

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

David C. Meechan,	:	C.A. No. 06-06-0020
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Newark Kubota, Inc.	:	
Registered Agents and Incorporators	:	
Of Delaware, Inc., Registered Agent,	:	
	:	
Defendant.	:	

Decision after Trial

Trial Date: February 12, 2007

Decided: February 15, 2007

**Judgment is entered on behalf of Plaintiff, David C. Meechan,
and against Defendant, Newark Kubota, Inc.**

Maggie Clausell, Esquire, 9 East Loockerman Street, Suite 205, Dover, Delaware 19901,
Attorney for Plaintiff.

Patrick Scanlon, Esquire, 200 N.E. Front Street, Suite 101, Milford, Delaware 19963,
Attorney for Defendant.

Trader J.

In this civil action I hold that the plaintiff, David C. Meechan, (Meechan) is entitled to recover from Newark Kubota, Inc. (Kubota) for unpaid wages, liquidated damages, and reasonable attorney's fees because the employer failed to pay the employee wages when due without reasonable grounds for dispute. Meechan's claim for wages for June 8, 2005 is disallowed.

The relevant facts are as follows: Meechan was employed by Kubota as a salesman and he sold tractors, backhoes, snow blowers, and other farm equipment. He was hired in November 2004 and his services were terminated on June 8, 2005. He received a salary of \$400.00 a week from Kubota, as well as commissions, and other incentives. The plaintiff's commissions were computed based on the percentage of profit that the company received of the sales price. Meechan would receive the same percentage of the total profits.

The plaintiff was terminated on the morning of June 7 and he left early in the afternoon. He returned the next morning for the purpose of filling out some paperwork and collecting his personal property. On June 21, 2005, Meechan requested his unpaid wages from the manager, Eric Reichold. On August 12, 2005, he received a check for commissions in the amount of \$1,227.03, and he had previously received a check for commissions in the amount of \$2,157.54. He submitted documents into evidence that show that he is entitled to commissions that total \$8,128.02 (Plaintiff's Exhibit 4 and 5) minus the sum of \$3,384.57. In addition, \$200.00 was deducted from his commissions by the employer because of a mistake made on the price of a snow blower.

When the Kubota failed to pay the commissions to Meechan, he filed suit in this Court to collect unpaid wages, liquidated damages and reasonable attorney's fees. Under

19 Del. C. Sec.1103(a), an employee who is discharged is entitled to his unpaid wages on the next regularly scheduled pay day. Commissions due an employee would be considered wages within the scope of Sec. 1103, where the money was owed for services rendered to the employer. *See* 19 Del.C. Sec. 1101(a)(5). Under Sec. 1103(b), the employee may recover liquidated damages in an amount equal to the unpaid wages, unless the employer has any reasonable grounds for the dispute of the unpaid wages. *See Rypack Packaging Mach, Inc. v. Coakle*, 2000 WL 567895, at *13 (Del. Ch. May 1, 2000).

In the case before me, the employer contends that no commissions are due the employee. I disagree. Meechan presented work sheets that show that commissions are due him. (Plaintiff's Exhibit 4 & 5). In contrast to the plaintiff's documentary evidence, the defendant presented the testimony of the former manager, David Reichold, concerning some of the transactions. He conceded that in at least four of the cases the plaintiff was entitled to commissions. The defense presented no documentary evidence in support of its position. In evaluating the credibility of the witnesses, I accept the testimony of the plaintiff and I primarily reject the testimony of the defense witness. The total figure from the plaintiff's worksheets was \$8,128.02 and he testified that he has received payments in the amounts of \$1,227.03 and \$2,157.54. Therefore, the unpaid commissions due him are \$4,743.45.

Additionally, the plaintiff is entitled to commissions for the \$200.00 in commissions deducted from his salary. There was a mistake in one transaction concerning the sale of a snow blower. The customer thought that he was purchasing a snow blower for \$799.00, but a snow blower costing \$999.00 was loaded on the back of

the customer's truck. It is unclear as to who made the mistake in this matter, but it was not established that it was made by the plaintiff. Additionally, the defendant has not filed an independent cause of action against the plaintiff for this loss, nor has the defendant claimed a set-off in this proceeding concerning the withheld commissions. *See Peirson v. Hollingsworth*, 251 A.2d 350, 351 (Del. Super. 1969). Under these circumstances, the employer had no right to withhold the \$200.00 from the employee's pay and he is entitled to that money.

As to wages for June 8, 2005, the plaintiff only worked one-half day and he worked one-half day on June 7, 2005. Therefore, his claim for wages for June 8, 2005 is disallowed. He was terminated on June 7, 2005 and he reported to Kubota to claim his personal property and fill out some paperwork.

The plaintiff is entitled to \$4,943.45 in unpaid wages and since the employer failed to pay these wages promptly after demand without any reasonable grounds for dispute, the plaintiff is entitled to liquidated damages in a like sum.

In accordance with the foregoing discussion, judgment is entered on behalf of the plaintiff, David C. Meechan, and against Newark Kubota, Inc. for the sum of \$9,886.90, plus reasonable attorney's fees, and costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge