

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

ARKANSAS DEPARTMENT OF LABOR

PETITIONER

vs.

CASE NO. WH 2008-004

**DON & LINDA BLADES, BOTH JOINTLY AND SEVERALLY,
INDIVIDUALLY AND dba D&L COMPANY dba LITTLE
CAESARS**

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on June 17, 2008. Don & Linda Blades, both jointly and severally, individually and d.b.a. D&L Company d.b.a. Little Caesars (hereafter referred to as "Little Caesars") has appealed the finding of Labor Standards Division of the Arkansas Department of Labor (hereafter referred to as the "LS Division") that they are in violation of Ark. Code Ann. §§ 11-4-210 and 11-4-213 (Minimum Wage and Allowance for furnishing board, lodging, apparel, etc.) The LS Division was represented by the Honorable Daniel Faulkner. Little Caesars was represented by Don and Linda Blades, appearing on their own behalf. Kathy Dilbeck, Labor Standards Investigator, and Tom Hudson, Labor Standards Administrator, testified on behalf of the LS Division. Brian McGraw and Jeremy Brown testified on behalf of Little Caesars. Agency Exhibit number one (Administrative Regulations Pertaining to the Arkansas Minimum Wage Act, June 2007), Agency Exhibit number two (inspection report completed by Kathy Dilbeck) and Respondent Exhibit number one (copies of recent register receipts and employee charge tickets) were offered and accepted into the record.

FINDINGS OF FACT

Don and Linda Blades are owners of a Little Caesars pizza restaurant operating at 814 N Highway 62/65, Harrison, AR 72601. On or about February 7, 2008, Labor Standards

Investigator Kathy Dilbeck performed a routine inspection of Little Caesars by inspecting payroll and time records. Ms. Dilbeck testified her inspection included records from October 1, 2006 through February 13, 2008 and her determination was that Little Caesars was in violation of Ark. Code Ann. § 11-4-210. Ms. Dilbeck testified it was her finding that employee meal charges were being deducted from wages, and as a result of those deductions, the final paycheck after those deductions reflected a wage rate that, averaged over the number of hours worked, calculated to be less than five dollars and ninety-five cents (\$5.95) per hour. The record reflects that the investigator allowed credit of thirty cents (\$0.30) per hour according to the allowance set forth in Ark. Code Ann. § 11-4-213. The total calculation by the investigator for these violations is three thousand, three hundred fifteen dollars and ninety-eight cents (\$3,315.98) for twenty four (24) employees. The testimony also reflected that time records revealed violations of Administrative Regulation 010.14-108 (C) (1), in which break periods of less than twenty minutes were docked from employees pay for a total amount of forty-two dollars and ten cents (\$42.10). Labor Standards Administrator Tom Hudson offered testimony consistent and comparable to that of Ms. Dilbeck. Testimony given by Ms. Blades of Little Caesars indicates the finding for forty-two dollars and ten cents (\$42.10) regarding break periods is not in controversy.

Linda Blades further testified that the practice of Little Caesars prior to the investigation was to allow employees to “charge” food that they chose to purchase during hours they were not working. She testified many of her employees are young people going to school or raising families and she allowed them to charge during times when they were not working in order to feed themselves and their families. These charges were documented by tickets and cash register

receipts. The employer even discounted the cost to the employees. The employees received what could be termed a wholesale charge. They paid less than regular patrons.

Ms. Blades testified that she had read the Administrative Regulations, consulted with her C.P.A., and still disagrees that the law is interpreted to mean that all purchases made by an employee is limited to a thirty cents per-hour credit. Her testimony is that the food purchases are not part of any established “meal program” and that the purchases are the choice of the employee. She has maintained that Little Caesars offers the “charge” option as a privilege and convenience for their employees. The testimony of Mr. Hudson is that the fault lies in the accounting process. He indicated that the procedure for this type of credit accounting should be for the employer to pay the employee for wages directly, and for the employee to then reimburse the employer.

CONCLUSIONS OF LAW

The employer herein did withhold more than the allowable amount pursuant to A.C.A. § 11-4-213, although there was no willful intent to violate the code by the employer. The employer believed such was allowable and the employees agreed to the arrangement. Furthermore, the department agreed, “...that the fault lies in the accounting process.” However, in accordance with Administrative Regulations of the Labor Standards Division, Rule Number 010.14-112, “the department may rely on the interpretations of the U.S. Department of Labor and federal precedent established under the Fair labor Standards Act in interpreting and applying provisions of the Act and Rule 010-14-100 through -113.” It has long been recognized that the protection afforded by the Fair Labor Standards Act may not be waived by agreement between employer and employee. *Brooklyn Bank v. O'Neil*, 1945, 324 U.S. 697, 65 S. Ct. 895, 89 L. Ed. 1296.

