

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Bobby Gibson, Jr., #171440,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 23-ALJ-04-0526-AP

ORDER OF REMAND RECEIVED

**JUN 26 2024
SC Court of Appeals**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Bobby Gibson 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 part of the Prison Industry Enhancement Certification Program (PIECP or Program) at Tyger River Correctional Institution from July 2016 to March 2017 and at Evans Correctional Institution from approximately September 2019 to June 2023.

On June 28, 2023, Appellant filed an Automated Request to Staff Member (ARTSM) asking why did not receive prevailing wage pay for his work in the Program. On June 29, 2023, Appellant filed a Step 1 Grievance on June 29, 2023, asserting more specifically that the Department was paying him less than the prevailing wage as required under *Torrence v. South Carolina Department of Corrections*¹ and section 24-3-430 of the South Carolina Code.² Appellant’s Step 1 Grievance was elevated to the Step 2 level. On October 25, 2023, the Warden

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). In this case, the South Carolina Court of Appeals determined the definition of the statutory term “prevailing wage” in the context of inmate pay to conclude an inmate was entitled to the difference between what the Department actually paid him and the “prevailing wage” that the Department should have paid him. *Id.*

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).



denied Appellant's Step 2 Grievance, finding it was untimely pursuant to SCDC Policy ADM-15.13 Section 12.1 because it was filed more than fifteen days after *Torrence* was issued.

On November 7, 2023, Appellant filed a Notice of Appeal with this Court, and the case was assigned on December 1, 2023. Appellant filed his brief on January 9, 2024. On February 9, 2024, the day the Record on Appeal was due, the Department filed a Motion for Extension of Time to file the Record. On February 13, 2024, the Court issued an order, providing the Department with a forty-five (45) day extension to file the Record. The Court also gave Appellant the opportunity to file a supplemental brief and then ordered the Department to file its brief thirty days from the date Appellant filed his brief. On April 3, 2024, the Department filed the Record. On April 25, 2024, Appellant filed a supplemental brief. As of the date of this Order, which is more than thirty days after Appellant filed his brief, the Department has not filed its brief.³

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

In his original brief, Appellant raised three issues: (1) whether the Department violated his statutory right to the prevailing wage pursuant to section 24-3-430(D) of the South Carolina Code; (2) whether the Department violated his statutory rights pursuant to section 24-3-315 of the South

³ This is not the only case in which the Department has failed to timely file a brief. Pursuant to SCALC Rule 62, “Upon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or **resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits** provided by this section (V), or for the failure to provide a factual basis for each expressly and specifically asserted constitutional violation as prescribed by Rule 59(B).” (emphasis added).

Carolina Code; and (3) whether the Department violated his statutory rights pursuant to section 24-3-40 of the South Carolina Code. Thereafter, in his supplemental brief, Appellant raised a sub-issue of his prevailing wage claim, arguing the Department erred in finding his grievance untimely under SCDC Policy ADM-15.13. Only Appellant's prevailing wage issue and related sub-issue are preserved for this Court's review because Appellant failed to raise a concern under section 24-3-315 or section 24-3-430(D) to the Department. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Regarding the issue that is before the Court, Appellant requests to be paid the prevailing wage under section 24-3-430(D) for his work in the Program from approximately July 2016 to March 2017 and September 2019 to June 2023. 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 any work in the Program 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 Program or whether some of his claim is barred under SCDC policies.

SCDC Policy

The Department denied Appellant's grievance as untimely pursuant to SCDC Policy ADM-15.13. Specifically, the Department found Appellant failed to file his prevailing wage claim within fifteen days of the date *Torrence* was decided. I conclude the Department has improperly determined timeliness from the date *Torrence* was issued instead of using the date of the payroll error as directed in SCDC Policy ADM-15.13 Section 12.1.

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) (emphasis added). Appellant began participating in the Program in July of 2016; therefore, the current version of SCDC Policy ADM-15.13 is applicable to his claim.⁴

Here, in its Step 2 decision, the Department determined Appellant was not entitled to back pay because he failed to notify the Department of any problems with his prison industries pay within fifteen days of the date *Torrence* was issued. This interpretation is counter to the plain language of the SCDC Policy ADM-15.13, which states the inmate must report a problem with pay “within 15 days of **the payroll date error.**” (emphasis added); see *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.”). Moreover, the Department’s interpretation would render all inmate issues with pay, no matter their genesis, untimely unless they were filed within fifteen days of the *Torrence* decision. See *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342–43, 713 S.E.2d 278, 283 (2011) (“Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.”). Therefore, the Department’s determination that Appellant’s claim was untimely was based upon an erroneous application of its policy.

⁴ This policy has applied to all forms of inmate pay, including wages earned through the Program, 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).

Although the Department erred in finding Appellant's entire claim was untimely, Appellant is nevertheless not entitled to backpay for the entire time he worked in the Program under SCDC Policy ADM-15.13. This policy only allows an inmate to claim "additional pay owed for the previous two (2) pay periods." SCDC Policy ADM-15.13, Section 12.1. Appellant filed his ARTSM on June 28, 2023. Therefore, he is entitled to receive back pay to bring his pay rate up to the prevailing wage under section 24-3-430(D) for the previous two pay periods before June 28, 2023. *Id.*

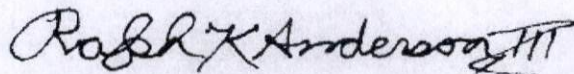
Finally, in his supplemental brief, Appellant argues the fifteen-day filing rule in SCDC Policy ADM-15.13, Section 12.1, does not apply under *Torrence* because prevailing wage claims involve "department policies [sic] and procedure rather than an isolated incident." Appellant refers to the South Carolina Court of Appeals' holding in *Torrence* that the inmate did not have to file a grievance within fifteen days because his issue involved a "policy or procedure" and not an "incident." *Torrence*, 433 S.C. at 645, 861 S.E.2d at 43 ("Because *Torrence's* claims involve continuous conditions potentially affecting numerous inmates, we find *Torrence's* grievance involves Department policies and procedures, rather than an isolated incident."). Although Policy ADM-15.13 was in effect at the time the inmate in *Torrence* filed his Step 1 grievance, this policy was not raised to the court of appeals and, thus, the court of appeals did not analyze the implications of this policy. Because Section 12.1 of Policy ADM-15.13 specifically directly addresses when and how an inmate may question their inmate pay, including wages earned through PIECP, I find no need to resort to the exception to the general grievance timeframe utilized by the court of appeals. 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 through the ARTSM under SCDC Policy ADM-15.13, Section 12.1, before pursuing a grievance if the pay error is not resolved.

In conclusion, pursuant to SCDC Policy ADM-15.13, Section 12.1, Appellant is entitled to "additional pay owed for the previous two (2) pay periods" prior to notifying the Department of the problem with his pay through the ARTSM on June 28, 2023. SCDC Policy ADM-15.13, § 12.1.

IT IS THEREFORE ORDERED that the matter is **REMANDED** to the South Carolina Department of Corrections.

IT IS FURTHER ORDERED that the Department has a period of ninety (90) days to calculate and remit to Appellant the additional pay owed to Appellant under the prevailing wage statute (S.C. Code Ann. § 24-3-430(D)) for the two pay periods prior to June 28, 2023.

AND IT IS SO ORDERED.

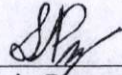


Ralph King Anderson, III
Chief Administrative Law Judge

June 13, 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

June 13, 2024
Columbia, South Carolina