BEFORE THE ARKANSAS DEPARTMENT OF LABOR

MICHELLE BERRY **CLAIMANT**

vs. **CASE NO. 2010-0022**

SUNBLET DEVELOPMENT CORPORATION **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, May 13, 2010. Sunbelt Development Corporation, the Respondent, has appealed an agency finding Sunbelt owes the Claimant, Ms. Michelle Berry unpaid wages. Ms. Berry appeared in person on her own behalf. Sunbelt Development Corporation appeared in person and through its representative, Ms. Linda Sims.

FINDINGS OF FACT

Michelle Berry filed her wage claim with the Labor Standards Division of the Arkansas Department of Labor on December 3, 2009. She claimed eight hundred seven dollars and fifty cents ($807.50) for unpaid wages earned between October 16 and November 16, 2009. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on March 11, 2010 finding that Ms. Berry was owed nine hundred seventy-seven dollars and fifty cents ($977.50). Sunbelt filed its request for an appeal hearing March 23, 2010.

At the appeal hearing, Ms. Berry testified that she worked for Sunbelt Development Corporation in a maintenance capacity, and that her duties included cleaning and minor repair work. Undisputed evidence shows she was paid hourly at a rate of $8.50 per hour. Ms. Berry introduced her Exhibit number one into the record, consisting of five pages. This document appears to be a record of time worked beginning on October 1, 2009 and concluding on November 12, 2009. Ms. Berry testified that she submitted these hours and was told that she

would be paid for her wages earned once she moved out of her apartment, which apparently was under the management of Sunbelt Development Corporation. Sunbelt has not claimed any offset for apartment rent or any benefit Ms. Berry received as part of her employment.

Other documents provided during the hearing and during the course of the investigation shows Ms. Berry was last paid on September 30, 2009. The exhibits provided at the time of the hearing documents a total number of hours worked from October 1, 2009 through November 13, 2009 of 129. However, these timesheets include dates from October 16 through October 27 that were not included in the original claim. Ms. Berry's testimony indicated that she did not work during this period because it was her understanding that she was terminated.

Ms. Sims' testimony indicated that Ms. Berry had submitted some of her time on time sheet forms that had not been approved by the payroll department and that a few of the timesheets had contained conflicting totals. Ms. Sims further testified that Sunbelt Development Corporation did not dispute that Ms. Berry was owed wages by Sunbelt, but had refused to pay Ms. Berry for the hours she submitted because the hours she claimed were in excess of what other maintenance personnel had estimated certain tasks should take. Ms. Sims believed that Sunbelt only owed Ms. Berry for one-half (1/2) the hours Ms. Berry turned in.

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 employee, Michelle Berry, carried her burden of proving that she worked the hours she claimed for the period of October 1, 2009 through November 16, 2009.

4. Sunbelt Development failed to provide evidence to support an affirmative defense for an offset or for non-payment of wages, and also failed to provide any evidence whatsoever that Ms. Berry claimed hours in excess of the times that she actually worked.

5. The evidence and testimony show that Ms. Berry worked without pay from October 1 through October 15 (83 hours) and November 3 through November 12 (13 hours) for a total of 96 hours. Ms. Berry's rate of pay is documented at $8.50 per hour. The number of hours allowed (96) times the rate of pay ($8.50) indicates total wages due in the amount of eight hundred sixteen dollars ($816.00).

6. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of eight hundred sixteen dollars ($816.00).

7. The Respondent is directed to issue a check payable to Ms. Berry in the amount of eight hundred sixteen dollars ($816.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JEFFREY BROWN **CLAIMANT**

vs. **CASE NO. 2010-0024**

CROSS COUNTY BANK **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, July 22, 2010. Cross County Bank has appealed an agency order that six hundred thirty dollars ($630.00) in unpaid wages are due to Jeffrey Brown from Cross County Bank. Cross County Bank appeared and was represented by the Honorable Vincent Guest. Jeffrey Brown did not appear.

FINDINGS OF FACT

Brown filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on November 23, 2009. He claimed six hundred thirty dollars ($630.00) in unpaid wages earned between August 23 and September 5, 2009. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on April 2, 2010, finding that Brown was owed six hundred thirty dollars ($630.00). Cross County Bank filed an appeal of this finding on April 26, 2010.

The hearing was set for 9:00 a.m. The hearing convened at approximately 9:10 a.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LESA COLBY **CLAIMANT**

Vs. **CASE NO.: 2010-0033**

HUDDLE HOUSE **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, July 1, 2010. Claimant, Lesa Colby appeared and testified on her on behalf. The Respondent appeared through its owner, Earl Freeland.

FINDINGS OF FACT

The Claimant filed her Wage Claim on March 26, 2010, claiming reimbursement for $1976.72 she claimed was deducted from her wages between July 4, 2009 and February 19, 2010. The Labor Standards Division of the Arkansas Department of Labor determined that there were improper deductions from Ms. Colby's payroll checks totaling $1,398.79 and that Ms. Colby is entitled to recover that amount from the Respondent. Huddle House gave written notice of its appeal from the April 30, 2010 Findings and Conclusions of the Labor Standards Divison and requested a hearing on Ms. Colby's claim.

At the July 1, 2010 hearing, Lesa Colby stated that she worked for Earl and Kayla Freeland as a store manager at the Huddle House Restaurant in Monticello, Arkansas and that she was paid a salary of $1,100.00 bi-weekly. Ms. Colby testified that she became ill at work around September 5, 2010 and took the previous day's deposit home with her. Due to her illness, she was subsequently admitted to Jefferson Regional Medical Center in Pine Bluff, Arkansas. At the time she became ill, she was owed $550.00 for one week of work. She was hospitalized for seven (7) days, during which time she talked with the store owner Earl Freeland

about money that was missing from the store. After her release from the hospital, she gave a bank bag containing the store's cash deposits to her mother, with instructions to deliver the bag to the acting manager so that the deposit could be made. There is no dispute that the bank deposit was not made until after Ms. Colby's release from the hospital.

Ms. Colby admitted that she made an agreement with the Respondent, through its owner, Earl Freeland, that she would pay back money that was discovered missing from the restaurant while she was in the hospital. She agreed to have $500.00 deducted from each of her payroll checks until the money was paid back to the store. She explained that she made the agreement to keep her job and to avoid being prosecuted for a felony offense. After she was released from the hospital, Ms. Colby returned to work and was given a check for $550.00, which she cashed and gave back to Earl Freeland as the first payment on an installment plan. Ms. Colby claimed she did not know how much money was discovered missing from the store's mishandled deposit, but also claimed that some of the money she paid back was for money from drawer shortages that occurred while she was hospitalized.

In addition to her explanation of her wage claim, Ms. Colby also testified that Huddle House had manager problems before she was ever hired, and that the previous manager had been terminated and prosecuted for stealing money from the store. Ms. Colby admitted that sometime after she was hired, she made a previous agreement to repay Huddle House $2,630.00 that had been stolen from the store after Ms. Colby took over as manager. Ms. Colby made an agreement to pay back that $2,630.00 by having $500.00 deducted from each payroll check, and had paid the money back in full by August 2009 (approximately two weeks before the "bank bag" incident occurred).

Earl Freeland, testifying on behalf of the Respondent testified that he learned of the second incident of money missing from the store after he received a call from Margaret Reddick, the Claimant's mother, who told Mr. Freeland that Ms. Colby had been taken to the hospital in Pine Bluff. Mr. Freeland drove to the hospital where he visited with Ms. Colby, and then he drove on to Monticello to the store to finish the day's business. Mr. Freeland stated that he discovered the bank bags for the next day deposit contained only checks and credit cards and that some of the cash from the previous day was missing. Mr. Freeland then logged onto the store's computer and audited the cash register tapes and a cash accountability system the store had in place. After he determined a significant amount of money was unaccounted for, he said he called the Claimant and asked for an explanation of the discrepancy, but did not receive an acceptable answer. He then made a police report about the incident, but also gave Ms. Colby the option of paying the money back through a civil agreement. Mr. Freeland did not dispute that Ms. Colby returned to work in September 2009 and agreed that she cashed her first check for $550.00 and paid him $460.00 as the first installment toward paying the missing deposit money back. According to Mr. Freeland and his wife, Kayla Freeland, who is also involved in the management and accounting for the store, Ms. Colby paid back all the money that was owed. In addition to the first cash payment of $460.00, Ms. Colby paid back an additional $817.72 by deductions from her bi-weekly payroll check.

CONCLUSIONS OF LAW

1. Under the provisions of *Arkansas Code Annotated 11-4-303(a),* the Director of the Department or Labor or any person authorized by the director shall have the authority to inquire into, hear and decide the amount of wages earned by the employee, and

shall allow or reject any deduction from wages claimed by the employer, when a request is made by either party to a wage claim dispute.

2. After final hearing by the director or his designee, a copy of findings of facts and any award made shall be filed in the office of the Department of Labor. *Arkansas Code Annotated 11-4-303(b).*

3. The amount of any award determined by the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. *Arkansas Code Annotated 11-4-303(c).*

4. The wage claimant carries the burden of proving any claim of unpaid wages.

5. In the present case, the claimant's request for unpaid wages is based on a salary of $1,100.00 every two weeks. She proved she earned the wages and that some deductions were made. She did not offer any evidence as to the amount or the exact nature of the deductions that were made. She failed to carry her burden of proving that she overpaid or that she paid any amount greater than what she admitted she voluntarily repaid.

6. The employer, on the other hand, has presented credible accounting records showing that the store's cash deposits were intentionally mishandled by the Claimant, and that the Claimant agreed to pay the missing money back to avoid being prosecuted for a felony criminal offense. The Claimant did not dispute that the agreement was made. Huddle House is entitled to an offset of $1,250.72 against any amount the Claimant has claimed. The Claimant failed to prove she paid in excess of $1,250.72 under the parties' re-payment plan.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Respondent. This claim is hereby dismissed.

James E. Salkeld
Director of Labor

BY: _____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

CYNTHIA EDGAR **CLAIMANT**

VS. **CASE NO. 2010-0034**

JOE MORPHIS INSURANCE AGENCY, INC. **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, July 8, 2010. The Respondent, Joe Morphis Insurance, has appealed an agency finding that JBL owes the Claimant, Cynthia Edgars unpaid wages in the amount of three-hundred, ninety five dollars ($395). The Respondent appeared through its owner, Joe Morphis. Claimant appeared in person and testified on her own behalf.

FINDINGS OF FACT

The Respondent, Joe Morphis Insurance, Inc. (Joe Morphis), is an Arkansas Corporation. The Claimant, Cynthia Edgar, is a resident of the State of Arkansas who worked for Respondent from October 2, 2009 until she was terminated on March 22, 2010. According to Ms. Edgar, she was originally hired as a receptionist and was paid $10/hr. Ms. Edgar later became the office manager and personal assistant of Joe Morphis, the Owner of Respondent, Joe Morphis Insurance Agency, Inc., and was paid $12/hr from December 1, 2009 until she was terminated. Ms. Edgar testified at the hearing that around January 2010, Mr. Morphis applied for Ms. Edgar to take an insurance licensing exam on his own initiative. Ms. Edgar took the exam in January and March, 2010 but was unable to pass the exam. She acknowledged that she had been called to Mr. Morphis' office on March 8, 2010 and told she would have to pass the exam within two weeks. Ms. Egar was told that if she failed to pass the March exam, she would either be terminated or her pay

would be "reduced."

