

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fred Gatewood, #289775,)	
)	Docket No. 07-ALJ-04-0517-AP
Appellant,)	
)	
vs.)	ORDER
)	
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
_____)	

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Motion to Supplement Record filed by Fred Gateway (Appellant), an inmate incarcerated with the Department of Corrections (Department or SCDC).

FACTS

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution. He filed a grievance with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. The Court conducted a consolidated review of SCDC's denial of administrative grievances filed by 197 inmates captioned *Ackerman, #266928, et al., v. South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. However, on August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination. On September 17, Appellant filed a Motion to Supplement Record.

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. However, the parties asserted that further findings of fact were not necessary to determine the issue before the ALC, and therefore the Court rescinded its Order of Remand. The Department requested an extension of time in which to respond to Appellant's Motion to Supplement Record, specifically until October 21, 2013. The Department timely filed

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its Response to the Appellant's Motion to Supplement Record. The Court held a conference call with the parties on October 29, 2013.

DISCUSSION

As an initial matter, during the conference call the Court held on October 29, 2013, the parties agreed that the issue on appeal is whether Appellant was entitled to a gross pay rate of \$4.00 per hour for the work that he performed while working in the Department's Prison Industries Program. It was also determined and agreed that the matter before this Court is an appeal, not a contested case, and as such, this Court cannot make new findings of fact. Rule 58(D) of the South Carolina Administrative Law Court Rules (SCALCR) begins with the phrase "[w]here applicable, the record of the contested case shall consist of" (emphasis added). Because Appellant, in Section II(A), (B), (C), and (E) of his Motion, seeks to supplement the Record on Appeal with documents that were not received or considered in the administrative hearing before the Department, the Court must deny Appellant's Motion to Supplement Record with respect to these sections of his Motion.

Furthermore, Appellant argues in Section II(C) of the Motion that page 12 of Appendix 1 attached to Appellant's Level 2 Brief should be included in the Record on Appeal.¹ Previously, Appellant filed a motion to include the same material found in "Exhibit 1" in the Record on Appeal; but the Court denied the inclusion of Exhibit 1 in its August 5, 2011 Order. In that same Order, the Court nevertheless allowed Appellant to submit this exhibit in support of his Brief, which Appellant did in the form of Appendix 1 and notes. The Court also allowed Appellant to present his argument in subsequent levels of review as appropriate.

Appellant now argues that because the Court allowed Appellant to "proffer" Appendix 1 in support his Brief, this converted Appendix 1 into a proffer of proof of excluded evidence under Rule 58(D), SCALCR and therefore should be part of the Record on Appeal. Rule 58(D), SCALCR states that "[w]here applicable, the record of the contested case shall consist of: (D) [a]ll proffers of proof of excluded evidence." Appellant misconstrues this rule. The rule does not permit the inclusion into the Record on Appeal proffers of excluded evidence to supplement the Record in a prior stage of an appeal. Rather, it allows inclusion of proffers of proof of evidence excluded in the contested case heard below. Here, the Court allowed Appellant to

¹ Two pages of notes are attached to Appendix 1, p. 12. Thus, Appellant presumably wishes those two pages of notes to be included in the Record on Appeal as well.

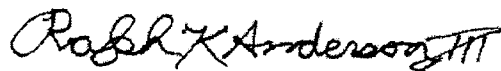
attach Appendix 1 to his Brief, but this was merely to support his argument and was not a proffer of proof of excluded evidence in the contested case. The Court had already denied Exhibit 1's inclusion in the Record on Appeal before Appendix 1 was attached to Appellant's Brief.

With respect to the documents listed in the remaining portion of Appellant's Motion, Section II(D)(1)-(5), the Department does not object to their inclusion in the Record on Appeal. However, as the Department correctly points out, there is no need to add these documents into the Record because they already appear in the Record. Appellant's appeal was one of 197 appeals that were consolidated in *Ackerman*, and his appeal is the only one of those that was not dismissed. Each of the documents that Appellant seeks to add to the Record is in the 1st Supplemental Record on Appeal from *Ackerman*. Appellant even cites to the corresponding pages in the 1st Supplemental Record on Appeal where the documents listed in Section II(D)(1)-(5) appear. Appellant also states in his Motion that these documents "from the 1st Supplemental Record on Appeal are already in the record, and are being designated herein only out of an abundance of caution. On September 16, 2013, SCDC consented to inclusion of these documents." Because the parties agree that these documents are already in the Record on Appeal, there is no need to add them to the Record. Therefore, I deny Appellant's Motion to Supplement Record as moot with respect to those documents listed in Section II(D)(1)-(5) of Appellant's Motion.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Supplement Record is **DENIED**.

