RECEIVED
SEP 08 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable Samuel L. Johnson, Administrative Law Judge

ALC Case No. 24-ALJ-04-0161-AP

Appellate Case No. 2025-002575

Roger Curtis, #143635, Respondent,

v.

South Carolina Department of Corrections, Appellant.

INITIAL BRIEF OF RESPONDENT

Roger Curtis
Roger Curtis, #143635
Tyger River Correctional
Institution Unit 8-B-223B
200 Prison Road
Enoree, S.C. 29335

Respondent, Pro Se

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

TABLE OF AUTHORITIES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. The ALC properly rejected the Appellant's exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 on the merits because Respondent's prevailing wage claim was a continuing statutory wage claim, not an isolated payroll error.

II. The ALC did not improperly raise a new issue sua sponte when it interpreted and applied ADM-15.13 in response to SCDC's exhaustion defense.

III. Torrence is directly controlling and requires rejection of SCDC's attempt to characterize Respondent's claim as a 15-day payroll error.

IV. Any error on the part of the ALC was harmless because SCDC failed to establish prejudice to a substantive right.

V. SCDC misrepresents that the Record shows that Respondent was "not employed at that time" he submitted his Step one grievance on January 30, 2023.

VI. The ALC did not sua sponte award back pay beyond January 30, 2023, because SCDC itself placed the **entire** Tyger River period before the ALC.

STATEMENT OF THE CASE

On or about September 1, 2006, while incarcerated at Kershaw Correctional Institution ("Kershaw"), a prison operated by the South Carolina Department of Corrections ("SCDC" or "Department"), Respondent Roger Curtis ("Respondent"), began participating in a federally certified Prison Industry Enhancement Certification Program ("PIECP"), where he performed labor for the private industry sponsor RM Designs as the Record reflects his job title as an industries trainee, for which he was paid an hourly rate of $5.15 to $7.25 until his labor at Kershaw ended on approximately Janurary 15, 2016. (R.pp. ____).

After Respondent was transferred from Kershaw to Tyger River Correctional Institution ("Tyger River"), on or about July 2, 2016, he began participating in the PIECP, where he performed work for the private industry sponsor Shaw Industries Group, Inc., ("Shaw"), where the Record reflects his job title as a "Machine Operator", (R.p.____), for which he was paid an hourly rate of $7.25 to $7.38. (R.pp_____).

On January 30, 2023, Respondent submitted a Step 1 Grievance with SCDC pursuant to <u>Torrence v. S.C. Dept. of Corrs.</u>, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021) and former S.C. Code Ann. § 24-3-430(D)(2007), expressly stating in pertinent part, "In my present grievance it is not a one time event in which I was not paid a prevailing wage. The Department **continuously fails to pay me** a Prevailing wage, therefore the Grievance involved is related to a policy, which can be filed at anytime. I have worked Prison Industries since 2006, at Kershaw C.I. & Tyger River C.I.". Respondent went on to specifically request, "I am asking for the prevailing wage that the Court ruled, I am entitled to **and** back pay...". (R.p.__).

On February 3, 2023, SCDC denied Respondent's Step 1 Grievance, stating in its decision, "You were provided with wages that were approved by the governing authority of South Carolina at that time and accepted as such." Specifically, the Department asserts Respondent's grievance was properly denied because he failed to identify any payroll error within fifteen days of the date of the error, pursuant to SCDC Policy ADM-15.13 ("Policy"). (R.p. ____).

Thereafter, on February 8, 2023, Respondent submitted a Step 2 Grievance, reiterating his request to be paid the prevailing wage and also back pay, pursuant to Torrence, supra and S.C. Code Ann. § 24-3-430(D)(2007). Also, in his Step 2 Grievance, Respondent asserted that his grievance falls within Paragraph 13.9 (now Paragraph 13.10) of the Department's Policy GA-01.12, which provides exception to time limit requirement which will be made for grievances concerning policies. (R.p.____).

On October 27, 2023, SCDC denied Respondent's Step 2 Grievance, stating in pertinent part, "In your grievance, you are requesting adjustment to your inmate pay pursuant to Torrence v. South Carolina Department of Corrections (2021). The South Carolina Court of Appeals opinion in Torrence was filed on June 30, 2021. You submitted your Step 1 Grievance regarding this matter on February 1, 2013, approximately one year and seven months after the Court of Appeals issued its opinion. Accordingly, your grievance is untimely under SCDC Policy ADM-15.13, section 12.1 .... Therefore, your grievance is denied." (R.p. ____).

