

State of South Carolina

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge Crystal M. Rookard

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FEB 07 2025
SC Court of Appeals

ALC Case No. 23-ALJ-04-0553-AP
Appellate Case No. 2024-002004

Bernard Jackson, #210745,

APPELLANT

v

South Carolina DEPARTMENT OF Corrections

RESPONDENT

REPLY BRIEF

Bernard Jackson, 210745
pro-se Litigant
Tyger River Corr. Inst.
Unit 10-Rm 211
200 Prison Road
Enoree, SC 29335

South Carolina Department
of Corrections
Christina Cole Bigelow
Deputy General Counsel
SCDC
P.O. Box 21787
Columbia, SC 29221
(803) 886-8508
Attorney for Respondent

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TABLE OF AUTHORITIES

CASES:

Guess v. Montague, (4th Cir. 1943), 140 F.2d. 500.

Torrence v. SCDC, 433 S.C. 633, 636, 861 S.E.2d. 36, 38 (Ct. App. 2021)

Anderson v. S.C. Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d. 704, 707 (2012)

S.C. Dept of Cor's v. Mitchell, 377 S.C. 256, 258; 659 S.E.2d. 233, 234 (Ct. App. 2008)

STATUTES and COURT RULES:

29 U.S.C.A. § 216, § 215 (c) (3), § 218 (d)

S.C. Code Ann. § 24-3-430 (d)

S.C. Code Ann. § 24-3-40

§ 1-23-610 (3) SCALC

REPLY

ARGUMENT

The Administrative Law Court did not properly dismiss the case because Appellant signed a Settlement Agreement and stipulation of Dismissal and Agreeing to Dismiss the case

To begin with, the fact that the Respondent believed that the "Final Release of all claims" is not subject to the provisions of the Fair Labor Standards Act § 16 (b) 29 U.S.C.S. § 216 (b) is unfounded. This standard reads in relevant part:

Any employer who violates the provisions of section 215 (c) (3) or 218 (d) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purpose of this section, including without limitation, employment, reinstatement, promotion and the wages lost and ¹an additional equal amount as liquidated damages.

29 U.S.C.A. § 216

1. An action to recover the liability prescribed in the preceding may be maintained against any employer (including a public agency) in any federal or state court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other similarly situated.

The record before this court clearly demonstrates appellant's exercise of due diligence to alert the Administrative Law Court that stipulation in the Agreement were not met. Moreover, the Respondent cannot pick and choose which part of the statute §24-3-430 (D) and § 24-3-40 (A)(5) they will honor and dishonor, especially when the attorney representing the Agency (SCDC) assured appellant that he would get all monies owed to him. See Initial Brief of Appellant, Designation of Matter Pg. 2 Ln 7-8.

Two (2) key factors is of particular importance here with respect to the stipulation of dismissal and Final Release of all claims: 1) The attorney A. Todd Darwin of Holcombe Bomar PA did not secure a Notice of Appearance in the Administrative Law court before the stipulation of Dismissal and statements were signed. See exhibit, Respondent's motion dated September 12, 2024 by A. Todd Darwin - Notice of Appearance and 2) the attorney stated a fact as of his knowledge when he didn't know but only believed it to be true that Appellant would get all money owed here per statute by certain knowledge.

It also became clearer that Mr. Darwin did not have all the information but only a figure - \$38,000 dollars the Agency calculated to have owed the Appellant before deductions per § 24-3-40 for victim restitution and Room and Board respectively. The certain Knowledge of Darwin's words did not represent the positive character and tattered on the lines of deceit, misrepresentation or fraud.

Appellant Avers the settlement was void because in contrvention of the Statute § 24-3-40 and the validity to even the victim restitution and room and board portion of the statute relating to deductions and not the ten percent into Appellant's escrow account would be to give effect to what it was purposed of the law to avoid payment of inadequate wages to employees, where settlement is made for less than the law requires to be paid so that the employee must go into court to recover what the law

intended that he should have. He should be allowed to recover the damages which the law provides, notwithstanding any release that may have given for the purposes of creating the liability for damages was to adequately compensate the employee who should find it necessary to go into court to protect his rights. See. Guess v. Mofatt, (4th CIR. 1943), 140 F.2d. 500. "In cases where minimum wage and overtime compensation required by the statute have been paid, the contract is valid, where they have not been paid, it is void and plaintiffs may recover not only the balance of minimum wages found to be due to him after deduction of the amount paid on the settlement, but also the original amount of liquidated damages to which they were entitled."

