STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
Docket No.25-ALJ-04-0139-AP
Hon.Crystal M. Rookard

RECEIVED
DEC 29 2025
SC Court of Appeals

MARCO BATES #249552 -- APPELLANT,

-Vs-

SOUTH CAROLINA DEP'T OF CORR. -- RESPONDENT,

APPELLATE CASE NO.2025-002328

APPELLANT'S BRIEF ON APPEAL

Introduction

COMES NOW, above captioned Appellant Marco Bates #249552, respectfully appeals the ALC's order of dismissal. This is an appeal filed by Appellant, an inmate housed in the South Carolina Dep't of Corrections.

Procedural History

On August 20, 2024 Appellant filed his step 1 prevailing wage grievance contending SCDC failed to pay Appellant the hourly prevailing wage for the hours worked in the Prison Industries program in violation of §24-3-430(D). See Record on Appeal (hereafter "ROA") at 3-4(grievance No.LEECI-0922-24). The step 1

grievance was closed at Tyger River and forwarded to Lee for processing. ROA at 3.

Apparently due to the nature of the grievance it was forwarded to a step 2. See ROA at 1-3. In denying the Step 2 the responsible official denied the step 2 by stating:

> In your grievance, you claim that you are entitled to prevailing wage back pay for work at Lee Correctional as a Material Handling Operator from October 1998 through May 2001. Our records show that the work program in which you participated was not a Prison Industries Enhancement Program job ("PIE" job) subject to the prevailing wage statute. The work you performed at Lee Correctional was a traditional/service job that is covered under a different statute. Accordingly, you were not entitled to the prevailing wage for your service work, and your grievance is therefore denied.
>
> ROA at 2.

Appellant filed a timely notice of appeal to the Administrative Law Court ("ALC") on March 26, 2025. The matter was assigned to the Administrative Law Judge on April 10, 2025 and given a case number 25-ALJ-04-0139-AP. SCDC filed a Motion to Dismiss on May 30, 2025, which the ALC denied on June 16, 2025. Appellant filed his brief on appeal on June 19, 2025. The record on appeal was filed July 17, 2025.

On July 29, 2025 Appellant filed two (2) motions, a "Motion to Dismiss Affidavit of Richard Hodgkiss" and a Rule 38 motion for relief for failure to comply with the rules. On August 22, 2025 SCDC filed it's brief and a second motion to dismiss ("Motion") stating that no state-create liberty or property interest was implicated, because Appellant never worked for a Prison Industries Certification Program (PIECP), which subject to

the prevailing wage statute. The Motion was accompanied by (1) Affidavit from SCDC's Director of Support Services and Industries, (2) Payroll detail records and (3) a copy of the PI Private Sector Accounting Account Summary. Appellant filed a reply brief on September 8, 2025.

On September 17, 2025 the Honorable Crystal M. Rookard, Administrative Law Judge denied Appellant relief and ruled in SCDC's favor. Appellant filed a timely notice of Appeal with this Court and this Court issued a docket number and briefing order. Appellate Case No. 2025-002328.

This appeal is as follows:

Standard of Review

In Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014)("In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review."); S.C. Dep't of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 ([Supp.2021]) sets forth the standard of review when the court of appeals sitting in review of a decision by the ALC on an appeal from the administrative agency."). §1-23-610(B)([An appellate] court may not substitute it's judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact.) Id (stating, however, when reviewing an ALC decision, an appellate court "may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the findings, 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 an 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) is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion).

ISSUE (I).

THE ALJ ERRED IN NOT RULING IN APPELLANT'S FAVOR WHERE THE RECORD ON APPEAL AND DOCUMENTED EVIDENCE SUBMITTED WITH APPELLANT'S ALC BRIEF WAS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE SHOWING APPELLANT'S RIGHT TO THE HOURLY BACK-PAY WAGE SOUGHT.

ISSUE (II).

THE ALC ABUSED IT'S DISCRETION IN NOT RULING IN APPELLANT'S FAVOR WHERE APPELLANT'S CLAIM IS BASED ON STATUTORY LAW THAT HAS ALREADY BEEN DECIDED IN THIS STATE.

