

In the Matter of

DUANE KNOWLDEN

Case No. 152-01

Final Order of the Commissioner Jack Roberts

Issued March 20, 2002

SYNOPSIS

Respondent willfully failed to pay five employees all wages they earned. The Commissioner ordered Respondent to pay the employees their unpaid wages plus civil penalty wages. ORS 652.140, ORS 652.150, ORS 653.025, ORS 653.055, OAR 839-001-0470, OAR 839-020-0010.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on January 29, 2002, in Hearings Room 1004, Portland State Office Building, Portland, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter David K. Gerstenfeld, an employee of the Agency. Wage claimants Vernon Gonzales, Robert Zbinden, and John DeZell were present throughout the hearing and not represented by counsel. Respondent Duane Knowlden did not appear at the hearing and no one appeared on his behalf.

In addition to claimants Gonzales, Zbinden, and DeZell, the Agency called as witnesses: Anthony Saa, another wage claimant; and Kathleen Johnson, Agency compliance specialist.

The forum received into evidence:

a) Administrative exhibits X-1 through X-9 (submitted or generated prior to hearing);

b) Agency exhibits A-1 through A-21 (submitted prior to hearing).

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On November 29, 2000, Claimant Zbinden filed a wage claim with the Agency alleging that Respondent had employed him and failed to pay wages earned and due to him.

2) On December 5, 2000, Claimants Gonzales and Newman filed wage claims with the Agency alleging that Respondent had employed them and failed to pay wages earned and due to them.

3) On January 16, 2001, Claimant DeZell filed a wage claim with the Agency alleging that Respondent had employed him and failed to pay wages earned and due to him.

4) On February 9, 2001, Claimant Saa filed a wage claim with the Agency alleging that Respondent had employed him and failed to pay wages earned and due to him.

5) At the time they filed their wage claims, Claimants assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimants, all wages due from Respondent.

6) Claimants brought their wage claims within the statute of limitations.

7) On March 16, 2001, the Agency issued Order of Determination No. 00-5220 based upon the wage claim filed by the claimants and the Agency's investigation. The Order of Determination alleged that Respondents "Duane Knowlden individually and Spotless Theatre Cleaning Co., an Arizona corporation," owed a total of \$1,961.00ⁱ

in unpaid wages and \$8,040.00ⁱⁱ in civil penalty wages, plus interest, and required that, within 20 days, Respondents either pay these sums in trust to the Agency, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law.

8) Respondents were served by certified mail on March 19, 2001.

9) On April 6, 2001, Respondent Duane Knowlden filed an answer and request for hearing. His answer acknowledged "We may owe [Gonzales] a total of 30 hours" and alleged the following defenses:

a) Claimant DeZell was never employed by Respondents;

b) Claimant Gonzales was paid \$234.00 in gross wages;

c) Claimant Newman's last day of employment was October 21, 2000, and he was paid \$222.00 in gross wages;

d) Claimant Saa was hired on October 24, 2000, and was paid \$97.50 gross wages;

e) Claimant Zbinden only worked November 6 and 7, 2000, and was paid \$65.00 gross wages.

10) On June 21, 2001, 2000, the Agency filed a "BOLI Request for Hearing" with the forum.

11) On July 11, 2001, the Hearings Unit issued a Notice of Hearing to Respondents, the Agency, and the Claimants stating the time and place of the hearing as January 29, 2002, at the Portland State Office Building, 800 NE Oregon Street, 10th Floor Hearings Room, Portland, Oregon. Together with the Notice of Hearing, the forum sent a copy of the Order of Determination, a document entitled "Summary of Contested Case Rights and Procedures" containing the information required by ORS 183.413, and a copy of the forum's contested case hearings rules, OAR 839-050-000 to 839-050-0440.

12) On September 7, 2001, the Agency notified the forum that a Final Order by Default had been issued against Spotless Theatre Cleaning Co. by the Agency

based on its failure to file an answer and request for hearing, and the hearing would only involve Duane Knowlden (hereinafter "Respondent").

13) On September 7, 2001, the Agency filed a motion for a discovery order seeking nine categories of documents and responses to four written interrogatories. The Agency provided a statement describing the relevancy of the documents and responses sought, as well as documentation that the same documents and information sought had been requested on an informal basis and not provided.