AND IT IS SO ORDERED.




Ralph K. Anderson, III
Chief Administrative Law Judge

November 12, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

November 12, 2013
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Fred Gatewood, #289775,)	
)	Docket No. 07-ALJ-04-0517-AP
Appellant,)	
)	
vs.)	ORDER
)	
South Carolina Department of Corrections,)	
)	
Respondent.)	
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This matter comes before the South Carolina Administrative Law Court (ALC or Court) in its “Level Three” phase pursuant to the appeal of Fred Gateway (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant challenges the hourly wage rate used by the Department for labor that Appellant performed between 2004 and 2009.

FACTS/PROCEDURAL BACKGROUND

Appellant is an inmate housed with the Department who had participated in the prison industries project at Lieber Correctional Institution (LCI). He filed Step 1 and Step 2 grievances with SCDC claiming entitlement to back pay as well as a higher hourly pay for labor he provided in the prison industry project. SCDC denied both of Appellant’s grievances. The Court conducted a consolidated review of SCDC’s denial of administrative grievances filed by 197 inmates captioned *Ackerman, #266928, et al., v. South Carolina Department of Corrections*, Docket Nos. 07-ALJ-04-00444 et seq. This Court found in orders dated March 2, 2012 and March 16, 2012 that Appellant filed a timely grievance and ordered briefing of the matter. On March 29, 2012, Appellant filed his Notice of Appeal of the Prior Orders of this Court. This case was included in the caption of the Notice of Appeal in the *Ackerman* cases pending before the South Carolina Court of Appeals. On August 26, 2013, the South Carolina Court of Appeals remitted this case to the ALC for a determination. On September 17, Appellant filed a Motion to Supplement Record.

By Order dated October 7, 2013, the Court remanded the matter for the Department to make further findings. However, the parties asserted that the findings of fact were already part

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of the record, and therefore the Court rescinded its Order of Remand. The Department requested an extension of time in which to respond to Appellant's Motion to Supplement Record, specifically until October 21, 2013. The Department timely filed its Response to the Appellant's Motion to Supplement Record. In an order dated November 12, 2013, this Court denied Appellant's Motion to Supplement Record. On February 19, 2014, Appellant filed his Appellant's Brief. On March 24, 2014, the Department filed a motion requesting a 14-day extension of time during which to file its brief. The Court granted this motion on March 26, 2014. On April 7, 2014, the Department filed its Respondent's Brief. On April 14, 2014, Appellant filed a Motion for Extension, requesting an extension until April 23, 2014 in order to file a reply brief. The Court granted this motion on April 14, 2014. Finally, on April 17, 2014, Appellant filed a Reply Brief.

ISSUES ON APPEAL

1. Was Appellant entitled to a \$4.00-per-hour wage rate for his labor provided to LCI based on the 2001 budget proviso and succeeding enactments, and on the 1998 service work contract between SCDC and Williams Technologies, Inc.?
2. Was Appellant entitled to overtime pay for his labor?
3. Is Appellant entitled to pre- and post-judgment interest on his back pay?
4. Is Appellant entitled to costs and attorney's fees?
5. Should SCDC be enjoined from further wage violations?¹

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decisions of the South Carolina Supreme Court in *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004) and *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004), wherein the Court held that an inmate's claim that he was paid less than the prevailing wage for work performed in the Prison Industries program, in violation of a statute mandating payment of the prevailing wage, implicated a state-created property interest and was therefore reviewable by the ALC. Furthermore, when reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754

¹ In his Appellant's Brief, Appellant included an additional issue stated as follows: "Should SCDC be ordered to process grievances for workers in the program whether or not they personally filed a grievance?" However, the instant case does not involve the grievances of other workers in the program or persons in the program who never filed grievances. Therefore, the Court does not consider this an issue and does not include it in the text above.

(2000); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(A)(5) states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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) (Supp. 2013).

