BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LABOR STANDARDS DIVISION — AGENCY

VS. — CASE NO.: 2014-0028

JANA COHEN INDIVIDUALLY AND D/B/A ARKANSAS DESTINATIONS, INC. — RESPONDENT

ORDER

Upon motion of Plaintiff herein, this matter is hereby dismissed **with prejudice.**

IT IS SO ORDERED this matter is dismissed with prejudice.

ADMINISTRATIVE LAW JUDGE

DATE: 1/15/15

APPROVED BY:

Daniel Knox Faulkner (2002-168)
Attorney for Arkansas Department of Labor

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

TONYA ROBINSON **CLAIMANT**

vs. **CASE NO. 2015-0005**

PROGRESS RAIL SERVICES **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, November 17, 2015. Tonya Robinson, the Claimant, has appealed an agency order that she was not entitled to vacation benefits from Progress Rail Services. Ms. Robinson (Claimant) represented herself and Leah Green; Attorney appeared via telephone on behalf of Progress Rail Services (Respondent).

FINDINGS OF FACT

Tonya Robinson filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on June 19, 2015. Ms. Robinson claimed $1,009.20 for unpaid vacation benefits earned between the dates January 1, 2015 through March 26, 2015. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on September 2, 2015 finding that Ms. Robinson was not entitled to vacation pay per the employer's policy for payment of vacation at time of separation. Ms. Robinson filed an appeal of this finding and a request for a hearing on September 14, 2015.

3. The hearing was scheduled for 10:30 a.m. November 17, 2015 and began at 10:00 a.m. Ms. Robinson testified that she worked for Progress Rail beginning on or around May 1, 2013 and her employment ended on or about March 26, 2015. Claimant referred to the employee handbook with a revised date July 13, 2012 on how benefits are to be paid to employees both current or when an employee ends employment with Progress Rail. Respondent stated that

claimant was paid vacation hours as provided in the vacation policy under revision date January 15, 2014. Ms. Robinson's testimony leaves the impression that she is entitled to unpaid vacation benefits based on either Progress Rails 2012 employee leave policy or with the 2014 revision of the policy. Ms. Robinson and Progress Rails testimony acknowledged that 2014 policy was in effect at the time of her March 2015 discharge. Ms. Robinson acknowledges that she was aware of the policy change from plant wide meetings and with Progress Rails local management and human resource personnel.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages Ark. Code Ann. 11-4-303(a).

2. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee Ark. Code Ann. 1-4-303(c).

4. The claimant Tonya Robinson carries the burden of proof that unpaid benefits are due.

3. In this matter, Ms. Robinson failed to provide any information to support an overturning of the Preliminary Wage Determination Order dated September 2, 2015. Ms. Robinson's testimony confirms Progress Rails position that all vacation was paid in accordance with the employee handbook with an effective date of January 15, 2014.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Respondent with no payment due for unpaid vacation to Ms. Robinson.

IT IS SO ORDERED.

Leon Jones Jr.
Director of Labor

BY: Lindy Moore
Lindsay Moore, Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: November 17, 2015

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

PRISCILLA JONES **CLAIMANT**

vs. **CASE NO. 2015-0007**

SCRAP IT FOR CASH **RESPONDENT**
ROSSVILLE METALS LLC.

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, November 17, 2015. Scrap it for cash/Rossville Metals LLC, (Employer), has appealed an agency order that the Priscilla Jones (Employee) was entitled to wages totaling $169.27. Ms. Jones (Claimant) represented herself and Les Coffey respondent on behalf of the employer (Respondent). The hearing was conducted by telephone.

FINDINGS OF FACT

Priscilla Jones filed a wage claim (2015-0245) with the Labor Standards Division of the Arkansas Department of Labor on July 22, 2015. Ms. Jones claimed $548.36 for unpaid wages earned between the dates March 23, 2015 through April 7, 2015. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on October 22, 2015 finding that Ms. Jones was entitled to wages of $169.27 after an employer setoff of $379.09 for employer cell phone that was in Ms. Jones possession. Mr. Coffey filed an appeal of this finding filed an appeal of this finding and a request for a hearing on October 23, 2015.

3. The hearing was scheduled for 1:30 p.m. November 17, 2015 and began promptly at 1:30 p.m. Ms. Jones (Claimant) provided testimony that she worked for the employer beginning on or around July 28, 2014 and her employment ended on or about April 7, 2015. Claimant stated that her work agreement was to be compensated at $10.00 per hour and to be

reimbursed at $0.54 per mile for a travel reimbursement. Claimant acknowledged possession of an employer owned I-phone (model 5S). Claimant stated that due to the contentious nature of her termination neither party remembered to handle the return of the respondent's property. Claimant stated that when she realized having the phone in her possession she attempted to return it to respondent however, the respondent's business office was vacant and she had no known address to return the item. Claimant also acknowledged that she attempted to sell the phone on craigslist to recoup back wages. Claimant maintained her daily work hours on a calendar. The claimant also referred to text messages between the respondent and her to receive payment for wages. The exchange of texts did not contain mention or demand for the return of the employer's phone. The claimant provided a witness (Tracy Nelson). Ms. Nelson provided testimony that the claimant worked at the location next to her employment, observed the employee's vehicle when she arrived in the morning and there in the afternoon when she left. Ms. Nelson acknowledged that that her employer hired the claimant upon termination with the respondent.

4. Mr. Coffey responded on behalf of the employer. Mr. Coffey (Respondent) provided testimony that the claimant should not be compensated due to quality of work, gossiping, failure to return property (Cell Phone) and the employee had falsified time records for actual worktime. Respondent disputed actual worktimes based on observations he made every morning that he would drive by the business on his way to breakfast but never observed the claimant at the office. Respondent stated that he did not physically enter the business premises to verify if the claimant was at the office. The employer stated they did not have time records other than those submitted by the claimant.

5. Based on the documentation submitted and contained in the file, and the testimony presented there are shortcomings in both parties handling of their responsibilities in the matter. Both parties exhibited negligence for the failing to return the company phone to the employer. Claimant and Respondent continued a dialogue through text and electronic media after the end of employment and should have made arrangements to return the phone. The claimant admission to attempting to sell the phone online as a form to recoup lost wages is an honest admission but, is still an admission to sell property that she did not rightfully own which is inexcusable. The employer has also demonstrated negligence in this matter by not collecting all company owned property at the time of termination or making attempts or notice through any of the conversations taking place by phone or other electronic communications with the employee post-employment. This matter will not be resolved through this hearing. The hearing officer strongly urges the claimant to return the phone to the employer's verifiable address through registered mail or for the employer to settle the matter in small claims court in the appropriate county that will have jurisdiction in the matter.

6. The respondents request for setoff for wages due to the employee falsely reporting of time worked for payroll purposes cannot be justified due to lack of documentation by the employer who has the burden to maintain and keep accurate time records as required by Arkansas law. The claimant has met the burden of proof for hours worked by maintaining an accounting of hours worked by submission of a calendar indicating dates worked.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

3. The administrative regulations pertaining to the Arkansas minimum wage act section 010.14-107(B) does not permit the deducting of employees below the applicable minimum wage pursuant to Ark. Code Ann. 11-4-210.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the respondent Scrap it for cash/Rossville metals to pay claimant Priscilla Jones for fifty-four and one half (54.50) hours at seven dollars and 50/100 ($7.50) per hour for a total of four hundred eight dollars no/100 ($408.75) less any required government withholdings

IT IS SO ORDERED.

Leon Jones Jr.
Director of Labor

BY: Lindsay Moore
Lindsay Moore, Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: December 7, 2015

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

KATHY CLARK **CLAIMANT**

vs. **CASE NO. 2015-0008**

WHITAKER TERRACE LIMITED PARTNERSHIP
ELAINE TERRACE LIMITED PARTNERSHIP **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, June 11, 2015. The Respondent has appealed an agency order that $410.13 in unpaid wages from Whitaker Terrace Limited Partnership and $181.81 from Elaine Terrace Limited Partnership for a total of $591.94 is owed to Kathy Clark (Claimant). Clark appeared by telephone on her own behalf. The record does not indicate that any contact was made by the Respondent to provide a representative name or a correct telephone number or representative name where they could be reached for the hearing as instructed in the notification of hearing. Claimant and R espondent

FINDINGS OF FACT

Clark filed two wage claims with the Labor Standards Division (2015-0045 & 2015-0049) of the Arkansas Department of Labor on February 10, 2015. She claimed $410.13 in wages for Whitaker Terrace Limited Partnership and $181.81 from Elaine Terrace Limited Partnership for a total of $591.94 in unpaid wages earned between January 1, 2015 and January 15, 2015. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Orders on April 20, 2015 to the business listed mailing addresses and on May 13, 2015 to the Registered Agents, finding that Clark is owed $410.13 from Whitaker Terrace Limited Partnership and $181.81 from Elaine Terrace Limited Partnership for a total of $591.94. Shannon Craig on behalf of the employer filed an appeal of this finding on May 20, 2015.

