STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM JOHNSON, JR.,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
October 21, 1997

No. 190335
Wayne Circuit Court
LC No. 93-333112-CK

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment awarding plaintiff $40,725.10 together with attorney fees, costs, and interest, entered pursuant to a jury verdict in plaintiff's favor, in this action for unpaid overtime wages pursuant to the Fair Labor Standards Act (FLSA), 29 USC 201 *et seq*., as incorporated into Detroit Ordinances, § 13-2-9(a). We reverse.

Defendant first argues that the trial court erred in denying its motion for a directed verdict because plaintiff's case established that he was an administrative employee not entitled to overtime wages under 29 USC 207. We agree.

When reviewing a trial court's decision regarding a motion for a directed verdict, we review the evidence presented, and all reasonable inferences from that evidence, in a light most favorable to the nonmoving party and determine whether there is an issue of material fact upon which reasonable minds could differ. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994); *Brisboy v Fibreboard Corp*, 429 Mich 540, 549; 418 NW2d 650 (1988).

Under the FLSA's implementing regulations, 29 CFR 541.2(a)(1) and (e)(2), an employer may prove that an employee who makes not less than $250 a week is an "administrative employee" exempt from being paid overtime by satisfying a three-part "short test": (1) that the employee was paid on a salary or fee basis; (2) that the employee's primary job duties consisted of non-manual work directly related to the management policies or general business operations of his or her employer; and (3) that the employee's job duties required him to customarily and regularly exercise discretion and independent judgment. *Douglas v Argo-Tech Corp*, 113 F3d 67, 70-71 (CA 6, 1997).

Viewing the evidence in a light most favorable to plaintiff, we conclude that plaintiff's own testimony established without contradiction that his work met all three criteria under the FLSA and its implementing regulations, and that the trial court should have granted defendant's motion for a directed verdict.

Plaintiff was a per diem employee who made more than $250 a week during the period for which he claimed overtime pay. As a per diem employee, plaintiff was paid for a forty-hour week even though he was required to work fifty hours per week. Plaintiff's primary job duties were directly related to the general business operations of his employer, defendant City of Detroit's Department of Transportation, in getting the bus service out. Plaintiff also exercised discretion and independent judgment in carrying out his tasks.

Plaintiff testified that he "ran" the terminal when the district superintendent was not there. He also stated that he "had responsibility" for the terminal's administrative staff and supervised the terminal's front-line supervisors such as the station master. Plaintiff testified that he gave assignments to workers under his supervision, made out the yard supervisor's schedule, and advised workers of Department of Transportation policy. Plaintiff also stated that he made service recommendations to his superiors and attended supervisors' meetings with the superintendent of transportation. He further testified that he evaluated rank and file workers' infractions to see whether discipline was warranted, occasionally issuing discipline, and made recommendations for promotions.

Although plaintiff testified that he was required to report to the district superintendent, was bound to follow all of the Department of Transportation's rules and regulations, and had been disciplined on occasion for violating those rules, this does not disqualify him as an exempt administrative employee. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment within the meaning of 29 CFR 541.2(e)(2). *Gilstrap v Synalloy Corp, Industrial Piping Supply Co Div*, 409 F Supp 621, 626 (MD La, 1976); see also 29 CFR 541.207(e)(1). We hold that the trial court erred in denying defendant's motion for a directed verdict because plaintiff's testimony so firmly established that he was an exempt administrative employee within the meaning of 29 USC 213(a)(1), as interpreted by 29 CFR 541.2(a)(1) and (e)(2), that reasonable jurors could not have concluded otherwise. See *Douglas*, *supra* at 71-73; *Hays v City of Pauls Valley*, 74 F3d 1002, 1007 (CA 10, 1996).

In light of our disposition of the directed verdict issue, we need not address defendant's argument that the trial court also erred in denying defendant's motion for judgment notwithstanding the verdict.

Reversed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, JR.