

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Frank Leach, Jr., #187447, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )

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Docket No. 23-ALJ-04-0543-AP

**ORDER**

**RECEIVED**  
AUG 20 2024  
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Frank Leach, Jr. (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department’s final decision finding that his claim for back pay for work performed in the prison industry (PI) program was untimely under SCDC Policy ADM-15.13, Section 12.1.

**PROCEDURAL HISTORY**

On April 18, 2023, Appellant filed a Step 1 Grievance asserting the Department was paying him less than the prevailing wage as required under *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 636, 861 S.E.2d 36, 38 (Ct. App. 2021), *reh’g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022) and statutory law.<sup>1</sup> He specifically requested to be paid the prevailing wage for the time he worked in the program from July 2018 to present. Appellant’s Step 1 Grievance was denied on April 24, 2024. On April 25, 2024, Appellant filed a Step 2 Grievance asserting the same claims. On October 27, 2023, the Department denied Appellant’s Step 2 Grievance because his Step 1 Grievance was submitted one year and nine months after *Torrence*, and, as a result, it was untimely pursuant to SCDC Policy ADM-15.13, Section 12.1.

On November 6, 2023, Appellant filed a Notice of Appeal with this Court, and the case was assigned on December 1, 2023. The Record on Appeal was originally due seventy days after

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<sup>1</sup> “In 1995, our 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).



the Notice of Assignment was filed, or February 9, 2024. SCALC Rule 59. However, on February 9, 2024, the Department filed a Motion for Extension of Time to file the Record on Appeal. On February 13, 2024, the Court ordered a forty-five (45) day extension was justified. Thus, the new deadline for filing the Record on Appeal was forty-five (45) days from the date of that order, or March 29, 2024. On March 30, 2024, Appellant submitted an Automated Request to Staff Member (ARTSM) to the Department specifically mentioning his PI gross wage back pay and requesting some sort of settlement.

On April 3, 2024, the Department filed the Record on Appeal.<sup>2</sup> On April 25, 2024, Appellant filed his brief. Then, on May 30, 2024, Appellant filed a Motion to Dismiss asserting the Department failed to timely file its brief and thus, requests the Court dismiss the appeal in his favor.

On June 2, 2024, Appellant submitted a second ARTSM to the Department asserting he is owed over “100,000 dollars of backpay” and was open to a settlement.

On June 13, 2024, the Court issued an order requiring the Department to supplement the Record with a copy of any ARTSMs filed by Appellant because whether Appellant utilized this system is necessary for the Court’s analysis of the Department’s denial of Appellant’s claim under SCDC Policy ADM-15.13, Section 12.1. On June 25, 2024, the Department supplemented the Record with two ARTSMs, dated March 30, 2024, and June 2, 2024. Also on June 25, 2024, the Department filed a Motion to Stay Further Proceedings for 180 days.

Thereafter, Appellant filed a Motion to Compel and a response to the Motion to Stay. In his Motion to Compel, Appellant requests the Court “answer” his Motion to Dismiss that was filed on May 30, 2024. As of the date of this Order, the Department has not filed its brief<sup>3</sup> or a response to either of Appellant’s Motions.<sup>4</sup> Because the Department did not timely file a brief in compliance with SCALC Rule 60, the Court will resolve this case solely based upon Appellant’s brief and the

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<sup>2</sup> Notably, even after receiving an extension, the Department filed the Record late.

<sup>3</sup> Importantly, the filing of the Department’s Motion to Stay does not stay the timeframe for filing its brief. See SCALC Rule 59 (“The filing of a motion other than a motion to dismiss shall not stay any time limits imposed by these Rules.”).

<sup>4</sup> Because this Order dismisses this case, the Department’s Motion to Stay and Appellant’s two Motions (Motion to Compel and Motion to Dismiss) are rendered moot. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (“Mootness has been defined as follows: ‘A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.’” (quoting *Mathis v. South Carolina State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973))).

Record on Appeal. Based upon these filings, as explained below, I find this appeal should be dismissed for failure to exhaust administrative remedies.

### **JURISDICTION**

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court's decision 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 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**

Appellant requests to be paid the prevailing wage for his work in the PI program from 2018 to present. 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 his work 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 PI program or whether some of his claim is barred under SCDC policies.

#### **SCDC Policy**

SCDC Policy ADM-15.13, Section 12.1, sets forth the Department's general policies governing inmate disputes with pay.<sup>5</sup> 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:

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<sup>5</sup> The Court takes judicial notice of the Department's public policies. See Rule 201, SCAR; SCDC Policy Listing, <https://www.doc.sc.gov/policy/policy-listing> (last visited June 13, 2024).

- 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).<sup>6</sup> Appellant began participating in the program in July 2018, and the above policy applies to Appellant's claim. Under this policy, the first step an inmate "must" take to correct an issue with their pay is to report the problem "to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error." *Id.* Therefore, pursuant to SCDC Policy ADM-15.13, Appellant was required to notify SCDC through the ARTSM of any problems with his prison industry's pay within fifteen days of the "*payroll date error.*" (emphasis added).

In this case, the Department denied Appellant's Step 2 Grievance because Appellant failed to file an ARTSM within fifteen days of *Torrence*, a determination which is at odds with the plain language of the Department's policy. *C.f. 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."). Indeed, such an interpretation would render SCDC Policy ADM-15.13 meaningless as it would foreclose an inmate, such as Appellant, from reporting a pay roll errors which arise more than fifteen-days from the date *Torrence* was issued. *See, e.g., 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.").

Nevertheless, I conclude that Appellant did not follow the proper procedure as required by SCDC Policy ADM-15.13, Section 12.1, for reporting his payroll issue. Indeed, Appellant filed an ARTSM on March 30, 2024, almost a full year **after** he submitted his Step 1 Grievance and **after** this appeal was filed. Thus, Appellant improvidently pursued his administrative remedies by submitting a Step 1 Grievance, and thereafter, an appeal to this Court, before first notifying SCDC through the ARTSM of the problem with his inmate pay. Based upon Appellant's failure

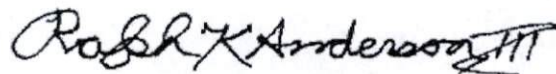
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<sup>6</sup> This policy has applied to all forms of inmate pay, including wages earned through PIECP, and has been in place since January 20, 1998. *See* SCDC Policy ADM-15.13 Policy Statement. Although this policy has been amended multiple times, the pertinent language in the fifteen-day provision has remained the same. *See* SCDC Policy ADM-15.13, Section 12.1 (2014).

to follow the proper procedure for submitting a wage claim under SCDC Policy ADM-15.13, Section 12.1, I find Appellant has failed to exhaust his administrative remedies, and this matter is not ripe for this Court's review. *See* S.C. Code Ann. § 1-23-380 (Supp. 2023) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."); *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act." (quoting 2 Am. Jur. 2d *Administrative Law* § 595 (1962))).

**IT IS THEREFORE ORDERED** that Appellant's appeal is **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**



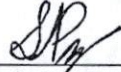
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Ralph King Anderson, III  
Chief Administrative Law Judge

August 7, 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).



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Stephanie Perez  
Judicial Law Clerk

August 7, 2024  
Columbia, South Carolina