

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Administrative Law Court
Honorable Robert L. Reibold, ALJ

Docket No. 24-ALJ-04-0186-AP

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SC Court of Appeals

Raqib Abdul al-Amin

Appellant,

v.

S.C.D.C.

Respondent.

INITIAL BRIEF

Raqib Abdul al-Amin #264465
Allendale C.I. BBB #52
1057 Revolutionary Trail
Fairfax, S.C. 29827

Appellant

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I.

The Administrative Law Court erred by holding the Department did not improperly fail to pay Appellant the prevailing wage for all regular and overtime hours?

II.

The Administrative Law Court erred by holding the Department did not incorrectly apply a limitation period to foreclose Appellant's back wage claims?

III.

The Administrative Law Court erred by holding the Department did not fail to extend the "policies and procedures" exception outlined in Torrence (II) to Appellant's case.

CERTIFICATE OF SERVICE

QUESTION PRESENTED

- I. The Administrative Law Court erred by holding the Department did not improperly fail to pay Appellant the prevailing wage for all regular and overtime hours?
- II. The Administrative Law Court erred by holding the Department did not incorrectly apply a limitation period to foreclose Appellant's back wage claims?
- III. The Administrative Law Court erred by holding the Department did not fail to extend the "policies and procedures" exception outlined in Torrence (27) to Appellant's case.

STATEMENT OF THE CASE

From March 2000 to November 2000, the Appellant participated in the Prison Industries Program (PIP) at Lee Correctional Institution. During the time of employment, Appellant was being paid "training wage" of \$0.25 per hour for the first 160 hours and \$0.75 for the remaining 160 hours.

From the dates of 2006 through 2010, Appellant was employed with R. M. Design Wood Flooring Co. which was operated through the PIP at Broad River Correctional Institution, South Carolina Department of Corrections (S.C.D.C. or Department) paid Appellant \$5.25 per hour for regular hours and \$7.48 per hour for overtime, without knowledge of what the prevailing wage was at the time of his employment, being under the assumption that he was receiving the prevailing wage at the time.

On August 28, 2023, Appellant was informed of an inmate who work for R. M. Design, who was made aware of the fact that the inmates working at the PIP during the time R. M. Design was the private employer that he was not receiving the prevailing wage, had filed a Step 1 Grievance in regards to not receiving said wages - to the best of this Appellants knowledge - and received a sum from SCDC for the unpaid wages.

This information is what prompted Appellant to file his Step 1 Grievance about this issue, Appellant

received a response to his Step 1 Grievance, which stated "Due to the nature of your appeal, it (Step 1 Grievance) has been forward to the Step 2 Level for further review. This grievance will be held in abeyance until a Decision has been rendered at the Step 2 level. This grievance was signed and dated September 29, 2023.

Appellant received a response from the Step 2 Grievance on January 23, 2024 which states "In your grievance, you are requesting adjustments to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021)." The South Carolina Court of Appeals' opinion in Torrence was filed on June 30, 2021. You submitted your Request to Staff Member regarding this matter on August 28, 2023, approximately one year and ten months after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under S.C.D.C. Policy ADM-15.13, Section 12.1 and is denied."

SCDC / Administrative Law Judge (ALJ) stated in its Step 2 Grievance response (see Order) that Appellant had not notified the Agency within 15 days of the problem with pay. ALJ went on to state said Policy and notify the Appellant that his grievance was denied due to not filing in a timely manner, seemingly, under the auspices of Torrence v. SCDC and due to not filing in a timely manner under SCDC Policy ADM-15.13, Section 12.1.

Appellant then file a Notice of Appeal with this Court on April 29, 2024. This Initial Brief of Appellant follows.

ARGUMENT

I. The Administrative Law Court erred by holding the Department did not improperly fail to pay Appellant the prevailing wage for all regular and overtime hours?

The standard of review is as follows. This Appellant contends that he is eligible to receive the wages due to him that were not added to the existing wage he received while working in the private sector in the Prison Industries Program for the outside contractor(s), R.M. Design Wood Flooring Co., from 2006 through 2010. Under § 24-3-430(d), this statute clearly states that "(a) inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector." It was held "mandatory" in Adkins (360 S.E. 413, 602 S.E.2d 51, 55). In Wicker, v. SCDC, 360 S.E. 421, 424, 602 S.E.2d 56, 58 (2004), the Court found that in § 24-3-430(d), the State "has created a statutory right to the payment of a prevailing wage".

The statutory right to prevailing wages is the right violated by SCDC's underpayment of wages. Together with Adkins and Wicker, they are the controlling case law regarding the issue of SCDC's refusal to pay the prevailing wage to inmates working in the private sector and it was the reason for the Court's decisions, as evidence by the holding in Adkins, and that SCDC's

liability is based on § 24-3-430(d).

II. The Administrative Law Court erred by holding the Department did not incorrectly apply a limitation period to foreclose Appellant's back wage claims?

AHJ asserts Appellant did not file his grievance in a timely manner, in accordance with SCDC Policy ADM-15.13, Section 12.1 Problems with Pay which states that "an inmate must notify the Agency in writing within 15 days of the payroll error." Appellant was not aware of the fact he was not receiving the prevailing wage during the time of his employment with R M. Design Co.; it was his understanding that the \$5.25 per hour and \$7.45 per hour overtime he was the prevailing wage and had no reason to file a Step 1 Grievance during the time of his employment.