Consequently, an Administrative Law Judge may not substitute his judgment for that of an agency “as to the weight of the evidence on questions of fact.” Section 1-23-380(5). Furthermore, an Administrative Law Judge may not reverse or modify an agency’s decision unless the Record reflects that substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence, arbitrary, or affected by an error of law. § 1-23-380(5); *see also Marietta Garage, Inc. v. S.C. Dep’t of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *S.C. Dep’t of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the Record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). Accordingly, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

DISCUSSION

1. **Was Appellant entitled to a gross wage rate of \$4.00 per hour for the labor that he performed between 2004 and 2009?**

From the outset, it appears that neither party disputes the fact that Appellant performed work between 2004 and 2009 in a prison industries service project operated by the Department at LCI in which Williams Technologies, Inc. (WTI) was the private sponsor. There also appears to be no dispute that SCDC and WTI entered into a service work contract in 1998 (Contract), and that the rate negotiated in the Contract for the inmate's labor was for \$4.00 per hour. It further appears that the parties do not dispute that Appellant did not receive \$4.00 per hour for the labor that he performed. However, the question before this Court is whether Appellant was entitled to be paid at a gross wage rate of \$4.00 per hour for his labor.

Appellant argues that Appellant was entitled to a gross wage rate of \$4.00 per hour for his labor based on the 2001 budget proviso and succeeding enactments allowing SCDC to negotiate the wages to be paid for inmate labor, and on the Contract between SCDC and WTI.² Looking first at the 2001 General Assembly budget proviso,³ it states in pertinent part:

The department may negotiate the wage to be paid for the inmate labor provided under prison industry service work contracts, and such wages may be less than the prevailing wage for work of similar nature in the private sector.

The General Assembly enacted similar budget provisos each year until it enacted S.C. Code Ann. § 24-1-295, effective August 1, 2007.⁴ The first part of S.C. Code Ann. § 24-1-295 (2009)⁵ provides:

² Clearly, the prevailing wage statutes were not "enacted for the special benefit of Inmates." *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 418, 602 S.E.2d 51, 54 (2004). Moreover, in this case, the purpose of the Contract, which approved the inmate labor with WIT, was "to fulfill the intent of Section 24-3-310." S.C. Code Ann. § 24-3-310(2), in setting forth the "Declaration of Intent" for prison industries, provides that the intent of the prison industries provisions is, in part, to "utilize the labor of inmates for **self-maintenance** and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment." (emphasis added). Appellant has made no challenge that the pay he received violated any agreement between him and the Department or that the Department failed to do a proper accounting of its expenses to insure the program was self-maintaining. Rather, both parties address the Contract provisions as determining the distribution of the inmate wages. Therefore, the Court addresses the arguments from that perspective.

³ Statutes at Large, No. 66, § 37.31, eff. July 2001.

⁴ Both parties agree that a similar budget proviso was passed each year between fiscal years 2001 and 2007, culminating in the codification of Section 24-1-295.

⁵ The language of this statute did not change between the effective date of its enactment and 2009, the final year in which Appellant worked in the prison industries service project at LCI.

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.

The statute then lists a series of mandatory deductions “from the gross earnings of . . . inmates engaged in prison industry service work,” and these deductions are “in addition to any other required deductions.”⁶

Section 3.3(1) of the Contract provides:

Williams agrees to **pay SCDC \$4.00 per hour per inmate for work performed SCDC shall be responsible to pay inmate workers, cover security costs and P.I overhead, including any costs for health, safety and welfare of the inmates, taxes or other payroll deduction. . . .**

(emphasis added).⁷ Section 3.2(4) of the Contract states: “At its expense, the Department shall be responsible for the security of the inmate labor force and the security of [WTI’s] employees and agents.” Section 3.3(1), though, explains that the inmate labor rate of \$4.00 per hour per

