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Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 79815-0
Title of Case: Stevens v. Brink's Home Sec., Inc.
File Date: 10/18/2007
Oral Argument Date: 05/17/2007

SOURCE OF APPEAL

Appeal from King County Superior Court
02-2-32464-9
Honorable Palmer Robinson

JUSTICES

Gerry L. Alexander Signed Majority
Charles W. Johnson Signed Majority
Barbara A. Madsen Concurrence Author
Richard B. Sanders Dissent Author
Bobbe J. Bridge Signed Majority
Tom Chambers Signed Majority
Susan Owens Majority Author
Mary E. Fairhurst Signed Majority and concurrence of Madsen, J.
James M. Johnson Signed Dissent

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DAVID STEVENS, DONALD A. GOINES,)
and JEFFREY R. PORTER, on behalf of all)
others similarly situated,)
)
Respondents,)
No. 79815-0)
)
v.)
En Banc)
)
BRINK'S HOME SECURITY, INC.,)
)
Appellant,)
)
and)
)

EDDIE KEELEY AGNICH (a/k/a SKIP)
KEELEY) and HOWARD GOAKEY,)
)
Defendants.) Filed
October 18, 2007)
)

OWENS, J. -- A class comprised of 69 installation and service technicians

(Technicians) filed an action against employer Brink's Home Security, Inc. (Brink's).

Technicians alleged that Brink's violated the Washington Minimum Wage Act

(MWA), chapter 49.46 RCW, by failing to compensate Technicians for time they

spent driving company trucks from their homes to the first jobsite and back from the

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last jobsite (drive time). On summary judgment, the trial court held that Brink's was

liable for the drive time claim. Brink's argues that the trial court erred in granting

summary judgment on the drive time claim and in granting prejudgment interest,

attorney fees, and costs. Brink's also challenges the rate at which the trial court

assessed prejudgment and postjudgment interest. We affirm the trial court.

FACTS

This case arises from Technicians' employment with Brink's in the Puget

Sound area between November 1999 and July 2005. Technicians installed and

serviced home security systems. Brink's supplied Technicians with pickup trucks

bearing the Brink's logo and configured to carry the necessary tools and equipment.

Brink's compensated all Technicians for the time spent driving the Brink's

trucks between jobsites. For the time spent driving to the first jobsite and from the last

jobsite, Brink's offered Technicians a choice between two programs. Under the first

option, Technicians could drive their personal vehicles from their homes to the Brink's

office in Kent and pick up the Brink's trucks at the Kent office. Under this option,

Brink's paid Technicians for the time spent driving the Brink's trucks from the Kent

office to the first jobsite and from the last jobsite to the Kent office. Brink's did not

pay them for the time spent commuting between their homes and the Kent office.

The second option—the subject of this litigation—allowed Technicians to keep

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the Brink's trucks at their homes and drive them directly to and from the first and last

jobsites without stopping at the Kent office. Brink's named this option the home

dispatch program (HDP). Technicians participating in the HDP received their daily

job assignments through voice mail or handheld computers. Brink's generally

compensated Technicians in the HDP for any drive time in excess of 45 minutes from

Technicians' homes. Between September 2002 and January 2005, Brink's

implemented an interim HDP policy, wherein Brink's paid Technicians for drive time

to the first jobsite and from the last jobsite only if the site was located more than 45

minutes from both Technicians' homes and the Brink's office in Kent. If the

particular drive qualified for compensation under this policy, Brink's paid Technicians

only for drive time in excess of 45 minutes.

In November 2002, Technicians filed a class action in King County Superior

Court. Technicians alleged in part that Brink's violated the MWA by failing to

compensate Technicians for all drive time under the HDP. In September 2005, the

trial court granted in part Technicians' motion for partial summary judgment, ruling

that Brink's was liable for the drive time claim. Specifically, the trial court held that

the time Technicians spent driving from home to the first jobsite and from the last

jobsite back to their homes in company-issued trucks was work time under the MWA.