On November 21, 2023, Respondent filed his Notice of Appeal with the South Carolina Administrative Law Court, ("ALC"). On February 16, 2024, the matter was assigned to the Honorable Deborah Brooks Durden, Administrative Law Judge. However, on June 20, 2025, the case was reassigned to the Honorable Samuel L. Johnson, Administrative Law Judge. On November 25, 2025, the Honorable Samuel L. Johnson issued an order rejecting SCDC's decision with respect to Curtis's PIECP wages and remanding the case with instructions to calculate and offer to remit Respondent the additional pay owed under the prevailing wage statute, S.C. Code § 24-3-430(D), for the period of September 1, 2006 through May 21, 2024. This appeal followed.

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. § 1-23-610(B)(a) - (f).

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 the administrative agency reached. <u>Hendley v. S.C. State Budget & Control Bd.</u>, 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

This appeal involves the rights of an inmate who participated in a prison industries program. Federal law generally prohibits the transportation in interstate commerce of goods, wares, and merchandise manufactured or produced by prisoners. 18 U.S.C. § 1761(a). An exception is available for prisoners participating in a work pilot project administered by the Bureau of Justice Assistance ("BJA"), an agency of the Department of Justice. 18 U.S.C. § 1761(c). Convicts participating in such programs must have "received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed." Id. § 1761(c)(2). Those wages are subject to certain listed deductions, including federal, state, and local taxes. Id.

BJA guidelines published in the Federal Register state that "[p]revailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security)." 64 Fed. Reg. 17000, 17010 (Apr. 7, 1999); (In South Carolina the wage setting agency would now be the Department of Employment and Workforce ("DEW")). In the absence of such verification, the program participant is "responsible for establishing a reasonable prevailing wage." Id. The participant must then retain on file for the BJA's review "relevant wage data from a sufficient number of competitors in the locality," "data analyses for determining a reasonable prevailing wage result," and "if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates." Id. The prevailing wage "can not be set below the Federal minimum wage, as defined in the Fair Labor Standards Act." Id. "Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage." Id.

In 1995, South Carolina passed legislation enabling its prison industries program to participate in the private sector. See Gatewood v. S.C. Dept. of Corrs., 416 S.C. 304, 785 S.E.2d 600 (Ct. App. 2016). In particular, South Carolina adopted S.C. Code Ann. § 24-3-430, requiring that "no inmate participating in the program may earn less than the prevailing wage" for similar private-sector work. S.C. Code Ann. § 24-3-430(D); 1995 S.C. Acts 79.

The rights of individual prisoners under this statute has been addressed in a series of decisions. South Carolina courts have repeatedly held that an inmate's statutory right to compensation as a prison industries worker gives rise to a state-created liberty interest and the right to a grievance. See, e.g., Torrence v. S.C. Dept. of Corrs., 373 S.C. 586, 592-93, 646 S.E.2d 866, 869 (2007)(Torrence I); Adkins v. S.C. Dept. of Corrs., 360 S.C. 413, 419, 602 S.E.2d 51, 55 (2004); Wicker, 360 S.C. at 424-25, 602 S.E.2d at 57-58; S.C. Dept. of Corrs. v. Cartrette, 387 S.C. 640, 694 S.E.2d 18, 21 (Ct. App. 2010); see also Ackerman v. S.C. Dept. of Corrs., 415 S.C. 412, 421, 782 S.E.2d 757, 762 (Ct. App. 2016), cert. denied 2017; Torrence v. S.C. Dept. of Corrs., 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), cert. denied 2022 (Torrence II).

Here, Respondent's position is simple: By law, he should have earned no less than the prevailing wage for his work performed in the PIECP, both at Kershaw and Tyger River for the relevant time period of September 1, 2006 to May 21, 2024. However, it is clear from the Record that the wages paid to Respondent for the entire time he worked in the PIECP fell short of the prevailing wage for comparable industries. (R.pp._____).