⁶ There also exists, pursuant to Section 24-3-40, which does not apply in this case, statutory instruction as to how inmate wages are to be handled for inmate labor in prison industry programs involving the private sector that, unlike those services covered by Section 24-1-295, involve “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.” See also S.C. Code Ann. 24-3-430(A) (2007). In *Williams v. S.C. Dep’t of Corr.*, 372 S.C. 255, 259, 641 S.E.2d 885, 887 (2007), the Court pointed out that “the legislature has specifically mandated [via Section 24-3-40] how inmate wages for prison industry labor are to be handled.” The Court also emphasized the last phrase of Section 24-3-40(A), which says that the private employer “shall pay the prisoner’s wages directly to the Department of Corrections.” *Id.* The Court added that “[t]his section also includes specific **deductions from inmate wages** that are to be made by the Director of DOC, including restitution to victims, payment to the State Office of Victim Assistance, child support, and state and federal taxes. . . .” (emphasis added). *Id.* Thus, even had Section 24-3-40 applied to the service work program in this case, the gross wages paid to the Department by a private employer for inmate labor would still have to sustain deductions prior to the Department’s payments to the inmates.

⁷ The Department in its Respondent’s Brief argues that Appellant has no standing to Petition the Court to interpret the terms of the Contract against the Department because Appellant was neither party to the Contract, a third-party beneficiary, or an intended beneficiary of the Contract. However, the Court rejects this argument, finding that Appellant does have standing. Though the amount of wages Appellant was to receive is in dispute, and though Appellant cannot bring an action against WTI (see *Williams, supra*), Appellant has a state-created property interest in the wages that he earned, the amount of which was governed by the terms of the Contract. If Appellant had no standing to challenge the wage terms in the Contract, then he would have no basis on which to exercise his right to file a grievance challenging the amount of wages he was to receive pursuant to the Contract; and the holdings in *Adkins* and *Wicker* would thus be turned on their heads.

inmate that WTI pays to the Department does encompass payment for the Department's overhead. Specifically, Subsection 1 describes the circumstances under which the Department and WTI may agree to increase the \$4.00 per hour rate:

Thirty (30) days prior to each anniversary date of this agreement, [the Department] and [WTI] may negotiate an **increase in the per hour rate** paid by [WTI] to [the Department]. . . . It is the intent of the parties that **such increase shall only reflect [the Department's] increased cost of prison overhead.**

(emphasis added). Along with the Contract was a "bullet sheet," which summarized the contract's key points. Entitled "Williams Technology Transmission Service Contract," it states the following: "Wage Rate: \$4.00 per hour/per inmate - \$.35/hr base for inmates." Under the Contract, the Department would pay inmates a minimum of \$.35 per hour, subject to potential longevity pay increases and "bonus pay." Also, according to a March 12, 2002 memorandum from the project's plant manager, Henry Middleton, to the inmate workers participating in the program, the inmates were "further advised that the MAXIMUM pay allowance is \$1.00/hr, regardless of your longevity status. In addition to the [bonus rates and base rates] above, your overtime pay is applied at a rate of {[Base Rate]+[1/2 Base Rate]} only. Your [Bonus Rate] pay will not be applied to your overtime hours."

"It is well-established that '[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* at 536, 725 S.E.2d at 695. "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language. *Id.* 397 S.C. at 536, S.E.2d at 695-96 (citing *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)).

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Madden v. Bent Palm Invs., LLC*, 386 S.C. 459, 464, 688 S.E.2d 597, 600 (Ct. App. 2010) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). The Court "must first look at the language of the contract to determine the intentions of the parties." *C.A.N. Enters., Inc. v. S.C. Health Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). "Contract interpretation

begins with the plain language of the agreement.” *Stevenson Aviation, Inc. v. DynCorp Intern. LLC*, --- S.E.2d ----, 2014 WL 1233859, at *5 (S.C. S.Ct. March 26, 2014). “The language alone will determine the contract’s force where such language is unambiguous; however, where the language is subject to multiple interpretations, the fact finder must determine the parties’ intentions from the evidence presented.” *Madden*, 386 S.C at 464-65, 688 S.E.2d at 600. “A party may not create an ambiguity by reading a single sentence or clause, but rather the contract and the language used must be considered as a whole.” *Id.* Finally, “[c]ommon sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” *C.A.N. Enters.*, 296 S.C. at 377, 373 S.E.2d at 586.

