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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge Deborah Brooks Durden

ALC Case No. 23-ALJ-04-0683-AP
Appellate Case No. 2024-001892

DARREN G. SCOTT, # 233182

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

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STATEMENT OF ISSUE ON APPEAL

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED IN A PRISON INDUSTRIES SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND LABOR FOR PRISON INDUSTRIES SERVICE PROEJCTS ARE NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Darren Scott (“Appellant”), an inmate in the South Carolina Department of Corrections (“SCDC”). On July 7, 2023, Appellant filed a Step One Grievance seeking to be paid pursuant to the prevailing wage statute, S.C. Code Ann. § 24-3-430(D), for work performed in two Prison Industries Service Projects operated at Lieber Correctional Institution in which Carolina Textiles Inc. (“Carolina Textiles”) and Caterpillar Reman Powertrain Services Inc. (“Caterpillar”) served as the contracting companies. This grievance was elevated to the Step Two level and denied on October 25, 2023. Appellant filed a Notice of Appeal in the Administrative Law Court (ALC) on November 21, 2023. On October 22, 2024, Judge Deborah Brooks Durden issued an order dismissing the appeal on the ground that the work performed by Appellant was not subject to the prevailing wage statute and therefore no state-created liberty or property interest was implicated. (See ALC Order). This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE LOWER COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT’S GRIEVANCE DID NOT IMPLICATE A STATE-CREATED LIBERTY OR PROPERTY INTEREST WHERE APPELLANT WORKED IN A PRISON INDUSTRIES SERVICE PROJECT AND NOT A PRISON INDUSTRIES ENHANCEMENT PROGRAM, AND LABOR FOR PRISON INDUSTRIES SERVICE PROJETS ARE NOT SUBJECT TO THE PREVAILING WAGE STATUTE.

Despite Appellant’s allegation that he was denied a prevailing wage under S.C. Code 24-3-430(D), the job Appellant actually worked was not subject to the prevailing wage statute. Accordingly, the Administrative Law Court properly dismissed the appeal as not implicating a state-created liberty or property interest.

There are three types of prison industries programs in the South Carolina Department of Corrections: (1) Prison Industries Enhancement Programs (commonly referred to as “PIE or PIECP”); (2) Prison Industries Service Projects; and (3) traditional prison industries. Only “PIE” or “PIECP” programs are subject to the prevailing wage statute, S.C. Code 24-3-430(D). This statute generally covers the use of inmate labor for manufacturing and processing of goods. See S.C. Code 24-3-430 (A)(“The Director of the Department of Corrections may establish a program involving the use of inmate labor by a nonprofit organization or in private industry for the manufacturing and processing of goods, wares, or merchandise or the provision of services or another business or commercial enterprise considered by the director to enhance the general welfare of South Carolina. . .”).

Appellant claimed below that he performed service work for Carolina Textiles, Inc., and Caterpillar Reman Powertrain Services, Inc. (See Appellant’s Brief to the ALC and ALC Record.) Prison Industries Services Projects are governed by S.C. Code § 24-1-290 & -295. S.C. Code 24-1-295 states in relevant part:

The Director of the Department of Corrections may enter into contracts with private sector entities that allow inmate labor to be provided for prison industry service work and export work that involves exportation of products. The use of inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Pursuant to this section, service work is defined as any work that includes repair, replacement of original manufactured items, packaging, sorting, recycling, labeling, or similar work that is not original equipment manufacturing. ***The department may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector.....***

S.C. Code Ann. § 24-1-295 (emphasis added).

Appellant acknowledged below that his participation with Prison Industries was in Service Projects. (See Appellant’s Brief to the ALC p. 3 and p. 9). Consistent with working in Prison Industries Service Projects, the pay stubs marked as Exhibit 23-29 to Appellant’s Brief to the ALC show a base pay rate of \$0.40. (See Appellant’s Brief to the ALC and Exhibits). Additionally, Appellant has never had a private industry account. (See Record to ALC p. 18). Additionally, during the time periods Appellant worked, Lieber Correctional Institution did not have a PIE or PIECP. (See Record to ALC p. 7). All of these facts support that Appellant did not work for a PIE or PIECP.

Appellant claims he worked for Carolina Textiles for a period of time. Appellant did not specify what years he participated in the Carolina Textile Project, however the contracts dated January 8, 2011 and February 14, 2013 are included in the record. (See Record to ALC p. 10-30). Both Carolina Textiles contracts state in the recitals on the first page, “WHEREAS ... engage in the business of cutting fabric component...” (ALC Rec. p. 9 and p. 21). Both contracts further provide

in section 2 of Article 3.1, that the contractor shall provide “component parts for cutting wiping rags from scrap material...” (emphasis added). (ALC Record p. 12 & 22). Lastly, both contracts are production-based contracts. (See ALC Record p. 14 and p. 24). The cutting of rags from scrap materials is recycling work which falls within the definition of service work and therefore the prevailing wage statute does not apply. See S.C. Code Ann. § 24-1-295.

Appellant also claims to have worked for Caterpillar. Appellant does not specify the dates he alleges to have worked for Caterpillar project, however the contract dated September 30, 2008, is included in the record. (See ALC Record p. 32-42). The Caterpillar program was not a PIE or PIECP program. (See ALC Record p. 7). The Caterpillar project was a repair operation and therefore was a prison industries service project. (See ALC Record p. 31 - “[Caterpillar] intends to engage in the business of disassembly and/or remanufacturing of its product lines at Lieber Correctional Institution...”); ALC Rec. p. 33 (“training of inmates in the disassembly and/or remanufacturing of its product lines...”; “will disassemble and/or remanufacture CRPSI’s product lines ...”).

Since Appellant did not manufacture any goods but instead provided services, Appellant worked for Prison Industries Service Projects which were not subject to the prevailing wage requirement of S.C. Code 24-3-430(D). Compare Wicker v. South Carolina Dep’t of Corrections, 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that the ALC could properly entertain a grievance regarding payment of a prevailing wage for work performed under S.C. Code 24-3-430, and that the statute required payment of a prevailing wage to Wicker for such work). Significantly, the statute governing service work **specifically states** that the wages may be less than the prevailing wage for work of a similar nature in the private sector. See S.C. Code §24-1-295 (“The department may


negotiate the wage to be paid for inmate labor provided under prison industry service work contracts and export work contracts, and these wages may be less than the prevailing wage for work of a similar nature in the private sector...”). Because Appellant worked for a Prison Industries Service Project governed by S.C. Code Ann. § 24-1-295, he was not entitled to be paid pursuant to the prevailing wage statute, S.C. Code 24-3-430(D). Therefore, the ALC properly dismissed the case for failing to implicate a state-created liberty or property interest.

CONCLUSION

For the reasons discussed above, Respondent respectfully requests that this Court affirm the determination of the Administrative Law Court.

Respectfully submitted,

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