Joe Morphis, testifying on behalf of the Respondent, confirmed that he originally hired Ms. Edgar as a receptionist and later "upgraded" her position to that of office manager/personal assistant, and that she had received two raises. Morphis admitted that he reduced the Claimants pay from $12/hr to $8.50/hr after Ms. Edgar failed to pass the March insurance exam, but claimed that he notified Ms. Edgar in advance that her pay would be reduced if she did not pass. The Respondent failed to produce any documentary evidence, whatsoever that would indicated that passing the insurance examination was a condition of Ms. Edgar continuing to be paid $12/hr or that the parties had ever agreed to such a condition prior to Ms. Edgar being hired or promoted.

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 employee, Cynthia Edgar, carried her burden of proving that she worked the hours she claimed for the period of March 8th through March 26, 2010 and that her rate of pay was $12/hr.

4. Respondent failed to provide evidence that the reduction in pay that occurred was authorized by the employment agreement between the parties or that the Claimant ever agreed to any condition of employment that would have required her to pass an insurance

licensing exam.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of three-hundred ninety-five ($395.00).

The Respondent is directed to issue a check payable to Cynthia Edgar in the amount of three hundred ninety five ($395.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

By: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

MICHAEL FRIAS **CLAIMANT**

vs. **CASE NO. 2010-0045**

PREMIER WELL SERVICES **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, September 30, 2010. Premier Well Services has appealed an agency order that wages are due to Michael Frias. Vicki Rupe appeared on behalf of Premier Well Services. Michael Frias did not appear.

FINDINGS OF FACT

Frias filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on March 23, 2010. He claimed five hundred dollars ($500.00) in unpaid wages earned between October and December, 2008. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on June 8, 2010, finding that Frias was owed five hundred and ten dollars ($510.00). Premiere Well Services filed an appeal of this finding on June 23, 2010.

The hearing was set for 12:00 p.m. The hearing convened at approximately 12:10 p.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

DALE GARREN **CLAIMANT**

Vs. **CASE NO.: 2010-0030**

SEALCO TRANSPORT, INC. **RESPONDENT**

ORDER

The Claimant, Dale Garren, filed a claim for unpaid wages with the Arkansas Department of Labor on February 12, 2010, in which he claimed the Respondent, Sealco Transport, Inc. (hereafter referred to as "Sealco, Inc." or "STI") failed or refused to pay him $1,969.00 for work Mr. Garren did on behalf of Sealco, Inc. from February 20, 2006 through November 24, 2009. The Respondent filed a timely response disputing the claim. A preliminary Wage Determination Order was entered by the Labor Standards Department of the Arkansas Department of Labor on April 15, 2010 in favor of the Claimant, which was followed by the Respondent's April 29, 2010 Notice of Appeal and Request for Hearing.

The matter came before the Arkansas Department of Labor on Tuesday, Thursday, July 1, 2010. Claimant, Dale Garren appeared and testified on his own behalf. The Respondent appeared through its owner, Larry Seal.

FINDINGS OF FACT

The Claimant was employed by the Respondent, Sealco, Inc., as an over-the-road truck driver. Mr. Garren testified that he quit working for the Respondent on or about November 22, 2009, and that he parked the Respondent's truck and trailer on a Wal-Mart parking lot in Conway, Arkansas as he had done numerous times before. Mr. Garren admitted that although he spoke with Larry Seal on the date he decided to terminate his employment, he told Mr. Seal that he had the truck and trailer at his own home. Garren testified that on the day Garren quit, Sealco, Inc. owed him $1,531.00, an amount that had been outstanding for some time plus and additional $1,251.30 for his final week of work.

The parties had been operating under an oral agreement whereby STI paid Garren $.30 per mile up until the time Garren refused to accept another dispatch without being paid the amounts Garren claimed he was already owed.

Larry Seal, testifying on behalf of the Respondent, did not dispute the Claimant's calculation of the miles he had driven or the dollar amount he was owed. The Respondent claimed an entitlement to offset the amounts owed to the Claimant by STI against amounts the Respondent claimed as damages incurred by STI. Although Mr. Seal acknowledged he had owed the Claimant between $1,100-$1,531.00 for a considerable period of time, and that The Claimant was due an additional settlement of $1,251.30 when Garren quit his job, Mr. Seal admitted that STI has never paid the Claimant that amount. Mr. Seal claims that STI deducted $687.00 from the Claimant's wages for airline and taxi fees Seal paid to "help" Garren get home to attend Garren's mother's funeral, $600 estimated lost-profit damages caused by Garren quitting his job without notice, $433.00 for a tow bill STI incurred as a result of the truck Garren was driving being towed from Wal-Mart parking lot in Conway, Arkansas, a $200 advance to Garren, $75.00 for having the brake lines "un-crossed," and a $74.33 storage fee to Great Dane of Little Rock. The Respondent produced evidence STI paid the Claimant $881.75 between December 11th and December 27, 2009, after the employment relationship between the parties had ended.

The Respondent also admitted that STI had been paying The Claimant $.30 per mile, but claimed the parties had been operating under a lease-purchase contract that the Claimant had signed. There is no dispute that the Claimant never made any of the payments or performed any other obligation called for by the Lease/Purchase Agreement that was introduced at the hearing.