Where SCDC who has paid less than the prevailing wage and overtime compensation prescribed by § 24-3-430 (D) and the Fair Labor Standards Act 29 U.S.C.A. § 16 makes settlement with the employee for full amount due there under and the employee accepts same in full discharge and satisfaction of all claims against the employer, there is an end of liability and the employer may not be harassed by further litigation. The condition however, is that the employer (SCDC) pay the full amount of the balance of prevailing wages and overtime compensation due. If SCDC pays less than this, the settlement constitutes no bar. This rule is in strict accord with the provisions of the Fair Labor Standard and of the public policy upon which it is based. It's also designed to encourage employers to settle claims for unpaid prevailing wages and overtime compensation with assurances that when a full and fair settlement is made there will be no danger of further liability, or it will encourage compliance with the law and minimize the opportunity to take unjust advantage of its provisions.

Appellant further avers the ALC's dismissal of the case can be arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion when every motion and/or assertion made by Appellant was either ignored or overlooked in favor of the Respondent's position

throughout the entire ALC process.² This Appellate court has already ruled pursuant to Torrence v. SCDC, 433 S.C. 633, 636, 861 S.E.2d. 36, 38, (Ct. App. 2021) (cert. denied Aug. 3, 2022), that based on a plain reading of section 24-3-430 (D) and its Legislative intent, they agree with the ALJ interpretation that to determine the prevailing wage for an industry, the Department must determine the mean average wage for the occupation at issue using records and data from D.E.W. It also ruled that sections § 24-3-40 should be properly harmonized with § 24-3-430 (D) which states in relevant part:

... unless otherwise provided by law, the employer of a prisoner authorized to work under [PIP]... shall pay the prisoner's wages directly to the Department... The Director of the department... shall deduct the following amounts from the gross wages of the prisoner...

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner,

S.C. Code Ann. § 24-3-40
(Supp. 2020)

To support this position the court referenced Anderson v. S.C. Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d. 704, 707 (2012) ("In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory Law must be construed together and each one given effect"). Further, subsection (A) (5) provides these wages will be held in an escrow account for the benefit of the prisoner.

Appellant further objects to the Respondent's argument on pg. 4 Ln. 24 thru pg. 5 in footnote asserting that this court is

2. There was no motion submitted by appellant ruled on in favor of his position even after demonstrating clear violations by the Respondent to file the Record on Appeal, and request to compel SCDC to come into compliance with mode of ALJ procedure.

not the appropriate forum for litigating a contract dispute. On the contrary, Appellant avers the Court of Appeals sits in an appellate capacity reviewing the decision by the ALC on an appeal from an administrative agency. See S.C. Dept. of Corrs. v Mitchell, 377 S.C. 256, 258, 659 S.E.2d. 233, 234 (Ct. App. 2008), § 1-23-610 (B) ("An appellate court may not substitute its judgement for the judgement of the [ALC] as to the evidence on questions of facts.")

The Respondents have again attempted to sway the courts by undue influence or misrepresentation and/or missapplications of clearly established law. §1-23-610. The question now is, did the ALC properly dismiss the case because appellant signed a settlement Agreement and stipulation of Dismissal fall into the pervue of §1-23-610 (B) where Appellant has demonstrated his due diligence to prevent this court's intervening through motions objecting to the stipulations of dismissal and to stay proceeding because the party's were in renegotiations prior to the ALC dismissal. There is no other court authorized to review these issues in South Carolina.

Finally, Appellant was served the Respondent's Initial Brief that was incomplete or failed to include the actual Record on Appeal on January 28, 2025. Appellant wonders whether this Appellate court too will overlook or ignore a clear failure to comply with procedural requirements by the Respondents.

CONCLUSION

Appellant prays this court reverse and remand this case for further proceeding by ordering the ALC to order the agency (SCDC) to pay appellant all long-term savings that was deducted from the gross \$38,000; they claimed to have calculated, or, in the alternative, order the agency to produce the record of calculations that establishes how they arrived at the \$38,000

dollar gross wages owed and refusal to place the ten percent statutory deduction from the said amount into appellant's escrow account, or allow for a full briefing and oral argument.