The hearing was set for 10:00 a.m. The hearing convened at 10:30 a.m. The Claimant appeared, and the Respondent, appeared not. Therefore, judgment is entered for the Claimant in the amount of $591.94. The Respondent is directed to issue a check payable to Leroy Thompson in the amount of $591.94 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

Leon Jones Jr.
Director of Labor

BY: _____
Lindsay M. Moore
Labor Standards Administrator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: June 11,2015

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

HARRY WOODRUFF **CLAIMANT**

vs. **CASE NO. 2015-0006**

ROB AND BUD'S PIZZA LLC. d/b/a PAPA MURPHY'S **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, June 11, 2015. The Respondent has appealed an agency order that $1,150.00 in unpaid wages from Rob and Bud's Pizza LLC d/b/a Papa Murphy's Ft. Smith and Van Buren locations is owed to Harry Woodruff (Claimant). Woodruff appeared by telephone on his own behalf Rob Dickerson appeared by telephone for the respondent. Ronda Brazada appeared as witness for the respondent.

FINDINGS OF FACT

Claimant filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on March 16, 2015 assigned case number 2015-0092. Woodruff claimed $1,150.00 in wages owed by respondent in unpaid wages earned between February 24, 2015 and March 9, 2015 based on the employer work agreement. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order for the claimant $1,150.00 on April 24, 2015 to the business listed mailing address. Rob Dickerson on behalf of the employer filed an appeal of this finding on May 4, 2015.

The hearing was set for 1:00 p.m. June 11, 2015. The hearing convened at 1:06 p.m. June 11, 2015. The claimant and the respondent appeared. The witness (Brazada) appeared for

the respondent. The respondent claimed setoff for wages based on section nine of the non-negotiables agreement due to the claimant's failure to accurately report inventory. The claimant did not dispute inventory shortages but failed to provide any reason or documentation for shortages during testimony only that his reports were accurate. Claimant also stated that the non-negotiables contained his signature but stated he believed that document was altered to show his signature on a document he did not sign. Respondent stated that was the agreement presented was original agreement signed by the claimant. The respondent and witness provided testimony and explained inventory records showing the inventory shortages of company product in excess of $8,000.00 based on their audit of the stock at the store locations on the day of claimant's termination. Respondent's witness stated the claimant acknowledged the shortages and apologize for the issue. Claimant denied the conversation took place. Respondent stated that only fraud, theft, or mismanagement of product could lead to the large quantity of missing product and the claimant was responsible for control of the inventory as part of his job duties. Employer acknowledges the withholding of final wages to recover previously paid bonus based on inventory and cost controls for the claimant's assigned locations based on claimants previous inventory submissions. Employer states that based on records of time, number of days worked in the pay cycle and business hours of operation the employee worked a total of 70 hours. The employee disputed the amount and stated 96 hours but did not provide a reasonable explanation on how he derived at his stated number of hours worked for the time period.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

3. The administrative regulations pertaining to the Arkansas minimum wage act section 010.14-107(B) does not permit the deducting of employees below the applicable minimum wage for loss or shortages of product. Ark. Code Ann. 11-4-210.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the respondent Rob & Bud's Pizza dba Papa Murphy's to pay claimant Harry Woodruff for seventy (70) hours at seven dollars and 50/100 ($7.50) per hour for a total of five hundred twenty-five dollars no/100 ($525.00) less any required government withholdings

IT IS SO ORDERED.

Leon Jones Jr.
Director of Labor

BY: Lindsay M. Moore
Lindsay M. Moore
Labor Standards Administrator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: June 26, 2015

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LABOR STANDARDS DIVISION — AGENCY

VS.

GPR PINES, LLC D/B/A GARFIELD'S RESTAURANT AND PUB — RESPONDENT

ORDER

Upon motion of Plaintiff herein, this matter is hereby dismissed **with prejudice.**

IT IS SO ORDERED this matter is dismissed with prejudice.

ADMINISTRATIVE LAW JUDGE

DATE: 1/15/15

APPROVED BY:

Daniel Knox Faulkner (2002-168)
Attorney for Arkansas Department of Labor

Spencer F. Robinson,
Attorney for Respondent