

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

CHESTER MARSHALL and	)	
RICHARD WHITBY	)	
	)	
Plaintiffs,	)	
	)	Case No. 3:10-cv-11-DJW
v.	)	
	)	
AMSTED RAIL COMPANY, INC.,	)	
	)	
Defendant.	)	

**FINAL PRETRIAL ORDER**

This matter is before the Court for a Final Pretrial Conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure:

**COUNSEL FOR PLAINTIFFS:**

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## **I. NATURE OF THE CASE**

This case involves a claim for unpaid wages under the Fair Labor Standards Act. Defendant Amsted Rail Company manufactures freight cars and locomotive components at its steel foundry and manufacturing facility in Granite City, Illinois. In this case, Chester Marshall and Richard Whitby allege that they were paid based on their scheduled shifts rather than the time they actually spent working, and that they were not paid for the time they spent working before and after their scheduled shifts. Plaintiffs seek their unpaid regular and overtime wages. Amsted denies Plaintiffs' allegations.

## **II. JURISDICTION**

A. This is an action for damages.

B. The jurisdiction of the Court is not disputed and is based on the federal question statute, 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

## **III. UNCONTROVERTED FACTS**

The following facts are stipulated to by the parties:

1. Defendant Amsted Rail Company is a steel and train parts manufacturing company that operates the foundry and manufacturing facility at issue in this case, in Granite City, Illinois.
2. Plaintiff Chester Marshall has been employed by Amsted during the applicable statute of limitations as an hourly-paid chipper, leadman, and foreman/instructor.
3. Plaintiff Richard Whitby was formerly employed by Amsted during the applicable statute of limitations as an hourly-paid chipper inspector, laborer, and mold processor.
4. During the times at issue in this case, Amsted classified Plaintiffs as non-exempt, hourly employees.
5. Plaintiffs are employees covered by the Fair Labor Standards Act.

## **IV. AGREED TO ISSUES OF LAW**

The parties agree that the following are the issues to be decided by the Court:

1. Whether Plaintiffs are entitled to liquidated damages.

2. The proper calculation of purported overtime damages, specifically:
  - a. The proper divisor for calculation of the regular rate (i.e. whether it is the amount of time Plaintiffs contend they worked—clock ring hours—or the amount of time Plaintiffs were paid for).
  - b. Whether any alleged damages should be computed at .5 times the regular rate—the “half-time”—or whether they should be calculated at 1.5 times the regular rate; and
  - c. Whether and to what extent Plaintiffs can claim damages for time worked in weeks where the clock rings reflect that they worked for more than 40 hours but where Defendant’s pay record reflects that they were paid for working under 40 hours.

## V. WITNESSES

### A. List of witnesses plaintiffs expect to call, including experts:

1. Robert Offerman, expert witness
2. Chester Marshall
3. Richard Whitby
4. Aaron Brookins
5. Wayne Luce
6. Peggy Reynolds
7. Chris Dockery
8. Any witnesses identified by Defendant

### B. List of witnesses defendant expects to call, including experts:<sup>1</sup>

1. Wayne Luce
2. Peggy Reynolds
3. Chris Dockery
4. Matt Modrovsky, supervisor
5. Kevin Jordan , supervisor
6. Joel Grinston, supervisor
7. Neil Huff, supervisor
8. George Smith, supervisor
9. Ed Self, supervisor
10. Ralph Gore
11. Larry Watson

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<sup>1</sup> In the event that any of Defendant’s witnesses are unavailable to testify pursuant to Fed. R. Civ. P. 32(b)(4), Defendant will request that the Court allow portions of depositions transcripts to be read into the record at trial.



**IT IS SO ORDERED.**

**DATED:** February \_\_, 2013

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**Donald G. Wilkerson**  
**United States Magistrate Judge**

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