Respectfully Submitted,

/s/ Berd

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Administrative Law Judge Crystal M. Rookard

ALC Case No. 23-ALJ-04-0553-AP
Appellate Case No. 2024-002004

Bernard Jackson, #210745,

APPELLANT

v

South Carolina DEPARTMENT OF Corrections

RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify by signature below that I have served the REPLY BRIEF on the Respondent's counsel of Record and Administrative Law Court by placing the same in the U.S. Mail, postage pre-paid and Addressed as follows:

~~Bernard Jackson, 210745
pro-se Litigant
Tyger River Corr. Inst.
Unit 10 Rm 211
200 Prison Road
Enoree, SC 29335~~

Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, SC 29201

South Carolina Department
of Corrections
Christina Cole Bigelow
Deputy General Counsel
SCDC
P.O. Box 21787
Columbia, SC 29221

February 4, 2025

1/s/



Bernard Jackson, 210745
Pro-se Litigant
TYRCI U 10 Rm #211
200 Prison Rd
Enoree, SC 29335

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TYGER RIVER MAIL ROOM



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William U. Gunn
Koger M. Bradford
William B. Darwin, Jr.
W. McElhane White
A. Todd Darwin
E. Brown Parkinson, Jr.
Todd R. Flippin
Chance M. Farr

Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

September 12, 2024

Honorable Crystal M. Rookard
SC Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: **Bernard Jackson , #210745**
Docket No: 23-ALJ-04-0553-AP
[Grievance No: PCI-0501-23]

Dear Judge Rookard:

Enclosed please find the originals and copies of a Notice of Appearance and Statement of Settlement in connection with the above referenced matter. Please file the originals and return clocked copies to me in the self-addressed, stamped envelope provided. I have also enclosed a Certificate of Service evidencing service on the Appellant.

Please give me a call if you have any questions. Thank you for your assistance in this matter.

With kindest regards, I am

Sincerely yours,


A. Todd Darwin

ATD/rsm
Enclosures

Cc: ProSe Appellant, Bernard Jackson, #210745 (with copy of signed settlement documents)

~~September 12, 2024~~

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Bernard Jackson, #210745)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of)
 Corrections,)
)
 Respondent.)
)

Docket No.: 23-ALJ-04-0553-AP
Grievance No: PCI-0501-23

NOTICE OF APPEARANCE

YOU WILL PLEASE TAKE NOTICE that A. Todd Darwin is making an appearance as
counsel for South Carolina Department of Corrections.

Respectfully submitted,

HOLCOMBE BOMAR, PA

By: A. Todd Darwin

A. Todd Darwin, SC Bar #7032
101 W. Saint John Street, Suite 200 (29306)
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300 / tdarwin@holcombebomar.com
ATTORNEYS FOR THE DEFENDANT

~~September 12, 2024~~

Spartanburg, South Carolina

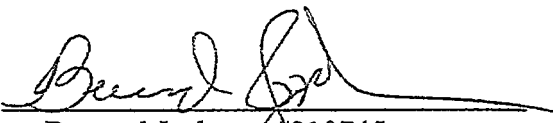
~~Exhibit~~


STATEMENT OF SETTLEMENT

Docket No.: 23-ALJ-04-0553-AP

[Grievance No.: PCI-0501-23]

The parties hereby notify the Court that they have agreed to settle the above action. The parties will file the original Stipulation of Dismissal once the settlement funds are deposited into Appellant's E.H. Cooper Inmate Account.

By: 
Bernard Jackson, #210745
APPELLANT

By: 
A. Todd Darwin, Esquire
SC Bar #7032
ATTORNEYS FOR RESPONDENT

~~September 9, 2024~~
Enoree, South Carolina

Bernard Jackson #210745
TYRRE - Unit 10 - Rm - 211
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Eunice, SC 29335

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SC Court of Appeals

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: JACKSON V. SCDC, 2024-002004; REPLY BRIEF.

Dear Clerk:

Enclosed, please find a true copy of Appellant's REPLY BRIEF and CERTIFICATE OF SERVICE. Thank you.

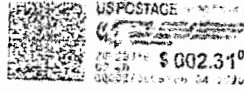
February 4, 2025

Respectfully,

151 Bernard Jackson
Bernard Jackson
Pro-se litigant

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TYGER RIVER MAILROOM

Bernard Jackson # 210745
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S.C. Court of Appeals
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