

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 28 2024

Apeal From The Administrative Law Court
Honorable Ralph K. Anderson III,

SC Court of Appeals

James A. Tucker

v.

Appellant,

S.C. Department of Corrections,

Respondent,

Appellant Case No.

2024-000718

APPELLANT INITIAL BRIEF

James A. Tucker # 260993
Allendale Corr. Inst.
1057 Revolutionary Trail
FairFax, South Carolina-
29827

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STATEMENT OF ISSUE ON APPEAL

1. Did the Department's (SCDC) fail to pay Appellate the prevailing wages for all regular and overtime "Training" and "Post-training" hours ?.
2. Did the Department's (SCDC) incorrectly apply a limitation period to foreclose Appellate's back wage claim ?.
3. Did the Department's (SCDC) fail to extend the " Policies and Procedures " exceptions outlined in Torrence (II) to Appellate's case ?.

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to an appeal by James Anthony Tucker (Appellate), from the South Carolina Administrative Law Court (Court of ALC), an inmate incarcerated in the South Carolina Department of Corrections (SCDC). Appellate appeals the Department's final decision, because, Appellate was not paid the statutory prevailing wages while working in the prison industries (PIP), at Broad River Correctional Institution.

On August 3, 2023, Appellate filed a Step 1 grievance asserting, I am filing this grievance in regard to my prevailing wages. I participated in the Prison Industries (PI) and Prison Industries Program (PIP) at Broad River Correctional Institution.

Appellate, participated approximately from 2014 of April thru September 2015 in the King of karts. Appellate participated approximately from June of 2016 thru February of 2023, at the Sign Shop. Appellate's step 1 Grievance was elevated to the Step 2 level. On October 25, 2023, The Responsible Official denied Appellate's Step 2 Grievance alleging it was untimely pursuant to SCDC Policy ADM-15.13 Section 12.1. On November 7, 2023, Appellate filed a Notice of Appeal with the Administrative Law Court (ALC), and the case was assigned on December 1, 2023.

On April 1, 2024, the Department (SCDC) filed a motion to Dismiss (Motion) asserting Appellate failed to exhaust his administrative remedies. The Court (ALC) asserts as of the date of this order, Appellate has not responded to the motion.

Appellate, filed an objection to Respondent's Motion to Dismiss on April 10, 2024, An a letter to the court in-regards to his filings of the objection.

ARGUMENT

I. Did the Department fail to pay Appellate the prevailing wages for all regular and overtime " Training" and "Post-training" hours ?.

Appellate James a. Tucker, respectfully suggest to this court that the matter of whether Appellate had a right to the prevailing wages for his labor in the prison industries program (PIP)., and whether Respondent's had a statutory duty to annually verify and pay Appellate that wage is settle law in South Carolina, See Torrence (II).

The Adiminstrative Law Court (ALC), reversed and remanded to Respondent to verify, calculate, and pay Torrence the difference between the wages he was paid and the prevailing wage verified through the ESC and subsequently the DEW.

Appellate receiving anything less than the prevailing wage for his labor is an error of law, exceeds the statutory authority of the agency, and the decision of the agency to deny this claim was arbitrary and capricious.

James A. Tucker, submits that Respondent's final agency decision neglected to address the merits of Appellate's grievance and has thus forfeited any claim or defense not set forth in the agency record.

Appellate would respectfully move that Respondent include in the record provided in this matter, all hours performed regular and overtime, training period and post-training, and rates of pay for each hour to the quarter hour with data.

II. Did the Department (SCDC) incorrectly apply a limitation period to forclose Appellate's back wage claims?.

In the Department's (SCDC) October 25, 2023, final agency decision the Department stated Appellate's grievance was untimely because Torrence II "was filed on June 30, 2021." some two years and two months after the Court of Appeals issued its opinion.