Appellant argues in his Appellant’s Brief and again in his Reply Brief that “expenses for security, overhead, and health, safety, and welfare are not allowable deductions from an inmate’s gross wages under § 24-3-40.” To support this claim, Appellant, in his Reply Brief, quotes the following footnote from *Torrence, et al. v. S.C. Dep’t of Corr., et al.*:

Furthermore, if appellants prove true their allegation that the DOC removes any of the money remitted by the private industry sponsor and then disburses the percentages listed in section 24-3-40 based on the **lower** rate, the DOC would be in violation of the plain language of the statute which directs it to disburse the money based on the **gross wages**. See § 24-3-40(A).

373 S.C. 586, 594 n.4, 646 S.E.2d 866, 870 n.4 (2007) (emphasis of “lower” in original; emphasis added to “gross wages” by Appellant).⁸

As discussed in footnote 6, *supra*, the Court disagrees that Section 24-3-40 applies in this case, because the contract at issue in this case was a service work contract, and deductions

⁸ In its Motion to Strike Argument from the Appellant’s Reply Brief, the Department argues that the Court should strike all of the arguments that Appellant made in his Reply Brief regarding *Torrence*, because Appellant only mentioned *Torrence* in the Conclusion section of his Appellant’s Brief without making the arguments in a discussion of *Torrence* that he made in his Reply Brief. First, Respondent arguably raised arguments in its brief, specifically on pp. 11-12, as to what was included in deductions pursuant to the contract, which could have given rise to the need for an elaboration on *Torrence* in response. But the Court need not address whether the Appellant’s discussion of *Torrence* was appropriate, because the Court is free to use any law that would be helpful in addressing this case, and would have applied the same analysis of Section 24-3-295 regardless of the “*Torrence* rule.” The Court therefore denies Appellant’s Motion to Strike Argument from Appellant’s Reply Brief.

Appellant also alternatively moved in its Motion to Strike that if the Court were to deny its Motion to Strike, that it grant the Department an opportunity to prepare and file a sur-reply to address the argument that Appellant raised for the first time in his Reply Brief. However, the Court is sufficiently informed of the arguments and therefore does not see the need to consider further arguments on the issue.

from wages resulting from service work provided to private industries by inmates is governed by Section 24-1-295, not Section 24-3-40. However, the Court agrees that the principle from *Torrence* would equally apply to the statutorily required deductions pursuant to Section 24-1-295, because the deductions pursuant thereto must also be “deduct[ed] . . . from the gross earnings of the inmates” The Court also agrees with Appellant that the gross amount of the wages paid to the Department for his labor was \$4.00 per hour. However, the Court finds that based on the terms of the Contract, security costs and overhead, including costs for health, safety, and welfare, constituted “other required deductions” pursuant to Section 24-1-295.

In this case, both the applicable statutory and contractual provisions are unambiguous,⁹ and there is substantial evidence to support the Department’s decision. The Department negotiated with WTI for an amount of \$4.00 per hour per inmate **to SCDC for inmate labor** (not **to the inmates**, but **for their labor** and **to SCDC**) with SCDC having the exclusive responsibility of handling payroll deductions and payment of wages to the inmate workers. *See* Section 24-1-295; *Cf. Williams*, 372 S.C. at 259, 641 S.E.2d at 887. Moreover, SCDC was required by the terms of the Contract, specifically under Section 3.3, “to pay inmate workers, cover security costs and P.I. overhead, including any costs for health, safety, and welfare of the inmates, taxes or other payroll deduction. . . .”¹⁰ Indeed, Section 3.3 allows for increases to the per-hour wage rate based on increases to the cost of prison overhead, thus reasonably implying that the per-hour wage rate takes into account a deduction for the cost of overhead. And again, “overhead” “includ[es] any costs for health, safety and welfare of the inmates”¹¹ Therefore, I conclude that security costs and overhead were contractually required deductions that had to be

⁹ Appellant, in his Reply Brief, specifically mentioned that he did not take issue with the fact that Section 24-1-295 and the budget proviso are clear and unambiguous. He likewise stated that terms of the 1998 contract were “clear and unambiguous.”

¹⁰ In his Reply Brief, Appellant argues that expenses for security are not an allowable deduction from an inmate’s gross wages under Section 24-3-40 and are instead to be paid by the Department “at its expense” pursuant to Section 3.2(4) of the Contract. However, as the Court has already discussed, Section 24-3-40 does not apply in this case. Moreover, Appellant did not raise this specific argument concerning Section 3.2(4) in his Appellant’s Brief. Therefore, the Court will not consider this argument. *See Hunter v. Staples*, 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App.1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief), *cited in Jones ex rel. Jones v. Enter. Leasing Co.-Se.*, 383 S.C. 259, 269 n.6, 678 S.E.2d 819, 824 n.6 (Ct. App. 2009).