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. 11-4-303(c).

3. The employee, Dale Garren, carried his burden of proving that Sealco, Inc. agreed to pay the Claimant $.30 per mile, and that he was owed $1,251.30 for miles he drove during the period ending November 24, 2009 plus $1,531.00 that was already past due.

4. Sealco, Inc. failed to produce credible evidence to support the Respondent's claim that parties had been operating under the written contract the Claimant signed, and he also failed to provide any evidence whatsoever that Mr. Garren claimed any miles in excess of the miles he actually drove. Arkansas law specifically prohibits employer deductions for "lateness, misconduct, or quitting by an employee without notice." Sealco's attempted offset of the cost of airline and taxi fees Larry Seal had previously paid on behalf of the Claimant is misplaced; all the evidence available indicates that Seal paid those expenses as a gift and there was no agreement for STI to ever be reimbursed for those costs.

5. STI is entitled to an offset in the amount of $433.00 for the towing fee STI incurred as a result of the Claimant's parking STI's truck and trailer at an unsecure location and concealing that fact from STI as well as the $75.00 and $74.33 fees STI incurred as special damages in recovering the truck.

6. The evidence and testimony show that Ms. Garren is entitled to recover $2,782.30 less the amount of STI's offset and the $881.75 payments STI made to Garren after the employment relationship between the parties had ended.

7. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of one-thousand one-hundred eighteen dollars and twenty-two cents ($1,118.22).

8. The Respondent is directed to issue a check payable to Mr. Garren in the amount of one-thousand one-hundred eighteen dollars and twenty-two cents ($1,118.22).within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

STEVEN GIDEON **CLAIMANT**

vs. **CASE NO. 2010-0020**

THRIFTY NICKEL **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, May 13, 2010. Thrifty Nickel, the Respondent, has appealed an agency finding that unpaid wages in the amount of three hundred eighty nine dollars and twenty cents ($389.20) is owed to Mr. Steven Gideon. Mr. Gideon appeared in person on his own behalf. Thrifty Nickel appeared by telephone and was represented by Mr. Danny Enlow.

FINDINGS OF FACT

Steven Gideon, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on November 30, 2009. He claimed three hundred eighty nine dollars and twenty cents ($389.20) for unpaid wages earned between October 22 and October 30, 2009. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on January 28, 2010 finding that Mr. Gideon was owed three hundred eighty nine dollars and twenty cents ($389.20).

Mr. Gideon's testimony was he worked both in the capacity of a route driver and as a manger for Thrifty Nickel for "three or four months." He further testified he is claiming unpaid wages earned from work he performed from October 22, 2009 through October 30, 2009, and that he was normally paid $1.00 per stop and $0.20 per mile when working as a route driver or $9.00/hour when he was performing work in a managerial capacity. He introduced Claimant's Exhibit # 1, driver reports dated October 22, 2009 and October 30, 2009 which appeared to detail

work performed on those days. He testified that he submitted this report on or about October 30, 2009 and when he followed up the next week to request payment for work performed he was advised that he would not be paid.

Mr. Enlow's testimony indicated he has not communicated with Mr. Gideon since Mr. Gideon left his position with Thrifty Nickel. He further testified that he had not paid Mr. Gideon and that "Patty," who normally issued paychecks for the office, did not pay Mr. Gideon either. Mr. Enlow indicated he was not questioning whether or not work had been performed, but that he had not paid Mr. Gideon because several paper stands were missing from the office and he felt that Mr. Gideon was at fault for this because they had discussed building a route in Heber Springs and "the route never developed up there and the stands have since disappeared." Mr. Gideon testified that he had driven a route in Heber Springs and offered a document to show the details of the route. The document was not entered as an exhibit but was attached to the record for reference. Mr. Enlow again testified that he had not communicated with Mr. Gideon since the last day of Mr. Gideon's employment and that no notice of an intention of an offset had been provided to the employee.

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 employee, Steven Gideon, carried his burden of proving that he worked the hours and miles he claimed for the period of October 22, 2009 through October 30, 2009.

4. Thrifty Nickel failed to provide evidence to support an affirmative defense for an offset or for non-payment of wages.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of three hundred eighty nine dollars and twenty cents ($389.20).

The Respondent is directed to issue a check payable to Mr. Gideon in the amount of three hundred eighty nine dollars and twenty cents ($389.20) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

ERICA HAIRE **CLAIMANT**

vs. **CASE NO. 2010-0046**

LINDA'S LEARNING CENTER **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, September 30, 2010. Linda's Learning Center has appealed an agency order that wages are due to Erica Haire. Linda Hill appeared on behalf of Linda's Learning Center. Erica Haire did not appear.

FINDINGS OF FACT

Haire filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on May 3, 2010. She claimed six hundred eighty-two dollars and twenty-five cents ($682.25) in unpaid wages earned between April 9 and April 23, 2010. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on June 22, 2010, finding that Haire was owed five hundred fifty-six dollars and sixty-three cents ($556.63). Linda's Learning Center filed an appeal of this finding on June 25, 2010.

The hearing was set for 9:00 a.m. The hearing convened at approximately 9:20 a.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JERRY WAYNE JUDD JR **CLAIMANT**

vs. **CASE NO. 2010-0032**

ROTEN FURNITURE & CARPET **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Tuesday, July 1, 2010. Jerry Wayne Judd, Jr. has appealed an agency order that no wages are due to him from Roten Furniture and Carpet. Bob Roten appeared on behalf of Roten Furniture and Carpet. Jerry Wayne Judd, Jr. did not appear.

