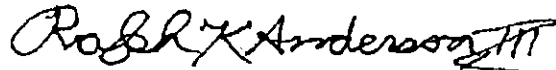
⁴ This policy has applied to all forms of inmate pay, including wages earned through PIECP, and has been in place since January 20, 1998. *See* SCDC Policy ADM-15.13 Policy Statement. Although this policy has been amended multiple times, the pertinent language in the fifteen-day provision has remained the same. *See* SCDC Policy ADM-15.13, Section 12.1 (2014).

⁵ Although the Department argues that the fifteen-day period runs from the date *Torrence* was decided, and, thus, Appellant's claims are completely foreclosed, the Court disagrees. The policy specifically states it runs from the date of the payroll error. *See* SCDC Policy ADM 15.13, Section 12.1 (providing that "Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) **within 15 days of the payroll date error.**") (emphasis added). In addition, if the Department's interpretation was correct, every inmate would be foreclosed from reporting any pay roll error as each claim would be well past the fifteen-day timeframe. This interpretation would render the policy meaningless.

thus entitled to “additional pay owed for the previous two (2) pay periods” prior to when he notified the Department utilizing the ARTSM, or October 30, 2022. SCDC Policy ADM-15.13, § 12.1.

IT IS THEREFORE ORDERED that the matter is **REMANDED** to the South Carolina Department of Corrections to calculate the additional pay owed to Appellant under the prevailing wage for the two pay periods prior to October 30, 2022.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

January 11, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

January 11, 2024
Columbia, South Carolina