Appellate notes that Respondents did not consider

Torrence II settled until certiorari was denied on August 3, 2022, thus allowing inmates until August 3, 2024 to file any claims; if SCDC Policy ADM-15.13 is found to apply in this case. This policy, in its current state, did not exist at ~~the time of Appellates labor.~~

In an effort to foreclose inmates from filing prevailing wage claims following Torrence (II), on September 1, 2023 the Department revised GA-01.12 and added a second unenumerated paragraph following section 13.2 making reference to SCDC policies that may require a shorter filing time and establishing a two year limitation from when the grievant should have known. That new section also limits the timeframe a claim may cover (two years immediately prior to the grievance). Appellant submits this policy was revised and took effect after Appellant filed the instant claim.

Appellant contends that ADM-15.13 mentions PIECP inmate pay only in the context of inmates being authorized to receive pay or whether or not they receive "inmate pay" upon leaving PIECP jobs. No where does it directly address PIECP prevailing wage claims as does our Supreme Court in Wicker and Torrence (I) that the Inmate Grievance System is the vehicle to address inmate prevailing wage claims.

Appellant submits Department's position in the time frame of when Torrence (II) was final is an error of law that incorrectly forecloses Appellant.

III. DID DEPARTMENT FAIL TO EXTEND THE "POLICIES AND PROCEDURES" EXCEPTIONS OUTLINED IN Torrence (II) TO APPELLANT'S CASE?

Respondent's final agency decision relies entirely on SCDC Policy ADM-15.13 (Inmate Pay) to foreclose Appellant from filing a claim for back wages in which Appellant's rights had already vested.

Respondent acknowledges that SCDC Policy GA-01.12

Inmate Grievance System governs the method by which inmates file their prevailing wage claims. Former GA-01.12 § 13.1 created an exception to the fifteen day time limit requirement for grievances concerning policies / procedures. Section 13.1 has been renumbered to §13.10 in the September 1, 2023 revision of GA-01.12 and still contains the exception for policies and procedures.

Appellant submits that regardless of the "policy" or "procedure" Department relies upon, Torrence (II), 433 S.C. at 644, citing Ackerman, 415 S.C. at 418-21, the analysis and holding remain the same:

[T]he terms "policies" and "procedures" constitute approved guidelines for handling the [Department's] day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, the terms "policies" and "procedures" constitute agency directives deemed by the responsible agency officials as "necessary to preserve internal order and discipline, and to maintain institutional security in prison."

Because the Department operates PI as part of its day-to-day operations the Court of Appeals found that an inmate grievance challenging a specific pay rate and invoking the Prevailing Wage Statute (§24-3-430(D)) constitutes a grievance challenging a policy or procedure under former paragraph 13.1 or current paragraph 13.10. The Court also found grievances invoking the Prevailing Wage Statute involve a topic governed by statute and, thus, an expression of the legislature's policy on inmate pay.

The Department's attempt to alter policies still falls within the realm of this holding, and as such, cannot circumvent precedent or statute to avoid fiduciary responsibility. ADM-15.13 is a policy and procedure as is GA-01.12. Torrence (II) and Ackerman did not just address GA-01.12 simply as that was the defense Department used, but contemplated "policies" and "procedures." At the very least that holding should be extended to all claims made under the Prevailing Wage Statute.

Wicker v. SCDC, 360 S.C. 421, 424, 602 S.E.2d. 56, 58 (2004). The statutory mandates that inmates be paid the prevailing wage creates a property interest that may not be denied without due process of law.

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on question of fact, but may modify or reverse the decision of the agency when substantial rights of the appellate have been prejudiced.

S.C. Code Ann - 1-23-380(5). Substantial rights of the appellant are prejudiced when the agency's finding, interferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterize by abuse of discretion. Id. Substantial evidence is not a mere scintilla, but evidence "which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency. Friends of Earth Pub. Serv. Commn. of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 911 (2010). An agency's construction of a statute that it administers will be accorded the most respectful consideration and will not be over ruled absent compelling reasons. S.C. Energy users Comm. v. S.C. Elec. & Gas, 410 S.C. 348, 353-54, 764 S.E.2d. 913, 915 (2014).