FINDINGS OF FACT

Judd filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on March 1, 2010. He claimed two hundred thirty-six dollars and six cents ($236.06) in unpaid wages earned between September 25 and October 1, 2009. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on April 27, 2010, finding that Judd was owed no wages. Judd filed an appeal of this finding on May 6, 2010.

The hearing was set for 11:00 a.m. The hearing convened at approximately 11:00 a.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JERRY WAYNE LEACH **CLAIMANT**

Vs. **CASE NO.: 2010-0029**

SEALCO TRANSPORT, INC. **RESPONDENT**

ORDER

The Claimant, Jerry Wayne Leach, filed a claim for unpaid wages with the Arkansas Department of Labor on January 25, 2010, in which he claimed the Respondent, Sealco Transport, Inc. (hereafter referred to as "Sealco, Inc." or "STI") failed or refused to pay him $817.55 for work he did on behalf of Sealco, Inc. from January 4, 2010 to January 10, 2010. The Respondent filed a timely response disputing the claim. A preliminary Wage Determination Order was entered by the Labor Standards Department of the Arkansas Department of Labor on April 15, 2010 in favor of the Claimant, which was followed by the Respondent's April 29, 2010 Notice of Appeal and Request for Hearing.

The matter came before the Arkansas Department of Labor on Tuesday, Thursday, July 1, 2010. The Claimant, Jerry Wayne Leach, appeared and testified on his own behalf. The Respondent appeared through its owner, Larry Seal.

FINDINGS OF FACT

The Claimant was employed by The Respondent, Sealco, Inc., as an over-the-road truck driver when he began having mechanical problems with the truck he was driving. Mr. Leach testified at the hearing that the radiator on the truck developed a very bad radiator leak on January 12, 2010 while he was in Springfield, Missouri, and that he "bobtailed" the truck to his home in London, Arkansas. Mr. Leach said he took the truck to Pottsville, Arkansas to be repaired at about 3:00 p.m. the following day. Mr. Leach decided he would quit working for Sealco Transport, Inc. (STI) while the truck was in the shop. According to the Claimant, the parties had been operating under an oral agreement whereby STI paid

Leach $.30 per mile, and at the time the employment relationship ended, the Claimant was owed $750.80 for 2,436 miles driven on behalf of STI. The Claimant acknowledged that he received a $180.00 advance against his wages.

The Respondent offered testimony largely consistent with that of the Claimant. Although the employer did not dispute the Claimant's calculation of the miles he had driven or the dollar amount he was owed, Larry Seal, the owner of STI, claimed an entitlement to offset the amounts owed to the Claimant by STI against amounts the Respondent claimed as damages incurred by STI. The Respondent offered testimony that the Claimant intentionally informed the shop that made the repairs on the truck that the truck would not be needed until the following week. The Respondent's calculation of damages were based on Mr. Seal's estimate of profit STI would have made if the truck the Claimant was driving had been repaired in time to carry a load to Pennsylvania that had been scheduled by Mr. Seal. Mr. Seal testified that Sealco, Inc. would have made $200 per day for three consecutive days after "fuel and driver costs" had been deducted. The offset claimed by the Respondent also included a charge of $60.00 for a DOT Drug Screen and a $65.00 charge to have the truck cleaned out. Finally, although Mr. Seal testified consistently with the Claimant that STI had been paying The Claimant $.30 per mile, Seal claimed that parties had been operating under a lease-purchase contract that the Claimant had signed. There is no dispute that the Claimant never made any of the payments called for by the Lease/Purchase Agreement that was introduced at the hearing.

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. 11-4-303(c).

3. The employee, Jerry Wayne Leach, carried his burden of proving that Sealco, Inc. agreed to pay The Claimant $.30 per mile, and that he drove 2,436 miles for the period of January 4 to January 10, 2010.

4. Sealco, Inc. failed to produce credible evidence to support The Respondent's claim that parties had been operating under the written contract the Claimant signed, and he also failed to provide any evidence whatsoever that Mr. Leach claimed any miles in excess of the miles he actually drove. Arkansas law specifically prohibits employer deductions for "lateness, misconduct, or quitting by and employee without notice." Sealco's attempted offset of the cost of the DOT drug screen is also prohibited by applicable law. *See* Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor 010.14-107 (B).

5. The evidence and testimony show that Ms. Leach is entitled to recover $730.80 less the $180.00 advance he admitted he received.

6. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of five hundred fifty dollars and eighty cents. ($550.80).

7. The Respondent is directed to issue a check payable to Mr. Leach in the amount of five hundred fifty dollars and eighty cents. ($550.80) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

ROY MAYS **CLAIMANT**

vs. **CASE NO. 2010-0044**

SCHUMAN ENTERPRISES **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, September 30, 2010. Roy Mays has appealed an agency order that no wages are due to him from Schuman Enterprises. Sabrina Schuman appeared on behalf of Schuman Enterprises. Roy Mays did not appear.

FINDINGS OF FACT

Mays filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on May 10, 2010. He claimed one thousand eight hundred eighty dollars ($1,880.00) in unpaid wages earned between April 12 and April 30, 2010. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on July 1, 2010, finding that Mays was owed no wages. Mays filed an appeal of this finding on July 12, 2010.

The hearing was set for 11:00 a.m. The hearing convened at approximately 11:15 a.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Danny R. Williams, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LARRY E. MCDANIEL **CLAIMANT**

VS. **CASE NO. 2010-0025**

VILLAGE CREEK RESORT LLC
CROSS COUNTY BANK **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, July 22, 2010. The Respondent, Cross County Bank, has appealed a preliminary wage determination in favor of the Claimant, Larry E. McDaniel in the amount of six-hundred seventy-five dollars ($675.00). The Respondent appeared through its President and Chief Executive Officer, David Dowd. Claimant appeared in person and testified on his own behalf.