THEREFORE, IT IS CONSIDERED AND ORDERED that the employer, Little Caesars, shall issue payment for a total sum of three thousand, three hundred fifty-eight dollars and eight cents (\$3,358.08). Payment drafts shall be issued to the employees in the respective amounts as detailed on page five (5) of Agency exhibit two (2) and mailed to the Department of Labor. Payment shall be issued within ten (10) days of the receipt of this Order.

IT IS SO ORDERED

James L. Salkeld
Director of Labor

BY: _____
C.J. Acklin, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

BETTY WILLIAMS

CLAIMANT

vs.

CASE NO. 2008020029

AT YOUR SERVICE

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Friday, July 11, 2008. Betty Williams has appealed an agency finding that no unpaid wages are due to her. Williams appeared on her own behalf. At Your Service was represented by Operations Manager Jackie Welch.

FINDINGS OF FACT

At Your Service is a company who provides cleaning services for third parties. Betty Williams, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on February 6, 2008. She claimed thirty-eight dollars at a rate of seven dollars (\$7.00) per hour earned between July 4, 2007 and July 18, 2007. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on April 24, 2008 finding that Williams was owed no wages. Williams filed an appeal of this finding on April 30, 2008.

Prior to the hearing, Ms. Williams submitted information and documentation which includes, among other items, a paycheck stub showing check number 9001729 issued by DAP Enterprises, Inc. for the pay period beginning on July 4, 2007 and ending on July 17, 2007 that shows that Ms. Williams was paid for forty-two hours at a rate of seven dollars (\$7.00) per hour for a gross pay before deductions of two hundred ninety-four dollars and zero cents (\$294.00).

Ms. Williams' testimony is that she is claiming for reimbursement of deductions from her check which are identified on the check stub as "AR- Withholding" and "Garnishment Fee." Ms. Williams also contends that her last date of work was July 18, 2007 and that she was not paid for that day of work. A further issue of a uniform fee was also addressed.

Jackie Welch of At Your Service testified that Ms. Williams' last day with the company was July 11, 2007. Ms. Welch submitted a document titled "Errand Report" dated July 11, 2007 which appears to be a record of the locations, times, and employees who worked on that day. Attached to this report is a handwritten note reading "take care." Ms. Welch stated that this was the day that Ms. Williams resigned from her position without notice. She also provided an additional Errand Report dated July 12, 2007 showing the lead employee to be "Barbara."

Ms. Williams' testimony is that she continued to work, although she is not listed on the Errand Report for July 12. Ms. Welch also submitted a time sheet for Ms. Williams for the week beginning Wednesday, July 4, 2007 through Tuesday, July 10, 2007 as well as a time sheet for the week beginning Wednesday, July 11, 2007 through Tuesday, July 17, 2007. The dates worked on these time sheets are Thursday, Friday, Monday and Tuesday (July 5, 6, 9 and 10) for a total of thirty-two hours and forty-five minutes and Monday, July 11, 2007 for a total of nine hours and fifteen minutes. The work time for these two time sheets totals forty-two hours, which corresponds with the previously mentioned check stub.

Ms. Welch clarified the deductions disputed by Ms. Williams. Ms. Welch stated that the AR-Withholding deduction is the withholding for Arkansas State income taxes. She also submitted a pamphlet compiled by Automatic Data Processing, Inc. that lists the authorized fee deduction for each state. The pamphlet indicates that Arkansas provides for employers to deduct

a fee of two dollars and fifty cents (\$2.50) per pay period to cover administrative costs for child support deductions.

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. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. § 11-4-303(b).

3. 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 wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. In the present case, the documents in the record support the finding that Ms. Williams did not perform any services as an employee of At Your Service subsequent to July 11, 2007. Williams had previously submitted a document titled "Warning Report" which she completed by hand, stating that she had worked on July 18, 2007. This was offered by Ms. Williams as proof she worked through July 18. There are no witnesses to this document or other documentation supporting Ms. Williams' claim that she worked after the 11th of July. Furthermore, there are no witnesses to dispute Ms. Welch's testimony that Ms. Williams' employment ceased on July 11, 2007. Therefore, it is the finding of the Administrative Law Judge that Ms. Williams has not sustained her burden of proof as to any wages being owed.

7. The deduction of “AR-Withholding” is not only found to be appropriate, but further is found to be mandatory pursuant to Ark. Code Ann. § 26-51-905, which states that employers are required to *“deduct and withhold from the employees’ wages an amount determined from withholding tables promulgated by the Director of the Department of Finance and Administration and furnished to the employer.”*

8. The deduction of a “Garnishment Fee” is also allowable pursuant to Ark. Code Ann. § 9-14-227.

THEREFORE, IT IS CONSIDERED AND ORDERD that the Claimant is due no additional wages for the period claimed of July 4, 2007 through July 18, 2007.

James L. Salkeld
Director of Labor

BY: _____
C.J. Acklin, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

MICHAEL CASTONE

CLAIMANT

vs.

CASE NO. 2007120034

WRIGHT'S MOWING, INC.

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Friday, July 11, 2008. Wright's Mowing, Inc. has appealed an agency finding that unpaid wages are due to Michael Castone in the amount of \$600.00. Mr. Castone appeared on his own behalf. John Wright, president of Wright's Mowing appeared on his own behalf. Jim Meadows and Jim Husky were present as witnesses on Mr. Castone's behalf, although only Mr. Meadows offered testimony. No exhibits or evidence was offered to be received into the record.

FINDINGS OF FACT

Michael Castone, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on December 26, 2007. He claimed seven hundred dollars (\$700.00) in improper deductions taken from his paycheck for work performed from October 3, 2007 through December 9, 2007. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on April 24, 2008 finding that Castone was owed six hundred dollars (\$600.00). Wright's Mowing filed an appeal of this finding on May 6, 2008.

Mr. Castone testified that he worked for Mr. Wright in two capacities, one as a farm worker and one as a mower. He stated that his claim for seven hundred dollars is representative of two particular deductions made from his check, one in the amount of two hundred dollars (\$200.00) for a deposit on a mobile home he rented from Mr. Wright, and one for five hundred dollars (\$500.00) for a truck that he had wanted to purchase from Mr. Wright, but then decided

against. Mr. Wright testified that the deductions were made, but did not provide any evidence of an agreement for any amount to be withheld. Mr. Wright stated that he had signed the title of the vehicle in question, but did not provide a copy of the title to show that it had been conveyed to any new owner.

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. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. § 11-4-303(b).

3. 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 wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. Testimony revealed there to be no agreement to withhold wages for the deposit or for an incomplete purchase of a vehicle. Testimony revealed the truck and its title were still in the possession of the Respondent. Testimony further revealed the deposit deduction was on a trailer rented from the Respondent by the Claimant. It was testified such trailer was left in a reasonable condition; however, the Respondent turned off the electricity, necessitating the removal and cleaning of the refrigerator. This is the deposit deduction. Wages must be paid to the employee.

THEREFORE, IT IS CONSIDERED AND ORDERED that judgment is entered for the Claimant in the amount of seven hundred dollars (\$700.00). The Respondent is directed to issue a check payable to Mr. Castone in the amount of seven hundred dollars (\$700.00) within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

James L. Salkeld
Director of Labor

BY: _____
C.J. Acklin, Administrative Law Judge
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

LLOYD BARDOUCHE

vs.

CASE NO. 2008030045

A.L. BLOOD HAULING, INC.

ORDER

This matter came for hearing on Friday, July 11, 2008 in the offices of the Arkansas Department of Labor. The hearing was set for 11:00 a.m. The hearing convened at approximately 11:15 a.m. The Respondent, Arthur Blood, appeared on his own behalf. The Claimant appeared not. As of this date, the Arkansas Department of Labor has not been contacted by the Claimant in regards to his failure to appear.

THEREFORE, this matter is hereby dismissed with prejudice.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
C.J. ACKLIN
ADMINISTRATIVE LAW JUDGE

DATE: _____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

PHILLIP DURHAM

CLAIMANT

vs.

CASE NO. 200710032

CRAIN AUTOMOTIVE GROUP

RESPONDENT

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, April 2, 2008. Mr. Phillip Durham appealed any agency order that no wages were due to him. Mr. Durham appeared on his own behalf. Crain Automotive did not appear.

FINDINGS OF FACT

Durham filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on October 16, 2007. He claimed seven hundred and fifty dollars (\$750.00) in unpaid commissions earned during his employment, spanning from May 13, 2007 through June 2, 2007. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on January 25, 2008, finding that Durham was owed no wages. Mr. Durham filed an appeal of this finding on January 29, 2008.

The hearing, scheduled for 9:00 a.m., convened at approximately 9:30 a.m., the Claimant appeared, and the Respondent, appeared not, having had due notice served upon them via certified mail, article number 71809594013140000190 delivered and accepted on February 6, 2008. Therefore, judgement is entered for the Claimant in the amount of seven hundred fifty dollars (\$750.00). The Respondent is directed to issue a check payable to Mr. Durham in the

amount of seven hundred fifty dollars (\$750.00) 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: _____
C.J. ACKLIN
ADMINISTRATIVE LAW JUDGE
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE: _____