In January 2006, the trial court granted Technicians' second motion for partial

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summary judgment, concluding that the class members were entitled to
prejudgment

interest and any back pay damages awarded in the case. At trial, the
jury awarded

Technicians back pay damages for the drive time claims. The court
awarded

prejudgment and postjudgment interest at the rate of 12 percent per
annum and also

awarded attorney fees and costs. Brink's appealed and we granted
Brink's motion to

transfer the case from Division One of the Court of Appeals.

Issues

A. Did the trial court err in holding that Brink's violated the
MWA by failing to

compensate for drive time?

B. Did the trial court err in awarding prejudgment interest?

C. Did the trial court err in fixing the prejudgment and
postjudgment interest

rate at 12 percent?

D. Are Technicians entitled to attorney fees and costs?

Analysis

Standard of Review. On review of summary judgment, we engage in
the same

inquiry as the trial court and view the facts and all reasonable
inferences in the light

most favorable to the nonmoving party. Fairbanks v. J.B. McLoughlin
Co., 131

Wn.2d 96, 101, 929 P.2d 433 (1997). Summary judgment is appropriate
when there

are no genuine issues of material fact and the moving party is entitled
to judgment as a

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matter of law.? Cerrillo v. Esparza, 158 Wn.2d 194, 200, 142 P.3d 155
(2006);

accord CR 56(c).

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A. Drive Time Compensation

Under the MWA, employees are entitled to compensation for regular hours

worked and for any overtime hours worked. See RCW 49.46.020, .130; see also

Bostain v. Food Express, Inc., 159 Wn.2d 700, 708-09, 153 P.3d 846 (2007) (Subject

to specific exemptions, the MWA requires employers to pay their employees . . .

overtime pay for the hours they work over 40 hours per week?). This case requires us

to determine whether Technicians' drive time constitutes hours worked within the

meaning of the MWA.

The legislature has not defined hours worked or addressed the compensability

of employee travel time. Accordingly, WAC 296-126-002(8) governs the determination of whether drive time is compensable.¹ Under WAC 296-126-002(8),

"hours worked" . . . mean[s] all hours during which the employee is authorized or

required . . . to be on duty on the employer's premises or at a prescribed work place."

"Where a regulation is clear and unambiguous, words . . . are given their plain and

ordinary meaning unless a contrary intent appears." Silverstreak, Inc. v. Dep't of

Labor & Indus., 159 Wn.2d 868, 881, 154 P.3d 891 (2007). Thus, to determine

¹ Both parties and amici curiae agree that WAC 296-126-002(8) is the appropriate standard. See Br. of Appellant at 18-19; Br. of Respondents at 25-26; Br. of Amici at 7-8, 17. Although the parties alternatively propose several standards for assessing whether Technicians' drive time is compensable, resort to these alternative standards is unnecessary in this case because the Department of Labor and Industries formally defined "hours worked" in WAC 296-126-002(8).

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whether drive time is compensable, we must examine the undisputed facts and assess

whether Technicians are "on duty" at the "employer's premises" or "prescribed work

place" within the meaning of WAC 296-126-002(8).

In Anderson v. Department of Social & Health Services, 115 Wn. App. 452, 63

P.3d 134, review denied, 149 Wn.2d 1036 (2003), the Court of Appeals evaluated

whether employee travel time was compensable under WAC 296-126-002(8). Id. at

456. Under the WAC standard, the court held that state employees who worked at the

Special Commitment Center on McNeil Island were not entitled to compensation for

time they spent traveling to work on the state/employer-provided ferry. Id. The

employees were not "on duty" within the meaning of WAC 296-126-002(8) because

"[d]uring passage, plaintiffs engage in various personal activities, such as reading,

conversing, knitting, playing cards, playing hand-held video games, listening to CD

(compact disc) players and radios, and napping. They perform no work during the

passage." Id. at 454. The court also concluded that the employees were not on the

Special Commitment Center's "premises" or "prescribed work place" during their

commute for purposes of WAC 296-126-002(8). Id. at 456.

