

RECEIVED
NOV 21 1996
STATE OF CALIFORNIA
LABOR COMMISSIONER
SACRAMENTO

#1202
FILED
SUPERIOR & MUNICIPAL COURTS
PLACER COUNTY CALIFORNIA
NOV 20 1996
CARL DePIETRO
EXECUTIVE OFFICER & CLERK
BY A. EICHENHOEFER Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER
APPELLATE DEPARTMENT

et al.,
Plaintiffs/Appellants,
vs.

NO.
Consolidated with

OPINION

Defendant/ Respondent.

_____ /
The Department of Labor Standards Enforcement, representing plaintiffs, appeals from a judgment of the trial court, in which the court granted back wages to plaintiffs, but denied penalty wages and attorneys' fees. The issues on this appeal are the denial of penalty wages and attorneys' fees. We shall reverse and remand to the trial court.

History of the Actions:

In each of these consolidated actions, the plaintiffs claim that they are due unpaid wages from their employer, defendant
Hearings were held in front of the Labor Commissioner, and the Commissioner awarded back wages, penalty wages, and interest.

Defendant then sought de novo review in the trial court pursuant Labor Code §98.2. The trial was held on stipulated facts. Defendant conceded that back wages were due and unpaid. The contested issue before the trial court was whether or not plaintiffs were entitled to penalty wages pursuant to Labor Code §203. Defendant argued that he was not liable for penalty wages, since his failure to pay plaintiffs was not "willful" within the meaning of §203, in that he could not pay plaintiffs until he was paid by his general contractor. The trial court granted back wages to plaintiffs, but denied an award of penalty wages, on the ground that defendant's failure to pay was not willful.

In addition, the plaintiffs requested an award of attorneys' fees pursuant to Labor Code §98.2(b), which provides for an award of fees against the party filing an unsuccessful appeal from the Labor Commissioner's decision. The trial court denied this request, on the ground that the only contested issue before the trial court was that of penalty wages, and on that issue, defendant was successful.

Discussion:

Labor Codes §203 provides that if an employer "willfully fails to pay" wages, the employer shall be liable for penalty wages. Here, defendant argues that his failure to pay was not willful, that he simply was unable to pay plaintiffs until he was paid by his general contractor. However, the case law is clear that evil motive is irrelevant to the interpretation of "willful" in §203. All that is required is that the failure to pay be

intentional. Davis v. Morris (1940) 37 Cal. App. 2d 269; Hale v. Morgan (1978) 22 Cal. 3d 388. Defendant herein told the plaintiffs that he would pay them as soon as he was paid. This type of "conditional payment" has been rejected. Zaremba v. Miller (1980) 113 Cal. App. 3d Supp. 1. By hiring an employee, an employer represents that he has the ability to pay the employee. Moreover, the court notes that in Labor Code §206, the Legislature specifically provided that ability to pay is a prerequisite to "willful" failure to pay undisputed wages. The absence of such language in §203 is telling. Therefore, the court finds that defendant is liable for penalty wages pursuant to Labor Code §203.

More problematic, however, is the issue of attorneys' fees incurred by plaintiffs in the trial court after defendant's appeal of the Labor Commissioner's ruling. Labor Code §98.2(b) provides:

If the party seeking review by filing an appeal to the justice, municipal, or superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorneys' fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal.

The issue therefore is whether the defendant was "unsuccessful" in his appeal of the Labor Commissioner's ruling. Plaintiffs argue that defendant was unsuccessful because, in spite of the trial

court's denial of penalty wages, the trial court did award back wages, which affirmed the Labor Commissioner's ruling. Defendant counters by arguing that on the only issue that was appealed from (penalty wages), defendant was successful, in that the trial court reversed the Commissioner's findings.

In Cardenas v. Mission Industries (1991) 226 Cal. App. 3d 952, the court held that an appealing party is unsuccessful in its appeal if a judgment in any amount is rendered, even if the amount is smaller than that awarded by the Labor Commissioner. In that case, the trial court awarded the employee an amount less than that awarded by the Commissioner, and therefore, the employer argued on appeal, the employer was successful for purposes of §98.2. The court of appeal held that because an appeal to court of a Labor Commissioner decision is a trial de novo, the trial court proceedings constitute a new trial and the findings of the Commissioner are entitled to no weight. Similarly, in Triad Data Services v. Jackson (1984) 153 Cal. App. 3d Supp. 1, the same result was reached.

We reject the argument that the only issue appealed from was that of the award of penalty wages. The court notes that in the notice of appeal filed in the trial court on March 17, 1995, the defendant appeals from the entire award of the Labor Commissioner, not just the issue of penalty wages. Moreover, as noted in the Triad and Cardenas cases, an appeal from such an order is a de novo trial, opening up all of the issues that were tried by the Labor Commissioner; the Commissioner's findings are given no weight. Cardenas, supra, 226 Cal. App. 3d at 960. Therefore, we

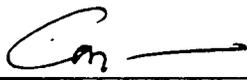
find that the trial court erred in denying plaintiffs' request for attorneys' fees pursuant to §98.2(b).

Order:

For the foregoing reasons, the judgment of the trial court is reversed as to the issues of penalty wages and attorneys' fees, and this action is remanded to the trial court for findings as to the amount of penalty wages and attorneys' fees owing to plaintiffs.

Dated: November 20, 1996

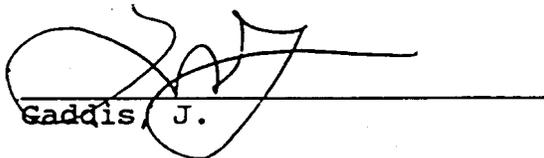
BY THE COURT:



Couzens, P.J.



Roeder, J.



Gaddis, J.