

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James Nesbitt, #291377,  
Appellant,  
v.  
South Carolina Department of Corrections,  
Respondent.

Docket No. 22-ALJ-04-0346-AP

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ORDER OF DISMISSAL FEB 28 2024

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by James Nesbitt (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant is appealing the Department's final decision finding he was correctly paid the statutory prevailing wage while working as part of the Prison Industry Enhancement Certification Program (PIECP or program) out of Tyger River Correctional Institution (TRCI).

Appellant filed a Step 1 Grievance on September 26, 2022, asserting the Department was paying him less than the prevailing wage required under *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 636, 861 S.E.2d 36, 38 (Ct. App. 2021), *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022), and statutory law.<sup>1</sup> Specifically, he noted the Department paid him less than the prevailing wage for the time he worked at TRCI beginning on March 2, 2017. As a result, Appellant asserted he is owed around \$36,405.01 in back pay.

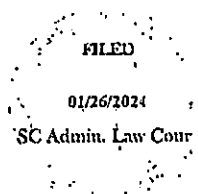
Before Appellant received a response to his Step 1 Grievance, he filed a Request to Staff Member (RTSM) on September 27 2022, in which he requested information on SCDC policy and procedures regarding filing a grievance on the prevailing wage issue. The Department issued a response the next day.

<sup>1</sup> "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 Court of Appeals



On September 28, 2022, the Warden denied Appellant's Step 1 Grievance and stated that Appellant had been provided with wages approved by the governing authority of South Carolina.

On October 5, 2022, Appellant filed a Step 2 Grievance, in which he again requested to be paid the prevailing wage. Before the Department issued a decision on his Step 2 Grievance, on November 5, 2022, Appellant again submitted a RTSM but this time, specifically mentioned he was not receiving the prevailing wage and requested backpay for his two last pay periods. The Department then denied the Step 2 Grievance on November 7 2022, stating that SCDC paid him the proper hourly rate of pay that conformed to the federal guideline applicable to the project for the labor he voluntarily provided to the prison industries project.

Appellant filed a Notice of Appeal on December 13, 2022. The case was assigned on January 17, 2023. Appellant filed his brief on February 10, 2023. The Department filed the Record on Appeal on March 28, 2023.<sup>2</sup> The case was held in abeyance on May 18, 2023. It was subsequently restored to the active docket on September 15, 2023. Thereafter, the Department filed 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

Here, Appellant requests to be paid the prevailing wage for his work in the PIECP program beginning on March 2, 2017. There is no dispute that Appellant is entitled to the statutory

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<sup>2</sup> Because the Record was unclear if Appellant had utilized the Automated Request to Staff Member (ARTSM,) the Court issued an Order requesting the Department supplement the record with Appellant's RTSM, if it exists. On January 17, 2023, the Department filed a Supplemental Record on Appeal with the requested documents.

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.

#### **Failure to Exhaust Administrative Remedies**

SCDC Policy ADM-15.13 Section 12.1 sets forth the Department's general policies governing inmate disputes with pay. 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. Under this policy, the first step an inmate "must" take to correct an issue with their pay is to report the problem "to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error." SCDC Policy ADM-15.13, Section 12.1 (June 3, 2014).

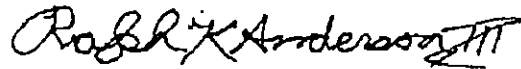
In this case, Appellant filed a Step 1 Grievance before he submitted an RTSM instead of submitting the RTSM first as required by SCDC Policy ADM-15.13, Section 12; therefore, he did not follow the proper procedure for reporting his payroll issue. Additionally, while Appellant's Step 1 Grievance alleges (1) he has not been paid the prevailing wage since he started working in the PIECP program in 2017 and (2) he is entitled to backpay from that time forward, the RTSM he filed after the Step 1 Grievance does not specifically mention an error in his pay or that he did not receive the prevailing wage. However, the RTSM he submitted after he filed the Step 2

Grievance does specifically complain of an error in his pay (he did not receive the prevailing wage) for his most recent pay period and requests two back pay periods wages consistent with SCDC Policy ADM-15.3.

Based upon Appellant's failure to follow the proper order of procedure for submitting a wage claim and the discrepancy between the relief requested in his Step 1 Grievance and his request through the RTSM, I find Appellant has failed to exhaust his administrative remedies, and this matter is not ripe for this Court's review. *See* S.C. Code Ann. § 1-23-380 (Supp. 2023) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."); *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act." (quoting 2 Am. Jur. 2d *Administrative Law* § 595 (1962))).

**IT IS THEREFORE ORDERED** that this case is **DISMISSED** with prejudice.

**AND IT IS SO ORDERED.**



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Ralph King Anderson, III  
Chief Administrative Law Judge

January 26, 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).



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Stephanie Perez  
Judicial Law Clerk

January 26, 2024  
Columbia, South Carolina