14) On September 11, 2001, the forum issued an interim order notifying Respondent that he must respond to the Agency's motion within seven days after service, pursuant to OAR 839-050-0150.

15) On September 18, 2001, the Agency filed a motion to amend the Order of Determination to correct the wages sought for Claimant Gonzales from \$189.50 to \$249 and to correct the starting date for when those wages were earned from October 16, 2000, to October 5, 2000.

16) On September 21, 2001, the forum granted the Agency's motion for a discovery order, having received no objections from Respondent.

17) On October 1, 2001, the forum granted the Agency's motion to amend.

18) On October 1, 2001, the forum ordered the Agency and Respondent each to submit a case summary including: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a brief statement of the elements of the claim (for the Agency only); and a statement of any agreed or stipulated facts and any wage and penalty calculations (for the Agency only.) The forum ordered the participants to submit case summaries no later than January 18, 2002, and notified them of the possible sanctions for failure to comply with the case

summary order. In addition, the forum enclosed a form designed to assist unrepresented respondents in filing a case summary.

19) The Agency filed its case summary, with attached exhibits, on January 18, 2002.

20) On January 29, 2002, at 10 a.m., Respondent did not appear for the hearing. The ALJ went on the record and announced that he would wait until 10:30 a.m., pursuant to OAR 839-050-0330, to commence the hearing and that Respondent would be in default if he did not make an appearance by that time.

21) At 10:30 a.m., Respondent had not appeared at the hearing. Pursuant to OAR 839-050-0330, the ALJ declared Respondent to be in default. The ALJ then explained the issues involved in the hearing, the matters to be proved, and the procedures governing the conduct of the hearing.

22) The evidentiary record of the hearing closed on January 29, 2002.

23) On February 25, 2002, the ALJ issued a proposed order that notified the participants that they were entitled to file exceptions to the proposed order. No exceptions were filed.

FINDINGS OF FACT – THE MERITS

1) During all times material herein, Respondent Duane Knowlden owned and operated Spotless Theatre Cleaning Company, a business that contracted to clean some movie theaters in Portland, Oregon, for Regal Cinemas.

2) Claimant Gonzales was employed by Respondent from October 16-28, 2000. He worked a total of 69 hours at the agreed rate of \$7.00 per hour. Respondent did not pay him at all for 30 hours that he worked and paid him only \$6.00 per hour for another 39 hours that he worked. He earned a total of \$483.00 and has been paid \$234.00 in gross wages, leaving \$249.00 in unpaid wages. There was no evidence as to the reason why Gonzales left Respondent's employment.

3) Oregon's minimum wage rate in 2000 was \$6.50 per hour.

4) Claimant Saa was employed by Respondent during October 2000 at the rate of \$6.50 per hour. He was not able to testify with any specificity about the total number of hours he worked. Consequently, the forum has only credited him with having worked the 35 hours that he documented on a timecard signed by his supervisor and an additional 15 hours for which Respondent paid him for his work. He is owed \$227.50 in unpaid wages for the 35 hours of documented work. Saa quit Respondent's employment.

5) Claimant Zbinden was employed by Respondent from November 6-20, 2000, at the wage rate of \$6.50 per hour. He contemporaneously documented having worked 54 hours in total, earning \$351.00. He has been paid only \$65.00 in gross wages and is owed \$286.00 in unpaid wages. He was discharged by Respondent.

6) Claimant Zbinden was sick on November 21, 2000, and unable to work for Respondent. He asked Michael Stevens, his immediate supervisor at Respondent's job site, if John DeZell, who lived at Zbinden's residence, could work for him. Stevens approved this arrangement. Claimant DeZell worked eight hours for Respondent on November 21, 2000, with Stevens' knowledge. Claimant DeZell has been paid nothing for his work and is owed \$52.00 in unpaid wages.