FINDINGS OF FACT

Claimant worked as a maintenance person on the golf course at the Village Creek Resort in Cross County Arkansas. He was paid $9.50/hour. According to undisputed testimony at the hearing, Mr. McDaniel was hired by a person he identified as Mike Brunner when the business was owned by a Louisiana corporation called Carter Lake Plantation. Mr. McDaniel testified that his work on the golf course continued, uninterrupted, from the date he was hired up until the date of the hearing, at which time he was still employed. Mr. McDaniel stated that at some time in July, 2009, Village Creek Resort, LLC's financial affairs were in such a condition that the business could not meet its payroll, and his paycheck "bounced." At that time, a Mr. Calvin Patterson, the manager of the golf ProShop made arrangements for the golf course maintenance

employees to be paid directly by respondent Cross County Bank. The bank then started foreclosure proceedings against Village Creek, LLC.

In the course of the foreclosure proceedings in the Cross County Circuit Court, a receiver was appointed on August 12, 2009 to gather the assets of Village Creek, LLC. After the appointment of the receiver, Cross County Bank continued to pay the wages of the golf course maintenance employees up until August 23, 2009, when payment ceased. Mr. McDaniel was instructed at that time by Mr. Calvin Patterson to "go ahead and work," and that Mr. Patterson would again make arrangements of Mr. McDaniel to be paid. Although he continued to work, Claimant's pay did not resume until after Arkansas Department of Parks and Tourism assumed responsibility for the maintenance and upkeep of the golf course. Claimant did not receive a paycheck for the sixty (60) hours he worked on the golf course from August 23, 2009 until September 1, 2009.

Bank President and CEO David Dowd, testifying on behalf of Respondent Cross County Bank did not dispute the version of the facts offered by the Claimant, and he did not deny that the Claimant continued to work after his paychecks from the bank had stopped. Although Mr. Dowd admitted he himself told the golf course maintenance employees to "hold pat" during the week of non-payment, he denied that the bank is obligated to pay the Claimant for that week of work. According to Mr. Dowd, the employees understood that they were working that week to ensure that their employment would continue after the Department of Parks and Tourism took over the course. Mr. Dowd explained that the bank had previously been paying the golf course maintenance employees for approximately two months at the direction of the receiver. Mr. Down admitted that from July until the August 23, 2009, the payroll for the maintenance

workers was being made from revenue from the operation of the golf course and discretionary ash loans that the Respondent bank made to Village Creek, LLC.

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 employee, Larry McDaniel, carried his burden of proving that he worked sixty (60) hours from August 23, 2009 through September 1, 2009, that his agreed-upon rate of pay was $9.50/hr. , and that he was never paid for those hours.

4. Work not requested by the employer but suffered or permitted is considered work time, and must be compensated for in accordance with "Minimum Wage Act" of this State. See 010.14-108(A) of the Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed.

5. Respondent's President and CEO, David Dowd admitted that he knew of the nature and extent of the work that the Claimant was performing on the golf course during the last week of August, 2009, and instead of seeing that the work was not performed, it encouraged Mr. McDaniel to continue working. Respondent Cross County Bank is therefore liable for payment of the Claimant's wages from August 23, 2009 through

September 1, 2009 in the amount of six-hundred seventy-five dollars ($675.00).

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of six-hundred seventy-five dollars ($675.00).

The Respondent is directed to issue a check payable to Larry E. McDaniel in the amount of six-hundred seventy-five dollars ($675.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

By: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JERRY DEWAYNE MILLER **CLAIMANT**

Vs. **CASE NO.: 2010-0026**

CROSS COUNTY BANK **RESPONDENT**

ORDER

The Claimant, Jerry Dewayne Miller, filed a claim for unpaid wages with the Arkansas Department of Labor on November 23, in which he claimed that Respondent, Cross-County Bank failed or refused to pay Miller five-hundred seventy-nine dollars and fifty-eight cents ($579.58) for work Mr. Miller did from August 25, 2009 through September 5, 2009. After a preliminary Wage Determination Order was entered in favor of the claimant on April 2, 2010, Respondent filed its Notice of Appeal and Request for Hearing on April 26, 2010.

The matter came before the Arkansas Department of Labor on Thursday, July 22, 2010. Claimant, appeared and testified on his own behalf, while the Respondent appeared through its President and Chief Executive Officer, David Dowd.

FINDINGS OF FACT

Claimant worked as a maintenance person on the golf course at the Village Creek Resort in Cross County Arkansas. He was paid $9.50/hour. Mr. Miller was hired by a Greg McDaniel and was supervised during his employment by Kelvin Patterson. Mr. Miller testified that after he had worked for Village Creek Resort (successor to Carter Plantation) for some time, the company began having financial problems, and Mr. Miller received an insufficient funds payroll check. At that time, Miller's supervisor, Kelvin Patterson made arrangements for the Claimant to be paid directly by respondent Cross County Bank. The bank then started foreclosure proceedings against Village Creek, LLC.

At the request of Cross County Bank, a receiver was appointed in the Cross County Circuit Court foreclosure proceedings on August 12, 2009 to gather the assets of Village Creek, LLC. After the appointment of the receiver, Cross County Bank continued to pay the wages of Mr. Miller and some other golf course maintenance employees up until August 23, 2009, when payment ceased. Although he continued to work, Claimant's pay did not resume until after Arkansas Department of Parks and Tourism assumed responsibility for the maintenance and upkeep of the golf course. Claimant did not receive a paycheck for the fifty four (54) hours he worked on the golf course from August 23, 2009 until September 5, 2009.

