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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT
ROBERT L. REIBOLD, ADMINISTRATIVE LAW JUDGE

APPELLATE CASE NO. 2024-000527

BOBBY ARNOLD, 280996

APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RESPONDENT

INITIAL BRIEF OF APPELLANT

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ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE ERR IN HIS FINDINGS THAT HE LACKED JURISDICTION TO ADJUDICATE THIS MATTER DUE TO APPELLANT'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES?

STATEMENT OF CASE

This matter appeared before the South Carolina Administrative

Law Court pursuant to an appeal filed by Bobby Arnold (Appellant), and inmate incarcerated with the South Carolina Department of Corrections (SCDC). In his appeal before the Administrative Law Court, he asserted that the Department did not pay him a prevailing wage under South Carolina Code Ann. §24-1-295, 24-3-40, -310, and -430, and is seeking to be paid back pay for work performed in the prison industries program. The Administrative Law Court dismissed the appeal for lack of appellate jurisdiction based upon Appellant's failure to exhaust his administrative remedies.

PROCEDURAL HISTORY

On 7-3-2023, Appellant initiated a complaint concerning his back-pay for prevailing wages by contacting the "Inmate Finances" designation on the institutional kiosk machine. The Inmate Financial Coordinator responded by stating that, "financial accounting does not make this determination. You must file a grievance for your request to be researched." see KIOSK NUMBER 23-03164041. On July 27, 2023, Appellant filed a Step 1 Grievance contending that he was not paid a prevailing wage. On September 5, 2023, the Department elevated the matter to a Step 2 Grievance without responding on the merits. The Responsible Official denied the Step 2 Grievance on December 19, 2023, explaining that Appellant's grievance was untimely under SCDC Policy ADM-15.13, section 12.1 which governs problems with inmate pay. Appellant received that decision on January 3, 2024. On January 18, 2024, Appellant appealed the Department's final decision. On February 2, 2024, the matter was assigned to the Administrative law judge, the Honorable Robert L. Reibold.

Appellant filed his initial brief on March 15, 2024, prior to the date on which the Record on Appeal was due. He asked the court to require the Department to compensate him for unpaid prevailing wages and generally disputes the application of Department Policy ADM-15.13 under the statutory authorities referenced above. On March 18, 2024, Judge Reibold dismissed the appeal for lack of appellate jurisdiction based upon Appellant's failure to exhaust his administrative remedies. This appeal follows.

RELEVANT FACTS

The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM-15.13. Policy ADM-15.13 is globally entitled "Inmate Pay". It requires each warden to designate at least one Inmate Payroll office for a correctional facility. SCDC Policy ADM-15.13, section 5. The office is responsible for entering inmate pay data into the Inmate Pay system. Id.

In his Order of dismissal, judge Reibold states that, "Nothing in Appellant's submissions to the Department suggests an attempt to utilize the problems with pay system established by policy ADM-15.13 section 12.1. None of Appellant's submissions to the department reference ADM-15.13 or any of its provisions. Inmate complaints are commenced using the ARTSM, the automated kiosk, but Appellant initiated his wage complaint using the standard internal grievance system. Decisions on pay complaints, including whether additional pay is owed, are made by the inmate pay designee. Decisions on inmate grievances are made by different personnel. see Order of Dismissal, Page 4, Dated 3-18-2024.

DISCUSSION

Appellant contends that judge Reibold erred in his findings that Appellant failed to exhaust his administrative remedies by failing to initiate his prevailing complaint by utilizing the automated kiosk.

Firstly, Appellant did initiate his claim on the automated kiosk by writing to the Inmate Finance designation on the kiosk machine. see KIOSK NUMBER 23-03164041, DATED 7-23-2023. It was only because of the response from the Inmate Pay Coordinator instructing him to file the step 1 grievance to have his request researched is why he filed the step 1 grievance. Id, Therefore, the department cannot now claim that appellant failed to comply with policy ADM-15.13 section 12.1.

Secondly, this Honorable South Carolina Court of Appeals has already found that issues complaining of the Department's failure to pay prevailing wages are considered "Policy and Procedure" complaints, and are therefore exempt from the fifteen day filing rule. see Torrence v. S.C. Dep't of Corr., 433 S.C. 633, 861 S.E.2d 36 (Ct.App.2021). Even though this court's findings in Torrence dealt with the Department's May 12, 2014 Policy Ga-01.12, section 13.9's requirements concerning its 15 day timeline, and this matter deals with Policy ADM-15.13, section 12.1's 15 day deadline, both policies requirements concerning prison industry pay has been superseded by the new department policy GA-01.12, sections 13.2 and 13.10. issued September 1, 2023.

In the new policy GA-01.12, section 13.2, the following new language was added:

"Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but has continued to be an issue that is grievable, only the two (2) years portion immediately prior to filing of the grievance will be considered. This section does not apply to grievances pertaining to PREA (Prison Rape Elimination Act) or criminal matters."

There, the Department confirmed this court's findings in Torrence that the prison industry pay issue is a continuing matter, and therefore, a "policy and procedure" issue. In the same section (13.2) the policy states that, "Inmates must make an effort to informally resolve a grievance by submitting a Request to Staff Member Form to the appropriate supervisor/staff within eight (8) working days of the incident. However, in certain cases, informal resolution may not be appropriate or possible (e.g., when the matter involves allegations of criminal activity)."

Then at Section 13.10, the policy states that, "Exceptions to the eight (8) working daytime limit requirement will be made for grievances concerning policies/procedures, and PREA allegations. Exceptions may also be made for incident grievances, provided that the inmate can show reasonable cause, i.e., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. All exceptions will be determined by the Agency

Inmate Grievance Coordinator/Designee of the Inmate Grievance Branch."

There, in 13.10, the Department made exceptions to its eight (8) working daytime limit requirement for seeking an informal resolution in grievances concerning policies/procedures. Therefore, because this policy supersedes all policies concerning prison industry pay, the 15 day time line for filing an automated request to staff member under policy ADM-15.13, section 12.1 does not apply and is not required.

CONCLUSION

The Administrative law Court's Order of Dismissal should be reversed and this matter be remanded back down for a ruling on the merits.

This 15 day of April 2024,

BY: Bobby Arnold
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CERTIFICATE OF SERVICE

I, Bobby Arnold (Appellant), do hereby certify that I did serve the "INITIAL BRIEF OF APPELLANT" on the Respondent by depositing one copy of the same in the U.S. mail, postage prepaid, and addressed as follows:

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This 15 day of April 2024,

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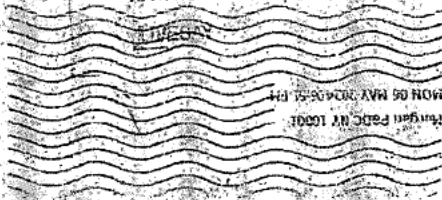


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