I. THE ALC PROPERLY REJECTED THE APPELLANT'S EXHAUSTION OF ADMINISTRATIVE REMEDIES DEFENSE BASED ON THE PROVISIONS OF SECTION 12.1 OF SCDC POLICY ADM-15.13 ON THE MERITS BECAUSE RESPONDENT'S PREVAILING WAGE CLAIM WAS A CONTINUING STATUTORY WAGE CLAIM, NOT AN ISOLATED PAYROLL ERROR

In both his Step 1 and Step 2 Grievances, Respondent relied on this Court's analysis in Torrence II of the timeliness of filing his wage related grievances, to establish that his grievances, which involved a continuous condition (failure to be paid the prevailing wage pursuant to former S.C. Code Ann. § 24-3-430(D)(2007) and Torrence II, fell within paragraph 13.9 (now paragraph 13.10) of the Department's Policy GA-01.12, which provides exceptions to time limit requirement for grievances concerning policies/procedures. (R.pp._____).

SCDC denied both grievances. (R.pp._____). The crux of SCDC's denial was its reliance on its SCDC Policy ADM-15.13 ("ADM-15.13"). ADM-15.13, section 12.1 provides that inmates must report "problems in their pay" to the institution's inmate-pay designee within fifteen days of the "payroll date error". The policy further states that failure to notify SCDC within fifteen days results in no back pay under that payroll correction procedure.

It's clear that SCDC's reliance upon ADM-15.13 ignores the nature of the claim presented by the Respondent. Respondent did not present an ordinary payroll entry dispute, nor did he contend that SCDC accidentally omitted one day's wages, made a mathematical error on a particular paycheck, or accidentally entered an incorrect number of hours. Instead, the Respondent challenged SCDC's continuing failure to pay the legally required prevailing wage, in accordance with S.C. Code Ann. § 24-3-430(D)(2007), for PIECP work. That distinction in dispositive.

The Department argues Respondent's claim is barred by ADM-15.13 because Respondent failed to raise an issue with the Department regarding his wages within fifteen days of the pay error's occurrence. It is noteworthy that two previous South Carolina Appellate cases have rejected a very similar argument by the Department that back wages can be limited to the two weeks immediately proceeding the date the grievance is filed, but on a different legal theory. See Torrence II, 433 S.C. at 645; Ackerman, 415 S.C. at 421 (holding it was arbitrary and capricious for the Department to attempt to characterize wage grievances as "incident grievances" and dismiss them on timeliness grounds). The Department now seeks to reach the same result under a departmental policy adopted June 1, 2007, (although this policy was amended on June 11, 2014, those amendments do not affect the issues presented in this grievance). Thus, the policy at issue was adopted prior to the litigation in Torrence and Ackerman and was in effect when those cases were argued and decided.

This Court explained in Ackerman that the prevailing wage requirement is a subject governed by statute and therefore reflects the legislature's policy concerning inmate pay. It further explained that SCDC implements that statutory policy through its own enduring policies and contracts concerning inmate wages. Because those provisions affect numerous inmates over an ongoing period, they cannot realistically be characterized as isolated "incidents". Ackerman, supra.

Likewise, in Torrence, this Court determined because Torrence's claims involve continuous conditions potentially affecting numerous inmates, the Court found Torrence's grievance involved Department policies and procedures, rather than an isolated incident. See Torrence, supra.

Here, the Respondent alleged that SCDC continuously failed to pay him the prevailing wage required by law for his PIECP work. His grievance challenged the legality of the wage rate itself. That is precisely the type of enduring statutory wage condition that Ackerman and Torrence hold cannot properly be reduced to an isolated payroll "incident". In his Initial Brief to the ALC, Respondent conclude with this assertion, stating, "Appellant asserts that his appeal is timely. In [Torrence II] our Court of Appeals affirmed such claim is a "continuous coarse of action" thus Procedural Policy, and exempt from time limit filing under section 13.10 of the Department's policy GA-01.12". See "Appellant's Initial Brief" to the ALC (August 14, 2024), p. 7.

Thus, the ALC did not disregard ADM-15.13. Rather, the ALC correctly refused to allow SCDC to use an internal payroll correction procedure to defeat a statutory prevailing wage claim governed by controlling appellate precedent.

II. THE ALC DID NOT IMPROPERLY RAISE A NEW ISSUE SUA SPONTE WHEN IT INTERPRETED AND APPLIED ADM-15.13 IN RESPONSE TO SCDC'S EXHAUSTION DEFENSE

In its Initial Brief of Appellant, the Appellant SCDC argues, "...the crux of the ALC's decision in rejecting SCDC's exhaustion of administrative remedies defense is again an issue never raised by the Respondent but rather one addressed sua sponte by the ALC for the first time in its order." (emphasis added). It is the Respondent's position that SCDC apparently raised ADM-15.13 as an affirmative defense to Respondent's wage claim. It has been SCDC's position that Respondent failed to comply with that policy because he did not report the alleged payroll problem within fifteen days of its occurrence. SCDC's reliance on ADM-15.13 necessarily put at issue the following: 1) What constitutes a "problem in [PIECP inmate worker's] pay"; 2) What constitutes a "payroll date error"; 3) Whether Respondent's alleged underpayment was the type of problem governed by ADM-15.13; 4) Whether the fifteen day reporting requirement applied to Respondent's claim; and 5) Whether failure to comply with that policy barred Respondent's claim. Therefore, the ALC did not need Respondent to separately plead the precise interpretive rationale it ultimately used. Thus, it is the Respondent's position that an issue in not "new" merely because the tribunal used a legal analysis or interpretation that the parties did not expressly propose. SCDC's exhaustion defense placed ADM-15.13 before the ALC. Thus, the ALC was required to determine what the policy meant and whether it applied to the facts.

Furthermore, in its Initial Brief of Appellant, SCDC says, "the ALC attempt[ed] to interject the notion of subjective intent into the definition of "payroll error". However, SCDC in mistaken. The ALC did not create a new defense or claim, but rather it adjudicated the defense SCDC affirmatively raised. SCDC cannot simultaneously argue that 'ADM-15.13 bars Respondent's claim because he failed to report the payroll error within fifteen days' and then argue 'The ALC was prohibited from determining what ADM-15.13 means'. Once SCDC relied upon the policy, its meaning and applicability became a legal question for the tribunal to determine. To this end, the ALC is the fact finder in contested administrative proceedings. South Carolina's Supreme Court has recognized that the ALC is the ultimate finder of fact and is not merely required to rubber-stamp the agency's characterization of the evidence. See Risher v. S.C. Dept. of Health & Envtl. Control, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011).

Additionally, in Torrence II, SCDC itself argued that the inmate's grievance was untimely. This Court nevertheless affirmed the ALC's determination that the grievance was timely and that equitable tolling applied. The timeliness/exhaustion question is not merely a mechanical question of whether a particular document was filed within fifteen days. It requires the tribunal to determine when the administrative violation occurred, what obligation SCDC had, and whether the agency's timeliness rule actually applies to the particular wage claim.

Therefore, Torrence II demonstrates that SCDC's administrative timeliness defense is itself subject to judicial scrutiny.

III. TORRENCE IS DIRECTLY CONTROLLING AND REQUIRES REJECTION OF SCDC'S ATTEMPT TO CHARACTERIZE RESPONDENT'S CLAIM AS A 15-DAY PAYROLL ERROR

SCDC's position is particularly difficult to reconcile with Torrence II because this Court has already considered a very similar argument by SCDC that back wages can be limited to the two weeks immediately proceeding the date the grievance is filed. In Torrence II, SCDC argued that inmate Torrence failed to file his grievance within fifteen days of the date SCDC began paying him for his labor. This Court rejected that argument. The Court reasoned that SCDC operates its prison industry program as part of its day-to-day operations, and that inmate wage requirements are governed by statutory policies that have an enduring effect on numerous inmates. Accordingly, the failure to pay the prevailing wage constitutes a continuing condition rather than a temporally limited incident. The Court specifically found that the Torrence's prevailing wage grievance fell within the policy/procedure exception to the fifteen day deadline. Respondent asserts that the Court of Appeals' holding in Torrence II is applicable here.

Respondent's grievances expressly stated that SCDC was failing to pay him the prevailing wage as required by former S.C. Code Ann. § 24-3-430(D)(2007) and Torrence II. In those same grievances (Step 1 and Step 2), Respondent, who expressly relied upon Torrence and former S.C. Code Ann. §24-3-430(D)(2007), and requested the prevailing wage **and** back pay. (R.pp._____).

SCDC therefore had actual notice of the nature and the scope of the claim. The Department cannot convert a statutory prevailing wage dispute into an ordinary payroll entry error simply by labeling it a "pay error".

Therefore, Respondent asserts that this Court, as the ALC has shown in this matter, should not be persuaded that an unpromulgated Department policy may be interpreted to foreclose prevailing wage claims made pursuant to the former Prevailing Wage Statute, § 24-3-430(D)(2007) and Torrence II.

Additionally, Torrence had performed PIECP work between June 1997 and November 2004 before filing a grievance on May 21, 2007. Nevertheless, this Court affirmed the ALC's determination that he was entitled to prevailing wages for his qualifying work and remanded the case for calculation of the wages for the remaining years of his labor.

The Court did not hold that an inmate's entitlement to prevailing wages begins only on the date the inmate files his grievance. Nor did the Court hold that an inmate's grievance automatically cuts off the wage obligation on the date it is filed. To the contrary, the Court recognized that the underlying wrong, the failure to pay the legally required prevailing wage, was a continuing condition. The remedy necessarily addressed the wages associated with that continuing condition. It is that very same reasoning that supports the ALC's decision here.

IV. ANY ERROR ON THE PART OF THE ALC WAS HARMLESS BECAUSE SCDC FAILED TO ESTABLISH PREJUDICE TO A SUBSTANTIVE RIGHT

In the first section of its brief, SCDC complains that the ALC erred in rejecting its exhaustion of administrative remedies defense based on the provisions of ADM-15.13 both on the merits and by asserting sua sponte arguments not asserted by the Respondent.

The Department further complains in its brief that the ALC erred in allegedly interjecting the notion of subjective intent into the definition of "payroll error", as it decided this case.

Even assuming arguendo that the ALC's analysis of the definition of "payroll error" in the context of ADM-15.13 involved the notion of subjective intent and was unnecessary or imperfect, SCDC still must demonstrate that the alleged error prejudiced a substantive right. It cannot do so merely by identifying an analytical statement with which it disagrees.

Under S.C. Code Ann. § 1-23-610(B), the Court of Appeals may reverse or modify an ALC decision only when the appellant's substantive rights have been prejudiced because of one of the statutory grounds, including unlawful procedure, error of law, or abuse of discretion. South Carolina appellate decisions repeatedly emphasize this prejudice requirement.

For example, in S.C. Dept. of Corrs. v. Mitchell, 377 S.C. 256, 260, 659 S.E.2d 233 (Ct. App. 2008), the Court recognized that the burden rests on the appellant to establish that its substantive rights were prejudiced. This Court has applied that principle in administrative appeals.

Respectively, the question for this Court should be: What would the ALC's judgment have been if the supposedly erroneous "intent" analysis were removed? If the answer is the same, then the alleged error is harmless.

Additionally, the Court should consider the following concerning this particular issue: 1) SCDC raised ADM-15.13 as its exhaustion defense; 2) The applicability of ADM-15.13 was therefore before the ALC; 3) The underlying facts concerning Respondent's wage rate, payroll, grievance, and SCDC's reliance on ADM-15.13 were already in the record; 4) The ALC was required to determine whether the policy applied; 5) Even if the ALC used an unnecessary distinction between an accidental "mistake" and an intentional pay rate determination, that distinction does not change the fundamental fact that the claim concerned SCDC's failure to pay the legally required prevailing wage; and 6) SCDC has not shown that it would have presented different evidence or a different legal defense had the ALC expressly framed the issue another way.

Therefore, SCDC cannot establish prejudice.

South Carolina's general harmless-error jurisprudence supports the principle that an error warrants reversal only where it could reasonably have affected the result. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006), explains that harmlessness depends upon the circumstances and the relationship of the alleged error to the entire case.

V. SCDC MISREPRESENTS THAT THE RECORD SHOWS THAT RESPONDENT WAS "NOT EMPLOYED AT THAT TIME" HE SUBMITTED HIS STEP ONE GRIEVANCE ON JANUARY 30, 2023

On January 30, 2023, the Respondent filed his Step 1 Grievance with SCDC, challenging SCDC's failure to pay him the prevailing and back pay, pursuant to former S.C. Code Ann. § 24-3-430(D)(2007) and Torrence II. (R.p.____).