7) Claimant Newman was employed by Respondent in October 2000, at the wage rate of \$6.50 per hour. In his wage claim, he claimed that Respondent owed him \$1,119.50 in unpaid wages. However, Newman did not testify at the hearing in support of his wage claim. There was credible testimony that he was employed by Respondent, a fact which Respondent also admitted. However, there was no evidence, other than a timecard filled out by Newman, without a supervisor's signature, to support his claim for the amount of wages claimed or his alleged wage rate of \$7.00 per hour.ⁱⁱⁱ

Consequently, the forum has relied on the facts admitted by Respondent in computing his unpaid wages. Those admitted facts are that he worked at least 37 hours and was paid \$204.02 in gross wages, computed at the wage rate of \$6.00 per hour. He has not been paid the remaining \$18.50 in gross wages that would bring his wage rate to \$6.50 per hour^{iv} and is owed \$18.50 in unpaid wages. Newman was discharged by Respondent.

8) Civil penalty wages for Claimants Saa, Zbinden, DeZell, and Newman, computed in accordance with ORS 652.150 and OAR 839-001-0470 (\$6.50 per hour x 8 = \$52.00 x 30 days), equal \$1560.00.

9) Civil penalty wages for Claimant Gonzales, computed in accordance with ORS 652.150 and OAR 839-001-0470 (\$7.00 per hour x 8 = \$56.00 x 30 days), equal \$1680.00.

ULTIMATE FINDINGS OF FACT

1) Respondent Duane Knowlden at all times material herein owned and operated Spotless Theatre Cleaning Co., a business that engaged the personal services of one or more employees in Portland, Oregon.

2) Respondent suffered or permitted Claimants Saa, Zbinden, DeZell, and Newman to work for him in October and November 2000.

3) Oregon's minimum wage rate in 2000 was \$6.50 per hour.

4) Respondent engaged the personal services of Claimant Gonzales to perform work for him in October 2000.

5) Claimant Gonzales was employed by Respondent from October 16-28, 2000. He worked a total of 69 hours at the agreed rate of \$7.00 per hour. Respondent did not pay him at all for 30 hours that he worked and paid him only \$6.00 per hour for another 39 hours that he worked. He earned a total of \$483.00 and has been paid \$234.00 in gross wages, leaving \$249.00 in unpaid wages.

6) Claimant Saa was employed by Respondent during October 2000 at the rate of \$6.50 per hour. He was only paid for 15 out of 50 hours that he worked and is owed \$227.50 in unpaid wages.

7) Claimant Zbinden was employed by Respondent from November 6-20, 2000, at the wage rate of \$6.50 per hour. He worked 54 hours in total, earning \$351.00. He has been paid only \$65.00 in gross wages and is owed \$286.00 in unpaid wages.

8) Claimant DeZell worked eight hours for Respondent on November 21, 2000, and has been paid nothing for his work. He is owed \$52.00 in unpaid wages, calculated at the wage rate of \$6.50 per hour.

9) Claimant Newman was employed by Respondent in October 2000, at the wage rate of \$6.50 per hour. He worked at least 37 hours and was paid \$204.02 in gross wages, computed at the wage rate of \$6.00 per hour. He is owed \$18.50 in unpaid wages.

10) Respondent's failure to pay Claimants' wages was willful and more than 30 days have passed since Claimants' wages became due.

11) Civil penalty wages for Claimants Saa, Zbinden, DeZell, and Newman, computed in accordance with ORS 652.150 and OAR 839-001-0470 ($\$6.50 \text{ per hour} \times 8 = \$52.00 \times 30 \text{ days}$), equal \$1560.00.

12) Civil penalty wages for Claimant Gonzales, computed in accordance with ORS 652.150 and OAR 839-001-0470 ($\$7.00 \text{ per hour} \times 8 = \$56.00 \times 30 \text{ days}$), equal \$1680.00.

CONCLUSIONS OF LAW

1) During all times material herein, Respondent was an employer and Claimants Saa, Zbinden, DeZell, and Newman were employees subject to the provisions of 652.310 to 652.405 and ORS 653.010 to ORS 653.055. During all times

material herein, Respondent was the employer of Claimant Gonzales and Claimant Gonzales was Respondent's employee. ORS 652.310.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondent herein. ORS 652.310 to 652.414, ORS 653.055(3).

