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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., Administrative Law Judge

Administrative Law Court Docket No. 15-ALJ-04-0560-AP

William Ray Ward, #91566 Respondent,

v.

South Carolina Department of Corrections Appellant.

NOTICE OF APPEAL

In accordance with South Carolina Appellate Court Rule 203 and the provisions of S.C. Code Ann. § 1-23-610(A)(1), the South Carolina Department of Corrections [“the Department”] appeals the June 20, 2018 Final Order issued by the Honorable H.W. Funderburk, Jr., Administrative Law Judge.

The Department’s undersigned counsel received written notice of the entry of Judge Funderburk’s June 20, 2018 Final Order on June 21, 2018.

By his June 20, 2018 Final Order, Judge Funderburk affirmed in part and reversed in part the final decision issued by the Department in an administrative grievance filed by the Respondent.

For clarity’s sake, the Department does not appeal the rulings by which Judge Funderburk affirmed its final decision regarding the Respondent’s administrative grievance.

Instead, the Department appeals the following ruling(s) from Judge Funderburk's June


20, 2018 order:

The items set out in the contract as the hourly rate charged to the private sector business for the inmate labor furnished by [the Department] are 'the gross wages of the prisoner,' as indicated in [*Torrence v. S.C. Dep't of Corr.*, 646 S.E.2d 866, 870, n. 4 (S.C. 2007)]. These gross wages must be disbursed as provided in [S.C. Code Ann. § 24-3-40(A)]. Not to do so in an error of law, a "violation of the plain language of the statute which directs [the Department] to disburse the money based on the gross wages." [*Torrence*, 646 S.E.2d at 870, n. 4]. See Order, p. 12.

...
[The Department] takes the position that the additional itemized expenses totaling \$1.92 were not "lawfully" part of [Ward's] gross wages, a position that is contrary to [*Torrence*, 646 S.E.2d at 870, n. 4] and is thus an error of law. Thus, this portion of [the Department's] decision is **REVERSED** and **REMANDED**. [The Department] shall classify the entire contract amount as the hourly gross wage for the purpose of determining not only whether the wage meets the prevailing wage requirement but also for the purpose of calculating deductions and distribution of [Ward's] pay as set forth in § 24-3-40(A). See [*Torrence*, 646 S.E.2d at 870, n. 4]. [footnote omitted and emphasis supplied by ALJ]. See Order, p. 13.

...
[The Department's] failures to demonstrate that it paid [Ward] the prevailing wage rate and to include the Social Security withholding, Workers' Compensation premium, and SCDC Surplus Fund Amount in the gross wages prior to making deductions thereto were errors of law. Accordingly, the parts of [the Department's] decision dealing with the prevailing wage rate and gross wages are **REVERSED** and **REMANDED**. [The Department] must demonstrate that [Ward] was paid prevailing wage rate for the type of labor he provided at the time and in the area that he provided it, pursuant to [S.C. Code Ann. §§ 24-3-410(B)(7) and 24-3-430(D)]. [The Department] must also classify the entire contract amount as the hourly gross wages and calculate deductions and distributions from [Hatton's] pay as set forth in [§ 24-3-40(A)]. If the contractual wage rate was also used to pay the inmate while training for the work, then this amount must also be included in the recalculation. [emphasis supplied by ALJ]. See Order, p. 14.

RESPECTFULLY SUBMITTED:



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Outside Counsel for Appellant
South Carolina Department of Corrections

July 18, 2018

Respondent's Counsel:

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William Ray Ward, #91566 Respondent,

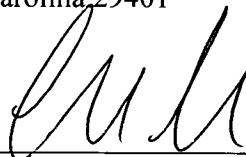
v.

South Carolina Department of Corrections Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal on the above-named Respondent by depositing a copy of it in the United States Mail, First Class Postage Pre-Paid, to the Respondent's Counsel addressed as follows:

Julius H. Hines, Esquire
Meg E. Sawyer, Esquire
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134 Meeting Street, Suite 500
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July 18, 2018

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SC Court of Appeals

The Honorable Jana E. Shealy
Clerk of Court, South Carolina Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29211

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. William Ray Ward, #91566, Respondent*, ALC Docket No. 15-ALJ-04-0560-AP

Dear Ms. Shealy:

Enclosed for filing is the Notice of Appeal submitted by the South Carolina Department of Corrections to the Court of Appeals in the above-captioned case.

I include with the Notice of Appeal a copy of its allied proof of service. I also include copies of the order issued by this Court which is to be challenged on appeal with the Court of Appeals.

Finally, I enclose a second copy of each of these documents. Please return the file stamped copy to our representative who delivered them to your office.

Thank you for your consideration of this matter.

As always, I remain

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July 18, 2018

Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. William Ray Ward, #91566, Respondent*, ALC Docket No. 15-ALJ-04-0560-AP

Very respectfully yours,



Lake E. Summers
Counsel for Appellant
South Carolina Department of Corrections

Cc:
Julius H. Hines, Esquire,
Respondent's Counsel
Meg E. Sawyer, Esquire,
Respondent's Counsel
The Honorable Jenny Abbott Kitchings,
Clerk of Court for the South Carolina Court of Appeals
Kensley Barrett, Esquire,
Staff Attorney for the South Carolina Department of Corrections

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July 18, 2018

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The Honorable Jenny Abbott Kitchings
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Re: Notice of Appeal of the Administrative Law Court's Final Order in *S.C. Dep't of Corrections, Appellant, v. William Ray Ward, #91566, Respondent*, ALC Docket No. 15-ALJ-04-0560-AP

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal submitted by the South Carolina Department of Corrections in the above-captioned case.

I also enclose a proof of service of the Notice of Appeal on the Respondent and a copy of the order which is to be challenged on appeal.

Additionally, I enclose a second copy of each of these documents. Please return the file stamped copy to our representative who delivered them to your office.

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Very respectfully yours,



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Counsel for Appellant
South Carolina Department of Corrections

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