In its brief, SCDC alleges that when Respondent filed his Step 1 Grievance on January 30, 2023, "he was not employed at that time, which is contrary to the ALC's finding.". However, SCDC,s argument on this issue is not supported by the Record as a whole.

The Record refects that generally the Respondent's (as well as all PIECP inmate workers) pay date occurs twice a month (the 1st and the 16th, except those dates fall on a weekend or holiday; and in such cases the pay date will be on either the 29th, 30th, or 31st, as reflected by the Record). (R.pp. _____).

By way of example, when a PIECP inmate worker works from the pay date period of January 2nd to January the **16th**, he's paid wages for that period on Febuary 1st, the following month. And in the case a PIECP inmate worker perform labor from the pay date January 17th to February **1**, he's paid wages for that period on February 16th. This example helps explains to the Court that the Record, which reflects under the heading **EARNED WORK CREDITS**, Respondent's whose job description reflects him as a Industries Trainee, who started on September 1, 2006, or "09/01/2006", (R.p.____), was paid for the first time as a PIECP worker on September 29, 2006. (R.p.____). Respondent's pay date on September 29, 2006 were for the hours he performed labor from

September 1, 2006 to September 16, 2006. (Respondent asserts that his first pay date would have fallen on October 1, 2026-consistent with the 1st and 16th pay date; however October 1, 2006 fell on a Sunday of that year. Respondent respectfully asks the Court to take judicial notice of this fact).

The same logic applies when determining whether or not Respondent was "not employed at that time" he submitted his Step 1 Grievance on January 30, 2023. The Record reflects that Respondent undisputedly was paid for 54.25 hours on the pay date February 16, 2023. The question would be, when did he work these hours for which he was paid for on February 16, 2023. The answer is: for the hours he performed labor from January 17, 2023 to February 1, 2023.

Therefore, based on these facts and the undisputed record as a whole, SCDC's argument that Respondent was "not employed at that time" he submitted his Step 1 Grievance on January 30, 2023, fails!

VI. THE ALC DID NOT SUA SPONTE AWARD BACK PAY BEYOND JANUARY 30, 2023, BECAUSE SCDC ITSELF PLACED THE ENTIRE TYGER RIVER PERIOD BEFORE THE ALC

In its brief, SCDC alleges that the ALC erred in sua sponte adjuging Respondent's claim for back pay beyond the date of the Step 1 Grievance and in thereby awarding relief through the date of May 21, 2024. However, SCDC's present position on this issue is inconsistent with its position before the ALC. In SCDC's brief filed to the ALC on March 7, 2025, under the heading, **"SCDC HAS CALCULATED THE GROSS BACK PAY DUE TO THE APPELLANT"**, SCDC expressly represented to the ALC "Should the Court reject the argument offered [SCDC Policy ADM-15.13 forecloses the Appellant's prison industries pay claim, and the agency decision denying his grievance should be affirmed], SCDC has calculated the gross back pay due to the Appellant for the labor he provided to the PIECP project it operated and continues to operate at Tyger River Correctional Institution ... SCDC respectfully represents that it has calculated the gross back pay due to the Appellant in conformity with the 2021 decision by the Court of Appeals in Torrence, ... and its calculations **encompass the entirety of the time** the Appellant voluntarily participated in the PIECP project the agency operated and continues to operate at Tyger River Correctional Institution. Accordingly, should the Court reject the argument from Section III above, the Appellant would receive a remittance of gross back pay in the amount of $115,307.13." See SCDC Brief to ALC, pp. 5-6, Mar. 7, 2025.

SCDC did not limit its calculation to January 30, 2023. Nor did SCDC contend before the ALC that Respondent's claim was limited to the period after January 30, 2023. Instead, SCDC represented that it had calculated the gross back pay owed for the entirety of Respondent's participation at Tyger River and identified the amount as $115,307.13.

SCDC cannot simultaneously tell the ALC that it calculated the entirety of Respondent's Tyger River back pay in conformity with this 2021 decision in Torrence II, and then tell this Court that the ALC improperly considered a period SCDC itself placed before the ALC. The ALC did not invent the period, but rather SCDC supplied it. Thus, the ALC did not sua sponte adjudicate an issue that was affirmatively litigated and addressed by both parties. In its Final Order, the ALC confirmed that represented calculations for the entirety of the time Respondent participated in the PIECP at Tyger River, stating "The Department's respondent's brief states that the Department has calculated the amount of gross backpay owed to Appellant for his work at TRCI." See Final Order, p. 12.