As in Anderson, we must evaluate the extent to which **Brink's** restricts

Technicians' personal activities and controls Technicians' time to determine whether

Technicians are "on duty" for purposes of WAC 296-126-002(8). Here, **Brink's**

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company policy strictly controls Technicians' use of the Brink's trucks, specifically

mandating that they use the trucks "for company business only."
Clerk's Papers (CP)

at 74. To that end, Technicians may not carry non-Brink's employees as passengers in

the trucks. Id. Company policy also requires Technicians to wear seat belts, obey

traffic laws, not park haphazardly, lock the vehicle at all times, and never carry

alcohol. Id. Unlike ordinary commuters who regularly run errands during their

commutes and carry additional passengers, Brink's policy prohibits Technicians from

engaging in personal activities while driving the Brink's trucks. See id. at 92

(explaining that Technicians cannot use the Brink's trucks for shopping). Further, in

contrast to ordinary commuters and the state employees in Anderson, Technicians

receive jobsite assignments at home via voice mail or handheld computer. Id. at 479-

80, 484, 488, 494. They must spend time writing down the assignments and mapping

the best route to reach their installation and service locations before beginning their

drive. Id. In addition to the restrictions on Technicians' drive time, Technicians

remain "on duty" during the drive. Supervisors may redirect Technicians under the

HDP while en route to and from their homes to assist with other jobs or answer service

calls. E.g., id. at 273, 281-82.

The undisputed facts establish that Technicians were "on duty" during the drive

time for purposes of WAC 296-126-002(8). Technicians are performing company

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business during the drive time because Brink's strictly controls the drive time,

prevents Technicians from using the trucks for personal business, and requires

Technicians to remain available to assist at other jobsites while en route to and from

their homes. Thus, we must next determine whether the Brink's trucks constitute the

employer's prescribed work place? under the WAC definition of "hours worked."

Driving the trucks is an integral part of the work performed by Technicians.

The nature of Brink's business requires Technicians to drive the Brink's trucks to

reach customers' homes and carry the tools and equipment necessary for servicing and

installing home alarm systems. Technicians in the HDP report to the Kent office only

once each week to refill supplies and attend the weekly company meeting. CP at 61

n.1. In addition, the Brink's trucks serve as the location where Technicians often

complete work-related paperwork because company policy dictates that employees

must complete all paperwork either at the customer's home or in the Brink's truck.

See id. at 668. Finally, like a work premises, Brink's requires employees in the HDP

to "ensure that the vehicle is kept clean, organized, safe and serviced." Id. at 74.

Based on these undisputed facts, we hold that the Brink's trucks constitute a

"prescribed work place" under WAC 296-126-002(8).

We conclude that Technicians were "on duty" at a "prescribed work place"

during the drive time and therefore entitled to compensation under the MWA for the

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hours worked. Accordingly, we affirm the trial court's grant of
Technicians' motion

for summary judgment on the drive time claims.

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B. Award of Prejudgment Interest

Brink's contends that the trial court erred by awarding Technicians prejudgment

interest for "all back wages . . . on unpaid hours worked." CP at 828. Courts award

prejudgment interest when claims are liquidated. Hansen v. Rothaus, 107 Wn.2d 468,

472, 730 P.2d 662 (1986). A liquidated claim exists when "the amount of

prejudgment interest can be determined from the evidence with exactness and without

reliance on opinion or discretion." Bostain, 159 Wn.2d at 723 (citing Hansen, 107

Wn.2d at 472). "A dispute over the claim, in whole or in part, does not change the

character of a liquidated claim to unliquidated." Id. (quoting Hansen, 107 Wn.2d at

472). In Bostain, we affirmed the trial court's award of prejudgment interest when the

plaintiffs submitted objective evidence of the overtime due and the basis for the

calculations. See id.