3) ORS 653.025 provides, in pertinent part:

“* * *[F]or each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

“* * * * *

“(3) For calendar years after December 31, 1998, \$6.50. * * *”

Respondent was required to pay Claimants at least \$6.50 per hour for each hour they performed work for Respondent. Respondent owes Claimant Saa \$227.50, Claimant Zbinden \$286.00, Claimant DeZell \$52.00, Claimant Newman \$18.50, and Claimant Gonzales \$249.00.

4) At times material, ORS 652.140(1) and (2) provided:

“(1) Whenever an employer discharges an employee or where such employment is terminated by mutual agreement, all wages earned and unpaid at the time of such discharge or termination shall become due and payable not later than the end of the first business day after the discharge or termination.

“(2) When an employee who does not have a contract for a definite period quits employment, all wages earned and unpaid at the time of quitting become due and payable immediately if the employee has given to the employer not less than 48 hours' notice, excluding Saturdays, Sundays and holidays, of intention to quit employment. If notice is not given to the employer, the wages shall be due and payable within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the next regularly schedule payday after the employee has quit, whichever event first occurs.”

Respondent violated ORS 652.140(1) by failing to pay Claimants Newman and Zbinden all wages earned and unpaid by the end of the first business day after their discharge.

Respondent violated ORS 652.140(2) by failing to pay Claimants Saa, Gonzales, and

DeZell all wages earned and unpaid within five days, excluding Saturdays, Sundays and holidays, after they quit.

5) ORS 652.150 provides:

“If an employer willfully fails to pay any wages or compensation of any employee whose employment ceases, as provided in ORS 652.140 and 652.145, then, as a penalty for such nonpayment, the wages or compensation of such employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced; provided, that in no case shall such wages or compensation continue for more than 30 days from the due date; and provided further, the employer may avoid liability for the penalty by showing financial inability to pay the wages or compensation at the time they accrued.”

OAR 839-001-0470(1) provides:

“(1) When an employer willfully fails to pay all or part of the wages due and payable to the employee upon termination of employment within the time specified in OAR 839-001-0420, 839-001-0430 and 839-001-0440, the employer shall be subject to the following penalty:

“(a) The wages of the employee shall continue from the date the wages were due and payable until the date the wages are paid or until a legal action is commenced, whichever occurs first;

“(b) The rate at which the employee’s wages shall continue shall be the employee’s hourly rate of pay times eight (8) hours for each day the wages are unpaid;

“(c) Even if the wages are unpaid for more than 30 days, the maximum penalty shall be no greater than the employee’s hourly rate of pay times 8 hours per day times 30 days.”

Respondent is liable for \$1,560.00 in civil penalty wages under ORS 652.150 to Claimants Newman and Zbinden, computed by multiplying their hourly rate (\$6.50 per hour) x 8 hours per day x 30 days = \$1,560.00, for willfully failing to pay all wages or compensation to them when due as provided in ORS 652.140(1). Respondent is liable for \$1,560.00 in civil penalty wages under ORS 652.150 to Claimants Saa and DeZell, computed by multiplying their hourly rate (\$6.50 per hour) x 8 hours per day x 30 days = \$1,560.00, for willfully failing to pay all wages or compensation to them when due as provided in ORS 652.140(2). Respondent is liable for \$1,680.00 in civil penalty wages

under ORS 652.150 to Claimant Gonzales, computed by multiplying his hourly rate (\$7.00 per hour) x 8 hours per day x 30 days = \$1,680.00, for willfully failing to pay all wages or compensation to them when due as provided in ORS 652.140(2).

6) Under the facts and circumstances of this record, and according to the law applicable to this matter, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondent to pay claimants their earned, unpaid, due and payable wages and the civil penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

DEFAULT

Respondent failed to appear at hearing and the forum held him in default pursuant to OAR 839-050-0330. When a respondent defaults, the Agency must establish a prima facie case to support the allegations of the charging document. *In the Matter of Usra Vargas, 22 BOLI 212, 220 (2001)*. To establish a prima facie case supporting the wage claims in this case, the Agency must prove: 1) that Respondent employed Claimants; 2) any pay rate upon which Respondent and Claimants agreed, if it exceeded the minimum wage; 3) that Claimants performed work for Respondent for which they were not properly compensated; and 4) the amount and extent of work Claimants performed for Respondent. *Id.* at 220.