In his Reply Brief to the ALC, Respondent addressed that although SCDC's calculations encompassed the entirety of the time he participated in the PIECP at Tyger River, its calculations failed to include any calculations for the work he performed in the PIECP at Kershaw. See Curtis's Reply brief to the ALC, p. 4.

SCDC's calculations represented to the ALC for backpay for work Respondent performed in the PIECP did not include any calculations for labor he performed at Kershaw, but rather the entirety of the period he performed labor at Tyger River. Now, before this Court, SCDC attempts to offer for an alternative that Respondent's back pay claim should not be adjudicated beyond the date of his Step 1 Grievance, or January 30, 2023, which although would include the entirety of the wages he earned at Kershaw, while eliminating the entirety of the wages he earned at Tyger River until May 21, 2024, (which are the very wages that SCDC presented to the ALC). SCDC's representation constitutes material evidence that the scope of the backpay issue before the ALC included the entire Tyger River period.

Therefore, the Department cannot characterize the ALC's consideration of that same period as a sua sponte adjudication of an issue that was never presented, because SCDC itself presented it.

CONCLUSTION

By law, Respondent Roger Curtis was to earn no less than the prevailing wage for his years of work in the federal certified PIECP both at Kershaw and Tyger River from September 1, 2006 to May 21, 2024. However, it is apparent that Respondent was paid at or near the federal minimum wage the entire time.

For the above-foregoing reasons, Respondent respectfully requests that this Honorable Court affirm the November 25, 2025 Final Order of the Administrative Law Court and reject SCDC's argument that the ALC erred in rejecting ADM-15.13 or in awarding prevailing wage back pay for the period covered by the ALC's order and direct SCDC to fully comply with the ALC's November 25, 2025 Order.

Respectfully Submitted,

DATE: Sept 1, 26

/S/ Roger Curtis

Roger Curtis, #143635
Tyger River Correctional
Institution Unit 8-B-223
200 Prison Road
Enoree, S.C. 29335

Respondent, Pro Se

RECEIVED
SEP 08 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Samuel L. Johnson, Administrative Law Court Judge

Administrative Law Court Docket No. 24-ALJ-04-0161-AP

Appellate Case No. 2025-002575

Roger Curtis, #143635, Respondent,

v.

South Carolina Department of Corrections, Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the **Respondent's Initial Brief** and **Respondent's Designation of Matter to be Included in Record on Appeal** in the above-captioned matter upon the Appellant by depositing a copy of it in the United States Mail, postage prepaid to the Appellant's Counsel of Record and addressed as follows:

Mr. Andrew F. Lindemann, Esquire
P.O. Box 6923
Columbia, S.C. 29260

Mr. Barton Jon Vincent, Esquire
General Counsel
South Carolina Department of Corrections
4444 Broad River Road
Columbia, S.C. 29221-1787

September 1, 2026

/S/ Roger D Curtis
Roger Curtis, #143635
Tyger River Correctional
Institution Unit 8-B-223
200 Prison Road
Enoree, S.C. 29335

Respondent, Pro Se

RECEIVED
SEP 08 2026
SC Court of Appeals

September 1, 2026

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: Roger Curtis, #143635, v. South Carolina Department of Corrections
Appellate Case No. 2025-002575

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter** in the above captioned appeal, along with **Proof of Service.**

Thank you for your attention to this matter.

Sincerely,

/S/ Roger D. Curtis

Roger Curtis, #143635
Tyger River Correctional
Institution Unit 8-B-223B
200 Prison Road
Enoree, S.C. 29335

Respondent, Pro Se

cc: Andrew F. Lindemann, Esquire
Barton Jon Vincent, Esquire

Attorneys for Appellant, SCDC

Roger D. Curtis #143635
Tyger River Corr. Insti.
200 Prison Rd. (U8-223B)
Enoree, S.C. 29335

US POSTAGE PITNEY BOWES
ZIP 29335 $ 003.14⁰
02 4W
0000373886 SEP 01 2026

RECEIVED
SEP 08 2026
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RECEIVED
SEP 01 2026
TYGER RIVER MAILROOM