¹¹ Appellant seems to argue in his Reply Brief that because SCDC is “responsible” for paying security costs and overhead pursuant to Sections 3.2(4) and 3.3(1) of the Contract, that these are both out-of-pocket expenses for the Department. However, under this theory, the Department would also have to pay the inmate workers out of pocket instead of out of the inmates’ gross incomes, since the Department is also “responsible to pay inmate workers” pursuant to Section 3.3(1) of the Contract. (emphasis added). This would be an absurd interpretation.

taken from the Appellant's gross wages; and those gross wages had to be calculated at a rate of \$4.00 per hour.

Furthermore, "in addition to [these] required deductions[,]” Section § 24-1-295 sets forth additional deductions that the Department must make in handling the wages paid to it for the inmates' labor. These deductions, aside from residual amounts payable towards taxes or incidentals, are in the form of percentages, and these deductions (where applicable) must be taken from "the gross earnings of the inmates engaged in prison industry service work.” The only minimum rate of pay guaranteed to be paid directly to Appellant (after contractual and statutory deductions) was the contractual base rate of \$.35 per hour plus potential longevity pay increases and bonus pay, with a maximum allowable pay of \$1.00 per hour. And at least 10% of the gross amount of Appellant's earnings (\$4.00 times the number of hours worked) must be available to Appellant during his incarceration for incidentals and 10% must be held in an interest-bearing escrow account for his benefit, pursuant to Section 24-1-295(4) and (5). Also, pursuant to subsection (6), Appellant would receive any funds remaining after all deductions, including state and federal taxes owed, are taken, and these funds would have to be used to purchase incidentals pursuant to Section 24-1-295(4). Therefore, Appellant was never entitled to actually receive \$4.00 per hour for his labor, though that is the rate by which his gross wages were to be calculated for purposes of Section 24-1-295.

Remaining Issues on Appeal

Overtime Pay

Appellant argues that he is entitled to overtime pay. However, this issue was not included in Appellant's Step 1 and Step 2 Grievances and is therefore not preserved for appellate review.¹² See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.").

¹² Appellant did not raise this issue until he filed his Notice of Appeal with this Court on June 5, 2007. In his Reply Brief, Appellant notes that "SCDC denied overtime in its step 1 and step 2 decisions." However, in its denials of both Appellant's Step 1 and Step 2 grievances, SCDC merely stated that "to the extent" that Appellant demanded overtime wages, his request was denied. However, there was no extent to which Appellant demanded overtime wages in his Step 1 and Step 2 Grievances, as he had not raised that issue in either grievance.

Pre-judgment and Post-judgment Interest/Costs and Attorney's Fees

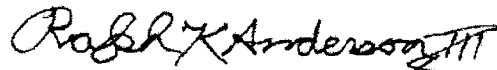
Appellant argues that he is entitled to pre-judgment and post-judgment interest on the back pay owed him, at an interest rate of 8.34 %. Appellant also argues that he is entitled to costs and attorney's fees. However, in light of the Court's ruling in this matter, Appellant is not entitled to pre-judgment or post-judgment interest on any back pay, and is also not entitled to any costs or attorney's fees.

Injunction against Further Wage Violations

Appellant argues that the Department should be enjoined against further wage violations. However, this is an appeal involving whether the Department properly denied Appellant the wages he seeks; it is not an injunction action. In fact, Appellant never raised the issue of an injunction in his Step 1 and 2 grievances or Notice of Appeal. *See Wilder Corp., supra.* Therefore, the Court will not entertain Appellant's injunction request.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.
AND IT IS SO ORDERED.

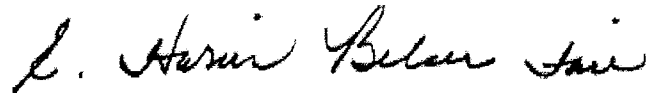


Ralph K. Anderson, III
Chief Administrative Law Judge

April 29, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

April 29, 2014
Columbia, South Carolina