A. Respondent Employed Claimants.

Respondent admitted employing all of the Claimants except for DeZell. The credible testimony of DeZell and corroborating testimony of Zbinden was sufficient to establish that DeZell worked for Respondent for one day, with the knowledge and approval of Respondent's agent.

B. Claimants' Wage Rate.

The evidence is undisputed that three of the Claimants were hired at Oregon's minimum wage rate of \$6.50 per hour. The Agency alleged that claimant Newman and Gonzales were hired at the agreed rate of \$7.00 per hour, but provided no sworn testimony, affidavits, business records, or other reliable evidence that established Newman's rate. Consequently, the forum has computed Newman's unpaid wages at the minimum wage rate.^v Gonzales, on the other hand, testified credibly that Respondent agreed to pay him \$7.00 per hour as a supervisory employee, and the forum has calculated his unpaid wages at that rate.

C. Claimants Performed Work for Which They Were Not Properly Compensated.

1. Claimants Newman and Gonzales.

Respondent admitted that Newman worked 37 hours and that he was paid only \$6.00 per hour, \$.50 less than Oregon's minimum wage, for those hours. Respondent also admitted that Gonzales worked 69 hours and was only paid \$6.00 per hour for 39 of those hours and nothing for the remaining 30 hours.

2. Claimant Saa.

Saa credibly testified that he worked 35 hours for which he was not paid; this figure was also supported by a contemporaneous timecard that was signed by his supervisor.

3. Claimant Zbinden.

Like Saa, Zbinden credibly testified that he worked 44 hours for which he was not paid; this figure was also supported by his contemporaneous notes.

4. Claimant DeZell.

DeZell credibly testified that he worked one eight-hour shift for Respondent, and Respondent admitted having paid DeZell nothing, claiming that DeZell never worked for Respondent.

D. The Amount and Extent of Work Claimants Performed for Respondent.

In his answer, Respondent provided some records of the hours claimants worked and the pay they received, and the forum relied on those records to determine the amount of work performed by Gonzales and Newman because they were more reliable than evidence provided by the Agency. Based on those records, the forum concluded that Gonzales worked 69 hours and Newman worked 37 hours.

The forum has relied on the testimony of Saa, where it was supported by a contemporaneous timecard, to determine that Saa worked 50 hours in total for Respondent. Likewise, the forum has relied on the credible testimony of Zbinden and DeZell, supported by Zbinden's contemporaneous time record, to determine that Zbinden worked 54 hours. Finally, the forum has relied on the credible testimony of Zbinden and DeZell to determine that DeZell worked 8 hours.

RESPONDENT MUST PAY PENALTY WAGES TO ALL CLAIMANTS

The forum may award penalty wages where a respondent's failure to pay wages was willful. Willfulness does not imply or require blame, malice, or moral delinquency. Rather, a respondent commits an act or omission "willfully" if he or she acts (or fails to act) intentionally, as a free agent, and with knowledge of what is being done or not done. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976).

Respondent admitted not paying the minimum wage to Gonzales and Newman, and there was no evidence to show that Respondent acted other than intentionally and as a free agent in underpaying Gonzales and Newman.

Respondent denied having employed DeZell, but the credible testimony of DeZell and Zbinden established that Respondent employed DeZell with the knowledge and acquiescence of the Respondent's job site supervisor. Respondent, as an employer, had a duty to maintain an accurate record of DeZell's hours. *In the Matter of Norma Amezola*, 18 BOLI 209, 218 (1999). Respondent also had a duty to know the amount of wages due his employees. *Vargas*, at 222. Accordingly, the forum concludes that Respondent acted intentionally and as a free agent in employing DeZell, then failing to pay him.

Respondent does not contest that he employed Zbinden and Saa, only the number of hours that they worked. The forum has discredited Respondent's version of their hours worked and credited Zbinden and Saa with having worked 44 and 35 hours, respectively, for which they were not paid. There is no evidence that Respondent acted other than intentionally and as a free agent in not paying Zbinden and Saa for all of their hours worked.