Here, Brink's contends that the amount owed on the drive time claim required a

jury to rely on opinion or discretion and was therefore unliquidated. At trial, the jury

relied on an expert's testimony calculating drive times with the software program

"Mappoint." Brink's contends this data was insufficient to constitute a liquidated

claim entitled to prejudgment interest.

The Court of Appeals recently rejected a similar argument regarding unpaid

overtime hours for employees improperly exempted under the MWA. McConnell v.

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Mothers Work, Inc., 131 Wn. App. 525, 536, 128 P.3d 128 (2006)
(?Damages are

liquidated if the evidence furnishes data that, if believed, made it possible to compute

the amount owed with exactness.?). In McConnell, the court determined that the

overtime hours were liquidated because the overtime payments were ?determinable by

computation? based on the hours worked and the fixed hourly rate. Id. at 536.

Similarly, the drive time payments in the instant case were determinable based on the

drive times calculated with Mappoint and Technicians? actual wage rates. Because the

jury did not have to rely on ?opinion or discretion? to calculate the amount, we affirm

the trial court?s determination that the drive time claim was liquidated.

C. Prejudgment and Postjudgment Interest Rate

Brink's also challenges the trial court?s prejudgment and postjudgment interest

award at the rate of 12 percent as provided in RCW 19.52.020(1). **Brink**'s contends

that the trial court should have assessed the lower interest rate (two percent over the

six-month treasury bill rate) provided in RCW 4.56.110(3), which applies to

?[j]udgments founded on the tortious conduct of individuals or other entities.? This

statute does not define ?tortious conduct.?

We have not addressed the question of whether violations of the MWA

constitute ?tortious conduct? for purposes of determining whether RCW 4.56.110(3)

affects the interest rate on such judgments. We have, however, decided that MWA

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violations do not constitute "tortious conduct" in determining the appropriate statute

of limitations. Seattle Prof'l Eng'g Employees Ass'n v. Boeing Co.,
139 Wn.2d 824,

838, 991 P.2d 1126, 1 P.3d 578 (2000) (SPEEA). In SPEEA, we held that
MWA

claims are more akin to unjust enrichment claims than to tort claims;
"in instituting

this action, the employees are in essence seeking recovery under an
obligation imposed

by law, and the WMWA, for Boeing's unjust enrichment (i.e., receiving
the benefit of

the employees' work without paying for the work.).? Id. We concluded
that the

employees' claims for the unpaid work were subject to the statute of
limitations for

implied contracts, not tortious conduct.

Technicians in the present case sought damages under the MWA,
essentially

claiming that Brink's was unjustly enriched by not paying them for
hours worked. In

accordance with SPEEA, we regard the nature of Technicians' claims as
implied

contracts, not tortious conduct. Because the judgment was not "founded
on tortious

conduct," we affirm the trial court's assessment of the 12 percent
interest rate.

D. Attorney Fees and Costs

We affirm the trial court's order granting partial summary
judgment for the

drive time claim and the trial court's award of attorney fees and costs
for that issue. In

addition, we grant Technicians' request for attorney fees and costs
incurred from this

appeal under RAP 18.1, RCW 49.46.090(1) (requiring employer to pay
reasonable

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attorney fees and costs when employer fails to pay the employee
required wages), and

RCW 49.48.030 (providing for attorney fees when employee successfully
recovers

judgment for wages and salary).

CONCLUSION

We affirm the trial court's rulings. Under the WAC definition
of "hours

worked," we conclude that Technicians were entitled to summary judgment
on the

drive time issue because the uncontested facts establish that
Technicians in the HDP

were "on duty" at a "prescribed work place" during the drive time. We
also affirm the

trial court's award of prejudgment interest, the prejudgment and
postjudgment interest

rate, and the award of attorney fees and costs. Finally, we award
Technicians attorney

fees and costs for their appeal.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Gerry L. Alexander
Tom Chambers

Justice

Justice Charles W. Johnson

Mary E. Fairhurst

Justice

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Justice Bobbe J. Bridge