Bank President and CEO David Dowd, testifying on behalf of Respondent Cross County Bank did not dispute the version of the facts offered by the Claimant, and he did not deny that the Claimant continued to work after his paychecks from the bank had stopped. Mr. Dowd admitted that the Respondent Cross County Bank owned a substantial interest in the golf course where Mr. Miller works, and that the bank had been paying Mr. Miller's wages for approximately two months when the Bank gave golf course employees notice that the Arkansas Department of Parks and Tourism would be assuming control over the maintenance and operation of the facility. Mr. Dowd claimed that the State of Arkansas assumed responsibility for the payment of the maintenance employees by a written agreement entered into before the operational changes had occurred. However, the only written agreement introduced by the bank was not signed until November 30, 2009, and therefore, did not corroborate the Respondent's claim that any binding agreement had already been made.

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 employee, Jerry Dewayne Miller, carried his burden of proving that he worked fifty-four (54) hours from August 23, 2009 through September 5, 2009, that his agreed-upon rate of pay was $9.50/hr. , and that he was never paid for those hours.

4. Work not requested by the employer but suffered or permitted is considered work time, and must be compensated for in accordance with "Minimum Wage Act" of this State. See 010.14-108(A) of the Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed.

5. Respondent's President and CEO, David Dowd admitted that he knew of the nature and extent of the work that the Claimant was performing on the golf course during the last week of August and the first week of September 2009, and it took no step to ensure that the work was not performed. Respondent Cross County Bank is therefore liable for payment of the Claimant's wages from August 23, 2009 through September 5, 2009 in the amount of five-hundred seventy-nine dollars and fifty-eight cents ($579.58).

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of five-hundred seventy-nine dollars and fifty-eight cents ($579.58).

The Respondent is directed to issue a check payable to Jerry Dewayne Miller in the amount of five-hundred seventy-nine dollars and fifty-eight cents ($579.58) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

By: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

GARRETT EVAN MOORE **CLAIMANT**

Vs. **CASE NO.: 2010-0027**

CROSS COUNTY BANK **RESPONDENT**

ORDER

The Claimant, Garrett Moore, filed his wage claim with the Arkansas Department of Labor on December 2, 2010, claiming that Respondent, Cross-County Bank owes him three-hundred ninety-two dollars ($392.00). for work Mr. Moore did from September 1 through September 9, 2009. After a preliminary Wage Determination Order was entered in favor of the claimant, Respondent filed its Notice of Appeal and Request for Hearing on April 26, 2010.

The matter came before the Arkansas Department of Labor on Thursday, July 22, 2010. Claimant appeared and testified on his own behalf, while the Respondent appeared through its President and Chief Executive Officer, David Dowd.

FINDINGS OF FACT

Claimant worked as a maintenance person on the golf course at the Village Creek Resort in Cross County Arkansas. He was paid $8.00/hour. Mr. Moore testified that he was hired about the middle of August 2009, about the time Village Creek Resort, LLC went into receivership, and that he was supervised during his employment by Kelvin Patterson. Claimant understood that Patterson was responsible for payroll, and had made arrangements for the Claimant to be paid directly by respondent Cross County Bank. The bank started foreclosure proceedings against Village Creek, LLC in the Cross County Circuit Court, and had a receiver appointed on August 12, 2009. Cross County Bank continued to Mr. Miller's wages up until September 1,

2010, when payment ceased. Although he continued to work, Claimant's pay did not resume until after Arkansas Department of Parks and Tourism assumed responsibility for the maintenance and upkeep of the golf course. Claimant has not been paid for the forty six (46) hours he worked from September 1 through September 9, 2009.

Bank President and CEO David Dowd, testifying on behalf of Respondent Cross County Bank did not dispute the version of the facts offered by the Claimant, and he did not deny that the Claimant continued to work after his paychecks from the bank had stopped. Mr. Dowd admitted that the Respondent Cross County Bank owned a substantial interest in the golf course, and that the bank paid all Mr. Moore's wages from the time Mr. Moore was hired up until about the time the Arkansas Department of Parks and Tourism assumed control over the maintenance and operation of the facility. Mr. Dowd claimed that the State of Arkansas assumed responsibility for the payment of the maintenance employees by a written agreement entered into before the operational changes had occurred. However, the only written agreement introduced by the bank was not signed until November 30, 2009, and therefore, did not corroborate the Respondent's claim that any binding agreement had already been made.

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 employee, Garrett Evan Moore, carried his burden of proving that he worked forty-six (46) from September 1 through September 9, 2009, that his agreed-upon rate of pay was $8.00.00/hr., and that he was never paid for those hours.

4. Work not requested by the employer but suffered or permitted is considered work time, and must be compensated for in accordance with "Minimum Wage Act" of this State. See 010.14-108(A) of the Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed.

5. Respondent's President and CEO, David Dowd admitted that he knew of the nature and extent of the work that the Claimant was performing on the golf course, and it took no step to ensure that the work was not performed. Respondent Cross County Bank is therefore liable for payment of the Claimant's wages from September 1, 2009 through September 9, 2009 in the amount of three-hundred ninety-two dollars ($392.00).