The federal statute requires that inmates in BJA-administrative programs "receive [] wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is performed." 18 USC § 1761(c) (2) (2021). The PIECP Guidelines refers to this rate of pay as the "prevailing wage" and states that the prevailing wage must be obtained from the state agency that determines wage rates. Guideline at 17010. The-----

Guideline states that this agency is usually the "Department of Economic Security." In South Carolina, at most times relevant to this case, that was the Employment Security Commission (ESC), but would now be the Department of Employment and Workforce (DEW). Further, the Guideline states that the prevailing wage must be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers and that no other cost variables may be taken into consideration. Id. at 17009-10. Additionally, the Guidelines state that the prevailing wage cannot be less than the federal minimum wage, but the payment of the minimum wage does not achieve compliance with the law unless the comparable private sector industry wage is indeed the federal minimum wage. Id. at 17010.

The Department's BJA-authorized program operates under South Carolina statutes enacted to comply with the federal law. In S.C. Code § 24-3-315 it is stated that the Director of the Department "must determine...that the rates of pay...are not less than those paid...for work of a similar nature in the locality in which the work is performed." Further, §24-3-430 requires that "[n]o inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector." Although these statutes were amended to some degree during the time period in question in this case, the amendments should not affect the disposition of this case.

The precedent for PIECP prevailing wage claims in South Carolina is Torrence v. S.C. Dept of Corr., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. June 30, 2021) (rehearing denied August 4, 2021) (certiorari denied August 3, 2022) (Torrence II).

The timeliness of a grievance issue was addressed in Torrence II, 433 S.C. at 643, 861 S.E.2d at 43; following Ackerman v. SCDC, 782 S.E.2d 757, 758 (Ct. App. 2016) for exceptions to agency "policies" and "procedures" setting filing limitations.

In Torrence (II) the court allowed Torrence to claim the difference between the wage he was paid and the prevailing wage where his grievance was filed ten years after the first wages he was challenging. Torrence, 433 S.C. at 637. That decision suggest that an inmate is not bound by time limits to initiate a grievance, such as the one here, implicating a department policy or procedure.

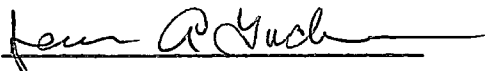
Department's (SCDC) final agency decision is clearly in violation of statutory authority, are in excess of the statutory authority of the agency; were made upon unlawful procedure, and are arbitrary or capricious or characterized by a clearly unwarranted abuse of discretion.

CONCLUSION

WHEREFORE, based on the foregoing facts and law, Appellate moves this Honorable Court reverse and remand the Department's final agency decision and order the Department (SCDC) to varify and calculate the appropriate prevailing wage for Appellate's labor and pay James A. Tucker # 260993, the difference in the amount Appellate receive from the Department and the prevailing wage.

June 26, 2024.
FairFax, South Carolina

Respectfully submitted


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IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
The Honorable ~~Ralph~~ K. Anderson, Judge

James A. Tucker

Appellant,

v.

S.C. Department of Corrections

Respondent,

Appellant Case No. 2024-000718

CERTIFICATE OF SERVICE

I do hereby certify that I have serve the following counsels of record the original and copies of the initial Appellant's Brief by placing the same in the United States mail with the sufficient postage affixed thereto here at Allendale Corr. Inst. Mail-room this date below. With Motion For Appointment of Counsel.

June 26, 2024


James A. Tucker # 260993

CC: S.C. Court of Appeals

Jenny Abbott Kitchings, Clerk

P.O. Box 11629, Columbia, S.C. -29211

S.C. Dept. of Corrections

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Re: James A. Tucker # 260993, v. S.C. Dept. of Corrections
Appellate Case No. 2024-000718

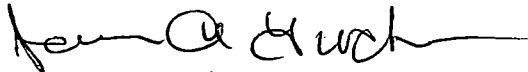
Dear Ms. Kitchings:

Enclosed you will find the original and a copy of the Appellate's
Brief and Motion For Counsel in Support of Brief for your filing.

Please return a filed copy to me for my record in the self-
addressed envelope provided for the return of the copy.

Thank you very much.

Sincerely,



CC: S.C. Dept. of Corrections

James Anthony Tucker 260983
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