

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

THELMA RIGGINS

CLAIMANT

Vs.

CASE NO.: 2010-0060

ARKANSAS DEMOCRAT GAZETTE

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Monday, December 22, 2010. The Claimant appeared on her own behalf. The Respondent appeared through its circulation manager, Jim Tolly.

FINDINGS OF FACT

The Claimant, Thelma Riggins filed her Wage Claim on August 31, 2010, in the amount of \$945.37 for work she claim she did from July 1, 2010 through August 1, 2010. The Labor Standards Division of the Arkansas Department of Labor entered a Preliminary Wage Determination Order on October 12, 2010 finding that the claimant is entitled to \$1,122.02 in unpaid wages. The respondent gave written notice of its intention to appeal the agency's Preliminary Order and requested a hearing on the claim.

The claimant, Thelma Riggins testified at the hearing that she was hired under contract by the Respondent to deliver the Siloam Springs Herald Leader, Ozark Leader and Neighborhood Shopper newspapers in the Siloam Springs area of Northwest Arkansas from March 28, 2010 through March 30, 2011. Ms. Riggins gave her employer written notice on July 8, 2010 that her final day of delivering the Neighborhood Shopper newspaper would be August 8, 2010. She wrote a second letter on July 25, 2010 rescinding her previous letter of resignation. She testified at the hearing that she continued to deliver the Herald Leader and the Neighborhood Shopper until August 1,

2010, but was never paid for that route for the last month she worked. She admitted she had been paid the \$132.20 she was owed for delivery of the Ozark Living paper and that part of her claim was not in dispute at the time of the hearing.

Jim Tolly, testifying on behalf of the Respondent acknowledged that the Arkansas Democrat Gazette, d/b/a/ Northwest Arkansas Newspapers, LLC contracted to pay the Claimant \$.08 per copy for delivering the Herald Leader and Neighbor Shopper newspapers. On July 8, 2010 the claimant gave written notice that her last day to deliver the Neighbor Shopper would be August 3rd, and that her last day to deliver the Herald Leader would be August 8th. Ms. Riggins later rescinded her resignation letter on July 25th when she wrote a second letter requesting that she be allowed to continue to deliver the Neighbor Shopper. Ms. Riggins continued to deliver the Neighbor Shopper without incident until about July 28, 2010 when Robert Reed, a member of the respondent's management staff discovered eighteen bundles of the Neighbor Shopper in the dumpster across the street from the respondent's office. Each bundle contained forty (40) newspapers.

Mr. Reed testified that he then followed his company's "route check" protocol of the paper routes that should have been delivered that day, and discovered that the claimant's route was the only one that did not have newspapers in the driveways or on the porches of the residences that were listed on the respondent's client list. Mr. Reed then delivered the newspapers himself, and subsequently went to Ms. Riggins home on three separate occasions. He finally caught her at home after 4:00 p.m. At that time, Mr. Reed informed the claimant that her Neighbor Shopper contract was terminated, based on her breach of the contract. Ms. Reed's Herald Leader contract was terminated about one

week later when she failed to show on September 4, 2010.

Respondent introduced a copy of its Herald Leader and Neighbor Shopper contracts, both of which contained a requirement that the claimant post a bond that would be forfeited upon the agent's failure or refusal to make deliveries as agreed. At that time Ms. Riggins' Neighbor Shopper contract was terminated, she had posted a bond of \$290.00. Her bond balance on the Herald Leader was \$50.00

CONCLUSIONS OF LAW

Under the provisions of *Arkansas Code Annotated 11-4-303(a)*, the Director of the Department of 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.

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)*.

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)*.

The wage claimant carries the burden of proving any claim of unpaid wages. In the present case, the claimant carried her burden of proving that she worked under contract with respondent to deliver the Neighbor Shopper and the Herald Leader at the rate of \$.08/copy. Ms. Riggins presented evidence that she delivered the Neighbor Shopper as required by her contract up until July 28, 2010. Evidence showed that she

delivered the Herald Leader as agreed up until August 4, 2010. She would have been due \$945.37 for work she performed.

The employer, on the other hand has presented credible evidence that Ms. Riggins breached each of her contracts and that she did not deliver any Neighbor Shopper newspapers on July 28, 2010. The respondent proved it is entitled to an offset in the amount of \$397.60, which is equal to the sum of the \$290.00 bond claimant had posted on the Neighbor Shopper account, the \$50.00 Herald Leader Bond, and the \$57.00 that would have been paid if Ms. Riggins had delivered the 18 bundles of the Neighbor Shopper the respondent found in the trash bin.