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of three-hundred ninety-two dollars ($392.00).The Respondent is directed to issue a check payable to Garrett Evan Moore in the amount of three-hundred ninety-two dollars ($392.00). within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

By: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JONES PATTERSON, JR. **CLAIMANT**

VS. **CASE NO. 2010-0031**

JBL RAPID TAX REFUNDS **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Thursday, July 8, 2010. The Respondent, JBL Rapid Tax Refunds, has appealed an agency finding that JBL owes the Claimant, Jones Patterson, Jr. unpaid wages in the amount of six-hundred forty dollars ($640). The Respondent appeared through its owner, Jim Doyle. Claimant appeared in person and presented evidence on his own behalf.

FINDINGS OF FACT

The Respondent, JBL Rapid Tax Refunds, Inc. is an Arkansas business entity doing business in the State of Tennessee. JBL is in the business of preparing individual and business tax returns for profit. JBL maintains six (6) separate offices, five (5) in the State of Arkansas, and one (1) in the State of Tennessee. The Claimant, Jones Patterson, Jr., is a resident of the State of Tennessee, who was hired in the State of Tennessee, worked exclusively in the State of Tennessee and was paid wages in the State of Tennessee. The current dispute arose when all of Respondents' computers in all locations "crashed" simultaneously on February 2, 2010 as a result of a computer virus downloaded into the system from the internet. This resulted in two (2) hours downtime and loss of revenue. The Respondent determined after investigation that the Claimant had intentionally or unintentionally downloaded the virus as a result of internet usage that was prohibited by the parties employment agreement and the policies of JBL. There is no dispute that JBL

withheld $640.00 from wages owed to the Claimant to offset JBL's losses.

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 director's authority to decide wage disputes extends only those disputes arising within the State of Arkansas. Ark. Code Ann. 11-2-108(1). The director therefore has no authority to decide a wage dispute between a resident of Arkansas and a resident of a foreign state where the work is done and the wages are paid under the laws of another State.

3. This claim must be dismissed for lack of jurisdiction over the subject matter of the claim.

THERFORE, IT IS CONSIDERED AND ORDERD that this claim is hereby dismissed.

IT IS SO ORDERED.
James L. Salkeld
Director of Labor

BY: _____
Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

JORDAN MILES RAGSDALE **CLAIMANT**

Vs. **CASE NO.: 2010-0028**

CROSS COUNTY BANK **RESPONDENT**

ORDER

The Claimant, Jordan Ragsdale, filed his wage claim with the Arkansas Department of Labor on December 2, 2009, claiming that Respondent, Cross-County Bank owes him five-hundred forty-eight dollars ($548.00) for work Mr. Moore did from September 1 through September 7, 2009. After a preliminary Wage Determination Order was entered in favor of the Claimant, Respondent filed its Notice of Appeal and Request for Hearing on April 26, 2010.

The matter came before the Arkansas Department of Labor on Thursday, July 22, 2010. Claimant appeared and testified on his own behalf, while the Respondent appeared through its President and Chief Executive Officer, David Dowd.

FINDINGS OF FACT

Claimant worked as a maintenance person on the golf course at the Village Creek Resort in Cross County Arkansas. He was paid $8.00/hour. He testified that he was hired by Kevin Patterson, the manager of the Pro Shop at the golf course, about "the end of July or during the "first part of August" 2009. Kevin or Kelvin Patterson was responsible for payroll, and Claimant received all his paychecks directly from respondent Cross County Bank. The bank had previously started foreclosure proceedings against Village Creek, LLC in the Cross County Circuit Court, and caused a receiver appointed in ex-parte proceedings on August 12, 2009. Cross County Bank stopped paying Mr. Ragsdale's wages on or about September 1,

2010. Mr. Ragsdale continued to work at the golf course and his pay resumed after Arkansas Department of Parks and Tourism assumed responsibility for the maintenance and upkeep of the golf course. Claimant has not been paid for the fifty-nine (59) hours he worked from September 1 through September 9, 2009.

Respondent Cross County Bank's President and CEO David Dowd, did not dispute the version of the facts offered by Mr. Ragsdale, nor did he deny that the Claimant continued to work after his paychecks from the bank had stopped. Mr. Dowd admitted that the Respondent Cross County Bank owned a substantial interest in the golf course where the Claimant worked, and that the bank had y been responsible for all Mr. Ragsdale's wages from the time the Claimant was hired up until about September 9, 2010. Mr. Dowd claimed that the State of Arkansas Department of Parks and Tourism assumed responsibility for the payment of the maintenance employees by a written agreement the Bank entered into before the operational changes had occurred. However, the only written agreement introduced by the bank that was also signed by anyone on behalf of the Parks and Tourism Department was not executed until November 30, 2009.

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 employee, Jordan Miles Ragsdale, carried his burden of proving that he worked fifty nine (59) from September 1 through September 7, 2009, that his agreed-upon rate of pay was $8.00.00/hr., and that he was never paid for those hours.

4. Work not requested by the employer but suffered or permitted is considered work time, and must be compensated for in accordance with "Minimum Wage Act" of this State. See 010.14-108(A) of the Administrative Regulations of the Labor Standards Division of the Arkansas Department of Labor. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed.

5. Respondent's President and CEO, David Dowd admitted that he knew of the nature and extent of the work that the Claimant was performing on the golf course, and it took no step to ensure that the work was not performed. Respondent Cross County Bank is therefore liable for payment of Mr. Ragsdale's wages from September 1, 2009 through September 7, 2009 in the amount of five-hundred forty-eight dollars ($548.00)

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of five-hundred forty-eight dollars ($548.00) The Respondent is directed to issue a check payable to Jordan Miles Ragsdale in the amount of five-hundred forty-eight dollars ($548.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

By: _____

Danny R. Williams
Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

_____
Date