To save the Court's time Appellant will address these issues together since the facts of encompasses the other.

Relevant Facts

Appellant submits the ALC abused it's discretion in not officially ruling on the merits of the issue and instead asking for more/additional documentation and an additional brief. Appellant would submit that the ALC erred in not ruling on the matter because all of the evidence applicable to the matter at hand is of course adequately before the ALC and now this Court. It is not and cannot be disputed that SCDC must pay inmates the hourly prevailing wage for the labor. Id.

First, the responsible official for SCDC answered the step 2 grievance, and in so doing specifically states: "The work you

performed at Lee Correctional was a traditional/service job that is covered under a different statute." Interestingly, Respondent says that the work Appellant performed is under "a different statute", but cites none in support of their conclusion. The Respondent went on to state: "Accordingly, you were not entitled to the prevailing wage for your service work", and therefore your grievance is denied.

Addressing these two distinct reasons for denial was (1) the job Appellant performed was covered by a different statute. A statute that Respondents have not cited and therefore can find no sanctuary in. Secondly, it appears Respondents are calling Appellant's hourly labor "service work", and that too is also covered by the prevailing wage statute.

The ALC is asking for evidence that is already properly before it, the ALC has all of the evidence before it and therefore should have made a ruling. The ALC need to consider the statutory laws of this State, §24-3-315 and §24-3-430(D) and Appellant's reply brief that was filed September 8, 2025 along with documented authority. Appellant submitted a tenable claim and support using the S.C. Attorney General's administrative decision. See 2002 WL 31728841 (S.C.A.G. 2002), that of which the ALC did <u>not</u> appear to discuss or want to discuss. There can be no dispute that 24-3-430(d) is mandatory, must be followed and is not open for interpretation because our Supreme Court and this Court of Appeals have already interpreted §24-3-430(d) numerous times.

In October 17, 2002 the S.C. Attorney General issued an Administrative decision to Senator Mike fair of Corrections & Penology Committee, within that decision in pertinent part states:

> In reviewing the operations of Department of Corrections (SCDC) Prison Industries Division last year, the General Counsel for SCDC realized that the agency was operating outside the authority and requirements of S.C. Code 24-3-430 in that inmates were being paid less than the prevailing wage for work performed for private companies. Several binding contract were in place, which would require renegotiation in order to meet the Code.
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> Id. at 2002 WL 31728841 (S.C.A.G. 2002).

As is seen Respondent have been operating in violation of the statutory laws of this State, §24-3-430, for over 22-years. This direct statutory violation is and of it's proof of SCDC's fraudulent conduct and now they are attempting to limit their liability.

The Administrative Decision goes on to state:

> It should be noted that §24-3-430 was enacted in 1995, while the Ashurst-Sumners Act, which contains the phrase "goods, wares or merchandise," was a product of the 1930's. At the time the Legislature enacted §24-3-430, the service industry in this country had just become just as important to the American economy as manufacturing or production. Recognition of that fact is obviously one reason the General Assembly included the broad language "the provision of services" in §24-3-430. To read that provision out of state law is, in out view simply incorrect. It is clear that, provided the other requirements of §24-3-430 are met, the Legislature intended "service contracts" to be so included. Inmates participating in the performance of service contracts for private industry as provided in §24-3-430 thus must be paid the prevailing wade.

As is seen in the above even the Assistance Attorney General agreed that our Legislature intended service contracts to also be included and "inmates must be paid the prevailing wage. Id

In further detailed discussion in the administrative decision the Assistant Attorney General stated:

> SCDC may operate a prison industry service program, but inmates who work in such programs must do so voluntarily, must be paid the prevailing wage for their work, and the work may not result in the displacement of employed workers in the State, nor impair existing contracts for services. In other words, if we chose to operate a prison industry service program, we must do so in conformance with section §24-3-430 of S.C. Code of Laws.
>
> Where existing prison industry **service programs** are in place, SCDC should begin to comply with the above provisions immediately.
>
> I agree that section §24-3-430 is mandatory and must be followed.
>
> Robert D. Cook, Assistant Attorney General.

Id at 2002 WL 31728841 (S.C.A.G. 2002)(emphasis original, supplied and added).

DISCUSSION

The ALJ abused it's discretion. The abuse here is where the ALC has erred as a matter of law, because Appellant clearly submitted a hard copy of the Administrative Decision to Mike Fair from Robert Cook, Assistant Attorney General. Since SCDC's General Couynsel and the Assistant Attorney General play for the same team alls the ALJ had to do is simply read the Attorney General's administrative decision and the ALJ could have easily concluded that inmates providing hourly "service work" must also be paid the prevailing wage. (emphasis original and added).

The ALJ has erred as a matter of law and fact and therefore abused it's discretion. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).

As is seen in the first section of the Attorney General's decision SCDC's General Counsel undoubtedly knew they operating outside the authority of §24-3-430 in that inmates were not being paid the prevailing wage as mandated by law. The Assistant Attorney General advised SCDC's General Counsel of their error and violation of the law **22-years ago** and they continually and knowingly violated the statutory laws of this state.

Our Courts have repeatedly held that inmates statutory right to compensation as a prison industries worker gives rise to a state-created liberty interest and the right to a file a grievance. See e.g. Torrence v. SCDC, 373 S.C. 586, 592-93, 646 S.E.2d 866, 869 (2007)(Torrence I); Adkins v. SCDC, 360 S.C. 413, 419, 602 S.E.2d 51, 55 (2004); Wicker v. SCDC, 360 S.C. at 424-25, 602 S.E.2d at 57-58; and Ackerman v. SCDC, 415 S.C. 412, 421, 782 S.E.2d 757, 762 (Ct.App.2016), cert. denied 2017; Torrence v. SCDC, 433 S.C. 633, 861 S.E.2d 36 (Ct.App.2021), cert. denied 2022 (Torrence II).

Appellant is entitled to be paid in compliance with the prevailing wage laws as mandated by §24-3-430(D). This Court should remand the matter back to the ALC with instructions to use the hourly record on appeal printout and calculate the difference that Respondent's owe Appellant in conformity with §24-3-430 and the back pay and order Respondents to pay Appellant the monies owed to him for his hourly work, in light of the fact that Respondents are attempting allude their liability by calling Appellants work "service work", as is clearly seen even the Assistance Attorney General recogized:

> It should be noted that §24-3-430 was enacted in 1995, while the Ashurst-Sumners Act, which contains the phrase "goods, wares or merchandise," was a product of the 1930's. At the time

> the Legislature enacted §24-3-430, the service industry in this country had just become just as important to the American economy as manufacturing or production. Recognition of that fact is obviously one reason the General Assembly included the broad language "the provision of services" in §24-3-430. To read that provision out of state law is, in our view simply incorrect. It is clear that, provided the other requirements of §24-3-430 are met, **the Legislature intended "service contracts" to be so included.** Inmates participating in the performance of service contracts for private industry as provided in §24-3-430 thus must be paid the prevailing wage.

Id 2002 WL 31728841 (S.C.A.G. 2002).

The ALC had this before it and there really shouldn't be a need for an additional brief or documentation. Rather, there is no dispute SCDC's must pay the hourly prevailing wage. The question now is whether or not, this Court wishes to use the ROA hourly print out at pages 12-14 ROA.

Respondents in accordance with the statutory laws of this State §24-3-430(D) must pay Appellant the hourly prevailing wage as mandated by law and the ALC erred in not concluding so.

CONCLUSION

Based on the above, record on appeal and supporting documentation, Appellant respectfully believes the ALC erred in not ruling in Appellant's favor in accordance with the prevailing wage statute. Appellant respectfully prays this Court will either remand back to the ALC with instructions to pay Appellant the prevailing wage or in the alternative that this Court will affix the relief deemed just and appropriate in this matter.

Respectfully Submitted,

/s/ Marco Bates # 249552

Marco Bates #249552
Appellant, pro-se