After giving the respondent a credit of \$397.60 against the outstanding wages owed, Claimant is entitled to recover \$554.77 in unpaid contract wages.

THEREFORE, IT IS CONSIDERED AND ORDERED that judgment is entered for the Claimant in the amount of \$554.77.

The Respondent is directed to issue a check payable to Ms. Riggins in the amount of five-hundred fifty four dollars and seventy-seven cents (\$554.77) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

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: January 7, 2011

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

YULANDA HILL

CLAIMANT

VS.

CASE NO. 2010-0042

**MOBLEY CLEMMER & ASSOCIATES
EDUCATION CONSULTANT GROUP**

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Thursday, September 30, 2010. The Respondent, Mobley Clemmer & Associates Education Consultant Group, Inc. (MCA), has appealed an agency finding that the Respondent owes the Claimant, Yulanda Hill unpaid wages in the amount of eight-hundred six dollars and sixty-four cents (\$806.64). The Respondent appeared through its representative and executive director, Alma M. Clemmer, by telephone conference call. Claimant appeared in person and testified on her own behalf.

FINDINGS OF FACT

MC & A is an Arkansas Non-Profit Corporation doing business in the State of Arkansas, having its principal office in West Memphis, Arkansas. The Claimant, Yulanda Hill, is a resident of Pine Bluff Arkansas who worked for MC & A (doing business as “Standing in the Gap” or SITG! Tutoring RMS) as a high school tutor. She provided tutoring services for MC & A in the Stuttgart, Arkansas School District four days a week, working 2.5 hours each day. Her claim is for wages she was not paid for forty four (44) hours she worked between April 29, 2010 through May 4, 2010 at twenty-five dollars (\$25.00) per hour. Ms. Hill testified at the appeal hearing that her work day was reduced from 2.5 to 2.0 hours per day, per her employer, Alma Clemmer. There is no dispute that

Ms. Hill actually worked the hours she claimed and the respondent does not contend that Ms. Hill was ever paid for the work.

Alma Clemmer, on behalf of the respondent MC & A, testified by telephone that MC & A had not received properly completed timesheets from the claimant, and that is why Ms. Hill had not been paid for her last paycheck. She stated the last properly completed time sheets she received from the claimant were dated April 23, 2010.

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, Yulanda Hill, carried her burden of proving that she worked the hours she claimed for the period of April 29, 2010 and May 4, 2010 and that her rate of pay was \$25/hr.
4. Respondent failed to prove any offset or other circumstance that would reduce the amount of wages the claimant earned.

THEREFORE, IT IS CONSIDERED AND ORDERED that judgment is entered for the Claimant in the amount of eight-hundred six dollars and sixty-four cents (\$806.64). The Respondent is directed to issue a check payable to Yulanda Hill in the amount of eight-hundred six dollars and sixty-four cents (\$806.64) 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

November 3, 2010
Date

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

DONNY HOLYFIELD

CLAIMANT

Vs.

CASE NO.: 2010-0029

COMPLIANCE MANAGEMENT

RESPONDENT

ORDER

The Claimant, Donny Holyfield, filed a claim for unpaid wages with the Arkansas Department of Labor on August 13, 2010, in which he claimed the Respondent, Compliance Management refused to pay him \$1,400.00 for work vacation pay Mr. Holyfield was due after he voluntarily terminated his employment with Compliance Management on or about July 29, 2010. Eddie Griffin, the owner of Compliance Management 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 September 16, 2010 in favor of the Claimant, which was followed by Compliance Management's October 12, 2010 Notice of Appeal and Request for Hearing.

The matter came before the Arkansas Department of Labor on Monday, November 22, 2010. Then Claimant appeared and testified on his own behalf. The Respondent appeared through its owner, Eddie Griffin.

FINDINGS OF FACT

The Claimant was employed by Compliance Management as a field technician when he was made a full-time employee of the company in approximately 2008. Holyfield was paid a salary of \$2,800/month for work he performed on behalf of the employer from Monday through Thursday each week. Holyfield was paid an additional sum as contract labor for any work performed after Thursday. According to Mr. Holyfield, he was given two weeks paid vacation

each year he was employed by the Respondent except for 2010, when he gave the company two weeks notice before he quit his job.

