

The State of South Carolina
In the Court of Appeals

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APR 15 2024

SC Court of Appeals

Appeal from the Administrative Law Court

The Honorable Judge Ralph Anderson III

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APR 29 2024

SC Court of Appeals

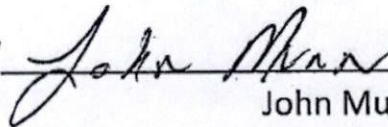
Case No.2024-000158

John Munn #226509, Appellant

Vs

S.C. Department of Corrections, Respondent

Initial Brief of Appellant

SI 

John Munn #226509

Appellant Pro Se

200 Prison Road

Enoree, SC 29335

Statement of Issues on Appeal

1. Did the Administrative Law Court Judge error in finding Appellant was not entitled to back pay pursuant to ADM 15.13 of The South Carolina Department of Corrections Policy.
2. Does ADM 15.13 apply to inmate's wages under S.C. Code 24-3-40 and the PIECP Guidelines for Prevailing Wages?

Facts

This matter is before the South Carolina Court of Appeals pursuant to a Notice of Appeal filed by John Munn, (Appellant), an inmate incarcerated with South Carolina Department of Corrections, (Department of Respondent). Appellant appeals the Department's Final Decision of the Administrative Law Court because the Respondent does not include in its calculation of wages pursuant to S.C. Code §24-3-430(d), the OCC (Occupational Code) of the Department of Employment and Workforce, as required by law, for inmates in the Prison industries Program; and denies back wages as owed under 24-3-40.

Background

On 10-31-22, the Appellant filed a Step 1 Grievance contending that he was denied wages pursuant to the Respondents' failure to calculate his rate of pay pursuant to S.C. Code §24-3-430(d) which is based upon the Federal Minimal Wage, that South Carolina has no "Prevailing Wage". Appellant fled a Step 2 Grievance on 12-9-22, appealing that which was denied on 12-2-22. Thereafter the Appellant filed his Notice of Appeal with this Honorable Court.

Legal Analysis

In *Torrence v. South Carolina Department of Corrections*, 373 S.C. 586, 646 S.E.2nd 866, (2007), our Supreme Court held: "Legislature specifically authorized inmate labor in private industry via S.C. Code §24-3-430: The statute provides no inmate participating in the program may earn less than the prevailing wage for work similar in nature in the private sector."

See S.C. Code §24-3-430(d), see also §24-3-315 (for a prison industry project, the DOC must determine "that rates of pay and other conditions of employment are not less than those paid and provided for work similar in nature in the locality in which the work is performed.)

Based upon *Torrence*, therefore, Appellants claim that the Department has not paid his prevailing wage that includes calculation of the data of the Department of Employment and Workforce occupational codes within locality of similar work performed in the private sector is properly before this Court and is no subject to dismissal.

Statutory Language §24-3-430(d) states:

“No inmate participation in the program may earn less than prevailing wage for work of a similar nature in the private Sector”

Section §24-3-430(d) is the controlling authority, as it directly addresses the rate of inmate wages. *Burning v. S.C. Department of Health and Environment Control*, 418 S.C. 537, 545, 795 S.E.2nd 290, 294 (2016) “Generally {a} specific statutory provisions prevails over a more general one”. Precedent has primarily addressed inmate wages within the context of S.C. Code §24-3-430 (d). *S.C. Department of Corrections v. Cartrette*, 387 S.C. 640, 646, 694 S.E.2nd 18, 21 (2010); “finding S.C. Code §24-3-430 (d), compels the Department to ensure inmate workers who are employed under this section receive the same rate and employment conditions as non-inmate peers”. Based on the language of section S.C. Code §24-3-430 (d), and its legislative intent to determine the prevailing wage, the mean average, for an occupation at issue using records and data from the Department of Employment and Workforce; *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2nd 36 (2021).

The Department is not authorized under the statutory scheme to pay a wage less than “prevailing wage” as provided by section §24-3-430 (d), *Wicker v. South Carolina Department of Corrections*, 360 S.C. 425, 602 S.E.2nd 58 (2004). The Department labels all inmates who participate in the program under contract with Shaw industries as Machine Operators, pays each inmate a federal minimal wage of \$7.25/hour, however, doesn't include the data of occupational codes for the locality of the private sector from the Department of Employment and Workforce in its calculating of inmates wages, while billing Shaw industries \$10.03/Hour for each hour of inmate labor performed. This present scheme of payment is contrary to the plain language of S.C. Code §24-3-430 (d), as determined in *Torrence*, supra.

Conclusion

Appellant asserts that he has worked a pay rate and wage less than the prevailing wage from 3/2/2017 thru present date, under the present scheme of payment that is contrary to S.C. Code §24-3-430 (d), and that the Department must include in its calculation of his hourly wages the mean average pay for his locality that incorporates this data for machine operators in accordance to *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 864 S.E.2nd 36 (2021)

Further, that he is entitled to back wages from 3//2017 thru present date for work performed that did not include the calculations of the Department of Employment and Workforce Occupational code for machine operators in determining a prevailing wage as required by S.C. Code §24-3-430 (d).

Wherefore, the Appellant prays this Honorable Court grant relief by ordering the Department to include in its calculation of Appellants wage rate the Department of Employment and Workforce data and occupational codes for locality and hourly wage for machine operators, and further order to pay for work performed that did not include the prevailing wage rate as required by S.C. Code §24-3-430 (d); and all back wages for his participation in the PIECP program.

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Vs.

South Carolina Department of Corrections

Proof of Service

I Certify that I have served the Counsel of Record with the Appellant's Initial Brief, by depositing the same in the United States Mail Postage prepaid, on this 25th, day of April, 2024, addressed to Christina Catoe Bigelow, Post Office Box 4444 Braod River Road, Columbia, SC 29221,

Respectfully Submitted

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