Appellant timely filed his grievance when he was informed that he had not received the prevailing wage while working in the PIP. Under the recent opinion from the Court of Appeals in Torrence v. SCDC, (433 S.C. 633, 861 S.E.2d 36), the Court held that Torrence's grievance fell within the exception enumerated in Paragraph 13.9 of the Department's Policy GA-01.12 and the Paragraph 13.1's Fifteen (15) day filing rule does not apply; that the "claim involved 'topics governed by statute' that reflect the Department's 'expression of the legislature's policy on inmate pay.'"

Also, as stated in Ackerman v. SEDE (415 S.E. 412, 782 S.E.2d 757, 758), the Court held "inmate grievance raising topics governed by statute that involve enduring conditions, such as inmate wages, 'cannot realistically be characterized as "incidents," which are temporarily limited and rarely affect more than a few inmates.'" (emphasis added) Appellant also contends that Adkins and Wicker created a new grievance and appeal remedies to enforce inmates' pre-existing right to prevailing wages under §24-4-430(d).

In regards to the doctrine of equitable tolling, this Court noted in the response of Torrence:

"The inmate Grievance System Policy fails to define either 'incident' or 'policy/procedures'... Based on the 'plain and ordinary meaning' of both these words, it is clear that an incident would be a one-time, specific event and a policy would be a continuous course of action. In the present case, it was not a one-time event, in which (Torrence) was not paid a prevailing wage. The Department (SEDE) continuously failed to pay (Torrence) a prevailing wage. Therefore, the grievance involved is related to a policy or procedure."

The ALC additionally found: "(Torrence) timely filed his Step 1 because his grievance "present[ed] the type of extraordinary circumstance in which fairness demands that the doctrine of equitable tolling be applied" and "[T]here is no construction of law under which the Department could not pay (Torrence) less

than the prevailing wage."

III. The Administrative Law Court erred by holding the Department did not fail to extend the "policies and procedures" exception outlined in Torrence (II) to Appellant's case.

The South Carolina Court of Appeals found that "§ 24-3-430(d) is the controlling authority, as it directly addresses the rate of inmate wages." (quoting Torrence) This is a state-created liberty, created explicitly by the State, and Appellant is eligible for the due compensation required for the hours worked while employed at R. M. Design Wood Flooring Co. Notably, SCDC does not contend in their refusal of the grievances Appellant has filed that Appellant is due the wages SCDC did not pay during the time of his employment.

Adkins, Wicker, Ackerman, and Torrence are all controlling cases where SCDC unsuccessfully tried to avoid their responsibility to pay inmates the wages due them while working in private sectors through the years. It is an obvious abuse of the Inmate Grievance System by SCDC when inmates have to continue to go through the lengthy process to receive wages due to them when their employment in a private sector began. SCDC is a government body and has used the grievance system as a deterrent for inmates not as well-educated as others, or has threatened access of future employment

with Prison Industries Program if they file an appeal regarding prevailing wage.

CONCLUSION

It is the view of this Appellant, as well as the various Courts who have filed opinions in the matter of inmates and the continued issue of prevailing wages, that this Court respectfully Grant, Vacate and Remand (GVR) this appeal and compel the ALC/SEDC to pay Appellant the unpaid wages he is due from March 2000 through November 2000 and 2006 through 2010 while working for PIP and R.M. Designs Co. This brief does not contain evidence as to what the prevailing wage was at the time of Appellant's employment because SEDC deemed the contract between PIP and Appellant contraband and Appellant was unable to procure a copy of said contract. This Court should compel the ALC/SEDC to correctly determine the wage of what the "average" wage was in South Carolina for a similar suited occupational category by referring to the appropriate Occupational Employment Statistics (OES) or OCC Code used by R.M. Designs Co.



Raqib Abdul al-Amin
Allendale Corr. Inst.
1057 Revolutionary Trail
Fairfax, S.C. 29827

CERTIFICATE OF SERVICE

I, Raqib Al-Amin under the penalty of perjury certify that I have served a Notice of Appeal, Initial Brief and Order Dismissing Appeal upon the South Carolina Court of Appeals, Clerk of Court at Post Office Box 11629, Columbia, S.C. 29211 and the Respondent at Office of General Counsel, 4444 BroadRiver Road, Columbia, S.C. 29221-1781, by depositing a copy of the same in the U.S. Mail, postage prepaid, this 29 day of April 2024.



Raqib Abdul al-Amin

Allendale C.I.

1057 Revolutionary Trail
Fairfax, S.C. 29827

Raqib A. al-Amin #264465
Allendale C.I. B30-52
1057 Revolutionary Trail
Fairfax, S.C. 29827

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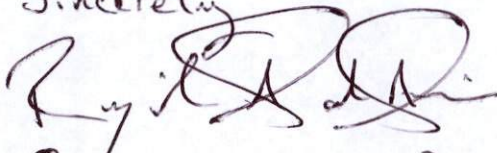
April 29, 2024

Dear Jenny Abbott Kitchings, Clerk

Please find enclosed for filing an Notice of Appeal,
Initial Brief and Order Dismissing Appeal.

Thank you

Sincerely


Raqib A. Al-Amin

Ms. Raqib A. al-Amin #264465
Allendale C.I. BBB-452
1057 Revolutionary Trail
Fairfax, S.C. 29827



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Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina 29211