Eddie Griffin, testifying on behalf of the Respondent did not dispute the terms of Mr. Holyfield's compensation, and he did not deny that he gave his employees two weeks paid vacation each year. Mr. Griffin admitted that he held back the two week vacation pay that Mr. Holyfield would have received had he not ended his employment with Compliance Management, but offered some testimony to prove that an offset equal or greater to the vacation pay was due. Mr. Griffin testified that the reason he held back the two weeks of pay from Mr. Holyfield was because of advances Mr. Griffin made on behalf of the Claimant that were never repaid. Mr. Griffin testified that he learned that Mr. Holyfield's aging parents' air conditioning unit had broken down in June of 2010 when the temperature was dangerously hot, and that Griffin wrote out a check for \$1,800.00 to have the unit replaced. When questioned about the reasons he made out the check, Mr. Griffin stated that he "did not want to see those old people die," and admitted that he may have "taken it on [himself], I don't know." It is undisputed that no demand for repayment was ever made until after the Claimant gave his two-week notice after finding another job.

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 in this case, Donny Holyfield, carried his burden of proving that the Respondent agreed to pay Claimant a base salary of \$2,800/month, which included two weeks paid vacation. Mr. Holyfield successfully proved that he did not use his vacation days in 2010, and that the Respondent did not pay him (Donny Holyfield) his vacation pay after he voluntarily left the job.

4. Under Arkansas law, an employer has the burden of proving any claimed offset to unpaid wages by a preponderance of the evidence. Here, although Compliance Management's owner, Eddie Griffin, claimed the Respondent is entitled to an offset equal to or exceeding the amount of vacation pay due the Claimant, his admission that he "might have taken it (Claimant's parents' air conditioning repair bill) on [himself]," is fatal. Mr. Griffin ultimately testified that he did not know whether he had volunteered to pay the repair bill for the Claimant's parents. The Respondent did not meet the burden of proof required to prove an offset of the amount the company owes the Claimant.

5. The evidence and testimony show that Mr. Holyfield is entitled to recover \$1,400.00 vacation pay from the Respondent.

6. THEREFORE, IT IS CONSIDERED AND ORDERED that judgment is entered for the Claimant in the amount of one-thousand four-hundred dollars (\$1,400.00).

7. The Respondent is directed to issue a check payable to Donny Holyfield in the amount of one-thousand four-hundred dollars (\$1,400.00) 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

TRACEY KING

CLAIMANT

vs.

CASE NO. 2010-0057

SESAME SCHOOL/DCDDC

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Monday, November 22, 2010. Sesame School has appealed an agency order that wages are due to Tracey King. Angie Burton appeared on behalf of Sesame School. Tracey King did not appear.

FINDINGS OF FACT

King filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 12, 2010. She claimed five hundred dollars (\$500.00) in unpaid wages earned between November 30, 2009 and July 19, 2010. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on September 28, 2010, finding that King was owed four hundred ninety-eight dollars and forty-seven cents (\$498.47). Sesame School filed an appeal of this finding on October 1, 2010.

The hearing was set for 1100 a.m. The hearing convened at approximately 11:05 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

DOUGLAS LANGLOIS

CLAIMANT

vs.

CASE NO. 2010-0059

WEST COAST MOTOR SPORTS

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Monday, November 22, 2010. West Coast Motorsports has appealed any agency order that eight hundred forty dollars (\$840.00) in unpaid wages is owed to Douglas Langois. Langois appeared on his own behalf. West Coast Motorsports did not appear.

FINDINGS OF FACT

Langois filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 10, 2010. He claimed eight hundred forty two dollars (\$842.00) in unpaid wages earned between May 22, 2010 and June 13 2010. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on September 29, 2010, finding that Langois was owed eight hundred forty dollars (\$840.00). West Coast Motorsports filed an appeal of this finding on October 12, 2010.

The hearing was set for 10:00 a.m. The hearing convened at approximately 10:15 a.m. The Claimant appeared, and the Respondent, appeared not. Therefore, judgment is entered for the Claimant in the amount of eight hundred forty dollars (\$840.00). The Respondent is directed to issue a check payable to Mr. Langois in the amount of eight hundred forty dollars (\$840.00) 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: _____