Based on the foregoing, the forum concludes that Respondent acted willfully and assesses penalty wages in the amount of \$1,560.00 for Saa, Zbinden, Newman, and DeZell, and penalty wages in the amount of \$1,680.00 for Gonzales.

ORDER

NOW, THEREFORE, as authorized by ORS 652.332 and as payment of the unpaid wages and civil penalty wages he owes as a result of his violations of ORS 652.140(1) and (2), the Commissioner of the Bureau of Labor and Industries hereby orders **Duane Knowlden** to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

- (1) A certified check payable to the Bureau of Labor and Industries in trust for Vernon Gonzales in the amount of ONE THOUSAND NINE

HUNDRED AND TWENTY NINE DOLLARS (\$1,929.00), less appropriate lawful deductions, representing \$249.00 in gross earned, unpaid, due, and payable wages and \$1,680.00 in penalty wages, plus interest at the legal rate on the sum of \$249.00 from December 1, 2000, until paid, and interest at the legal rate on the sum of \$1,680.00 from January 1, 2001, until paid.

(2) A certified check payable to the Bureau of Labor and Industries in trust for John DeZell in the amount of ONE THOUSAND SIX HUNDRED AND TWELVE DOLLARS (\$1,612.00), less appropriate lawful deductions, representing \$52.00 in gross earned, unpaid, due, and payable wages and \$1,560.00 in penalty wages, plus interest at the legal rate on the sum of \$52.00 from December 1, 2000, until paid, and interest at the legal rate on the sum of \$1,560.00 from January 1, 2001, until paid.

(3) A certified check payable to the Bureau of Labor and Industries in trust for Anthony Saa in the amount of ONE THOUSAND SEVEN HUNDRED AND EIGHT SEVEN DOLLARS AND FIFTY CENTS (\$1,787.50) less appropriate lawful deductions, representing \$227.50 in gross earned, unpaid, due, and payable wages and \$1,560.00 in penalty wages, plus interest at the legal rate on the sum of \$227.50 from December 1, 2000, until paid, and interest at the legal rate on the sum of \$1,560.00 from January 1, 2001, until paid.

(4) A certified check payable to the Bureau of Labor and Industries in trust for Robert Zbinden in the amount of ONE THOUSAND EIGHT HUNDRED AND FORTY SIX DOLLARS (\$1,846.00) less appropriate lawful deductions, representing \$286.00 in gross earned, unpaid, due, and payable wages and \$1,560.00 in penalty wages, plus interest at the legal rate on the sum of \$286.00 from December 1, 2000, until paid, and interest at the legal rate on the sum of \$1,560.00 from January 1, 2001, until paid.

(5) A certified check payable to the Bureau of Labor and Industries in trust for Michael Newman in the amount of ONE THOUSAND FIVE HUNDRED SEVENTY EIGHT DOLLARS AND FIFTY CENTS (\$1,578.50) less appropriate lawful deductions, representing \$18.50 in gross earned, unpaid, due, and payable wages and \$1,560.00 in penalty wages, plus interest at the legal rate on the sum of \$18.50 from December 1, 2000, until paid, and interest at the legal rate on the sum of \$1,560.00 from January 1, 2001, until paid.

ⁱ The Order of Determination sought \$52.00 for DeZell, \$189.50 for Gonzales, \$913.50 for Newman, \$520.00 for Saa, and \$286.00 for Zbinden.

ⁱⁱ The Order of Determination sought \$1,560.00 for DeZell, Saa, and Zbinden, and \$1,680.00 for Gonzales and Newman.

ⁱⁱⁱ See, e.g., *In the Matter of Catalogfinder, Inc.*, 18 BOLI 242, 263-64 (1999) (“[t]his forum has universally relied on credible testimony and documentation from claimants or witnesses to the claimants’ employment to establish the nature and extent of work performed by claimants in wage claim cases.”)

^{iv} Although the Agency alleged Newman worked at the agreed rate of \$7.00 per hour, no reliable testimony was presented to support that figure. Consequently, the forum has calculated his unpaid wages and penalty wages at the statutory minimum wage of \$6.50 per hour.

^v See *In the Matter of Jo-El, Inc.*, 22 BOLI 1, 7 (2001) (where there is no agreed upon rate of pay, an employer is required to pay at least the minimum wage.)