

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***Rodas v. Service General Corporation***
C.A. No. S08C-12-025

Submitted: May 26, 2010
Decided: June 10, 2010

Dear Ms. Stevens and Mr. Howard:

Trial was held in the above-referenced matter on April 19 and 20, 2010. The jury found for Plaintiff and awarded wages, liquidated damages and civil penalties. Pending before me are two post-trial motions: Plaintiff's Application for Costs and Attorney's Fees and Defendant's Motion to Exclude From Any Judgment Entered That Portion of the Jury's Verdict Awarding Penalties under 19 *Del. C.* § 1112. As explained below, I find that Plaintiff is entitled to costs and fees, and the motion is granted as amended. I also find that the verdict awarding the civil penalty must be vacated because a civil penalty is not a remedy available to an employee under Delaware's Wage Payment and Collection Act ("the Wage Act"). *See* 19 *Del. C.* § 1101--§

1115.

The Wage Act was enacted by the General Assembly to provide for payment of wages and to enforce their collection.¹ Section 1103(b) provides that an employer who fails to pay wages in accordance with the Wage Act shall “be liable to the employee for liquidated damages” for the unpaid wages. No reference is made to a civil penalty or any recovery other than liquidated damages vis-a-vis the unpaid wages. Similarly, under § 1113(a), the employee’s remedies under the Wage Act are identified as the recovery of “unpaid wages and liquidated damages.” Nothing in §1113(a) suggests that an employee may recover civil penalties or any remedy other than unpaid wages and liquidated damages.

Section 1112 provides that an employer who violates any requirement of the Wage Act “shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each such violation.” Section 1111 provides that “[t]he Department [of Labor] may institute actions in the Superior Court for penalties for any violation of this subchapter or any regulation published thereunder.” There is no provision in the Wage Act authorizing a private right of action for statutory penalties. Nor are there any Delaware cases awarding civil penalties to an employee or suggesting that such an award is feasible under the Wage Act.

Based on the language of the pertinent statutory sections, the Court finds that recovery of the statutory penalties set forth in § 1112 is beyond the statutory framework for remedies available to an employee who was not paid for his services. The Department of Labor, as the regulatory agency, is the entity entitled to pursue and obtain the statutory civil penalties. The agency declined to take enforcement action because the employer provided “substantial

¹*Rypac Packaging Machinery Inc. v. Coakley*, 2000 WL 567895, at *13 (Del. Ch.).

documentation” to refute the employee’s claim.² There is a clear statutory delineation between remedies afforded to an employee and civil penalties. If the Delaware General Assembly intended to add a civil penalty on top of the unpaid wages, liquidated damages and attorneys’ fees provisions, it certainly knew how to do so.

Furthermore, §1112 is a strict liability provision available to the Department where claims are denied without a substantial basis. Its language does not require a wilful or wanton or recklessly indifferent act by an employer. Nothing supports the notion that the legislature intended to have civil penalties function like punitive damages, as Plaintiff suggests.

For these reasons, Plaintiff is awarded unpaid wages in the amount of \$624.16, and liquidated damages in the amount of \$624.16, for a total amount of \$1,248.32, together with lawful interest. The special verdict awarding penalties of \$5,000 and \$1,000 under § 1112 is vacated. No civil penalties should be awarded, consistent with the preceding discussion and the conclusion that the Department is the proper entity to seek civil penalties.

Plaintiff requests \$584.50 in costs, pursuant to Super. Ct. Civ. R. 54. That motion is granted. The costs would have been incurred without the civil penalty claim.

Also, Plaintiff seeks to recover \$6,400 in attorneys fees for 32 hours of attorney time billed at \$200 per hour, pursuant to 19 *Del. C.* § 1113(c). Defendant argues that the award should be reduced as Plaintiff was not completely successful. Another objection is made that the amount requested in excess of \$6000 is disproportionate to the modified judgment of \$1,248.32. No question is raised about the number of hours spent to prepare for and attend trial nor to the

²See Letter from Lori Greenhouse of the Department of Labor, dated June 5, 2008, to Antoniel Rodas informing him that, given the employer’s refutation, his case was “administratively closed,” but that he had the right to pursue his claim at his own expense.

hourly rate.

Upon review, no more than 1 ½ hours should be deducted for the lack of success on the civil penalty claim. This aspect of the case was minor. The case was contested; Defendant tested Plaintiff's resolve, and Defendant should not be able to complain about the risks resulting from litigation. Defendant did not attempt to mitigate them by making an offer of judgment under Super. Ct. Civ. R. 68.

Nor should the fees be reduced because of the difference in the judgment and request.³ One purpose of 19 *Del. C.* § 1113 (c) is to provide employees with relief to redress arbitrary actions of employers who have stronger economic positions. Without reasonable attorneys fees, employees would not be able to find lawyers to try cases of this nature where the amounts involved are relatively small, as compared, for example, to personal injury litigation that justifies contingent rather than fixed fee compensation.

With this background, an award of \$6,100 is reasonable and consistent with Professional Conduct Rule 1.5(a). Labor and skill were required. Ms. Stevens' time was taken away from other clients. The hourly rate was reasonable. Ms. Stevens achieved substantial success in recovering unpaid wages and vacation pay. She enjoys a good reputation in the legal community. While Plaintiff may have sought recovery of more vacation pay, the effort to get any of it was substantially the same and disputed.

³See *Mazut v. Colonial Park Properties, Inc.*, 2004 WL 422029 (9th Cir.)(affirming award of attorneys fees of \$13,032 where judgment was for \$830.57 in compensatory damages, which was more than nominal damages, and Mazut's limited success did not mandate greater diminution in fees in a Fair Labor Standards Act case).

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary