

**In the Matter of**

**USRA A. VARGAS**

**dba Leon's Complete Asphalt Maintenance**

**Case No. 67-01**

**Final Order of the Commissioner Jack Roberts**

**Issued October 24, 2001**

**SYNOPSIS**

Respondent Usra A. Vargas employed Claimants as asphalt spreaders and failed to pay them all wages due upon their leaving employment, in violation of ORS 652.140. Respondent's failure to pay the wages was willful, and Respondent was ordered to pay civil penalty wages, pursuant to ORS 652.150. ORS 652.140; ORS 652.150.

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The above-entitled case came on regularly for hearing before Linda A. Lohr, 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 June 26, 2001, in the Bureau of Labor and Industries conference room located at 700 East Main, Suite 105, Medford, Oregon.

Cynthia L. Domas, an employee of the Agency, represented the Bureau of Labor and Industries ("BOLI" or "the Agency"). James John Chisem ("Claimant Chisem") was present throughout the hearing and was not represented by counsel. Martin Dean Cline ("Claimant Cline") was not present at the hearing. Usra Vargas ("Respondent") after being duly notified of the time and place of the hearing failed to appear in person and no one appeared on her behalf.

In addition to Claimant Chisem, the Agency called Deborah Garner, Claimant Chisem's friend, and BOLI Wage and Hour Division compliance specialist Margaret Pargeter as witnesses.

The forum received as evidence:

a) Administrative exhibits X-1 through X-18 (submitted or generated prior to hearing);

b) Agency exhibits A-1 through A-13 (filed with the Agency's case summary).

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 or about August 31, 2000, Claimant Chisem filed a wage claim form stating Respondent had employed him from August 23 to August 27, 2000, and failed to pay him the agreed rate of \$10.00 per hour for all hours worked.

2) At the time he filed his wage claim, Claimant Chisem assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

3) On or about September 1, 2000, Claimant Cline filed a wage claim form stating Respondent had employed him from August 18 to August 27, 2000, and failed to pay him the agreed rate of \$15.00 per hour for all hours worked.

4) At the time he filed his wage claim, Claimant Cline assigned to the Commissioner of the Bureau of Labor and Industries, in trust for Claimant, all wages due from Respondent.

5) On November 2, 2000, the Agency served Respondent with an Order of Determination, numbered 00-3744. The Agency alleged Respondent had employed Claimant Chisem during the period August 23 to August 27, 2000, at the rate of \$10.00 per hour and that Claimant Chisem had been paid all sums due and owing except for \$375. The Agency further alleged Respondent had employed Claimant Cline during the period August 18 to August 27, 2000, at the rate of \$15.00 per hour and that Claimant

Cline had been paid all sums due and owing except for \$945. The Agency alleged Respondent's failure to pay Claimants was willful and Respondent, therefore, was liable to Claimant Chisem for \$2,400 as penalty wages, plus interest and to Claimant Cline for \$3,600 as penalty wages, plus interest. The Order of Determination gave Respondent 20 days to pay the sums, request an administrative hearing and submit an answer to the charges, or demand a trial in a court of law.

6) Respondent filed a timely answer and request for hearing. In her answer, Respondent stated the following:

"Both Mr. Chisem and Mr. Dean [sic] accepted as a condition of employment that they would be paid at the completion of the contract (see enclosed copy of contract.). Their demand for payment and walking off the job, when it was not forthcoming, delayed the work and gave the customer an excuse to withhold [sic] payment.

"When Robin McElroy refused to honor the contract I notified both workers that I was going to have to take legal action to get our pay and that when I succeeded I would pay them. (see copies of letter of demand and suit filed in small claims court)

"Mr. Chisem and Mr. Cline have failed to report their rate of pay correctly. Mr. Chisem was hired at \$8.00 for the first two hours and then advanced to \$10.00 both because he had a legal ODL and was able to move equipment, use my car to bring his co-workers to work and was a good worker. Mr. Cline was hired at \$8.00 for the first two hours which I waived and started him at \$10.00 when I saw his level of experience. The only promise of more pay was to be in the form of a bonus if we finished in a timely manner and would probably have brought his pay to \$12.00 an hour. However, that did not happen.

"Mr. Cline did not have an ODL and his agreement was that he would not drive my car even though it was parked at his house during mid-day breaks and at night. On Saturday August 26<sup>th</sup> Mr. Chisem went to pick up Mr. Cline and another worker at Mr. Cline's house. Not only were they not there but my car was gone. Mr. Chisem got a ride to the job site and waited awhile and when no one showed up he went home.

"Mr. Cline was not seen again until 8:00 AM the next morning when he arrived at the job site an hour later driving my car. When I confronted him about the potential liability of driving my car illegally and pointed out he was breaking his word to me, he made excuses for his behavior and became sullen when I said I would no longer make my car available.

“On Sunday August 27<sup>th</sup> during mid-day break Mr. Chisem took the large tank truck off the job site without my permission and against Mr. Cline’s instructions. He went to his brother’s house to borrow money to buy cigarettes and a cold drink. He ran out of gas, parked the truck illegally and came back to the job site on foot. I took him to buy gas and we were unable to get the truck started. His actions resulted in a parking ticket being issued which cost the company \$30.00 and a loss of work time having to haul the sealcoat to the job site in buckets until we could get the tank truck moved. Mr. Chisem walked off the job when the truck did not start and did not return to help after that.

“Mr. Cline and another worker failed to follow my suggestion that they mask a cement drain, curbing and the edge of the building and made a mess with sealcoat that took 6 man hours to clean up. They agreed to clean up their mess at their own expense but walked off the job before doing so. Mr. Cline failed to deduct 3 hours.

“My records show that James Chisem worked:

| “Week ended | Sun | Mon | Tue | Wed | Thur | Fri | Sat |
|-------------|-----|-----|-----|-----|------|-----|-----|
| “08/26/00   |     |     |     | 5   | 9    | 5   | 8.5 |
| “09/02/00   | 4   |     |     |     |      |     |     |

“My records show that Martin Cline worked:

| “Week ended | Sun | Mon | Tue | Wed | Thur | Fri | Sat |
|-------------|-----|-----|-----|-----|------|-----|-----|
| “08/19/00   |     |     |     |     |      | 10  | 6   |
| “08/26/00   | 10  |     |     | 6   | 8    | 8   | 4   |
| “09/02/00   | 10  |     |     |     |      |     |     |

“I also gave a \$10.00 draw in the form of cigarettes and beer to Mr. Chisem and \$15.00 of the same to Mr. Cline. If you need more information please feel free to call me at (541) 770-7002. U. Abra Vargas.”

7) On February 2, 2001, the Agency requested a hearing. On February 16, 2001, the Hearings Unit issued a Notice of Hearing stating the hearing would commence at 9:00 a.m. on June 26, 2001. With the Notice of Hearing, the forum included a copy of the Order of Determination, a “SUMMARY OF CONTESTED CASE RIGHTS AND PROCEDURES” and a copy of the forum’s contested case hearings rules, OAR 839-050-0000 to 839-050-0440.

8) On April 30, 2001, the forum issued a case summary order requiring the Agency and Respondent to submit case summaries that included: 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); a brief statement of any defenses to the claim (for Respondent only); 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 their case summaries by June 15, 2001, and advised them of the possible sanctions for failure to comply with the case summary order.

9) On May 30, 2001, the Agency filed a motion for partial summary judgment with supporting documentation, alleging there was no dispute as to a number of material facts and the Agency was entitled to prevail on its claims for a minimum amount of wages due and owing and civil penalty wages as a matter of law.

10) On June 5, 2001, the forum issued an order requiring Respondent to respond to the Agency's motion for partial summary judgment, in writing, no later than June 11, 2001. Respondent did not file any opposition to the Agency's motion.

11) On June 14, 2001, the Agency filed its case summary. Respondent did not file a case summary.

12) On June 21, 2001, the ALJ denied the Agency's motion for partial summary judgment, finding there were genuine issues of material fact regarding the amounts paid to each Claimant by Respondent.

13) Respondent did not appear at the time and place set for hearing and no one appeared on her behalf. Respondent had not notified the forum she would not be appearing at the hearing. Pursuant to OAR 839-050-0330(2), the ALJ waited 30

minutes past the time set for hearing. When Respondent failed to appear, the ALJ found her to be in default and began the hearing.

14) The Agency waived the ALJ's recitation of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

15) At hearing, the Agency stipulated that Respondent had paid Claimant Cline wages totaling \$320.00.

16) After the hearing, the ALJ, on her own motion, amended the caption in this matter to correct a spelling error and conform the caption to the Agency's Order of Determination, numbered 00-3744.

17) The ALJ issued a proposed order on September 25, 2001, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Neither the Agency nor Respondent filed exceptions.

#### **FINDINGS OF FACT – THE MERITS**

1) At all times material herein, Respondent Usra A. Vargas, an individual, owned and operated an asphalt maintenance company under the assumed business name, Leon's Complete Asphalt Maintenance, and engaged or used the personal services of one or more employees in Oregon.

2) Claimant Chisem worked for Respondent as an asphalt spreader from August 23 through August 27, 2000. Claimant Cline, who was Claimant Chisem's brother-in-law, offered Chisem the job at a site formerly known as the Kopper Kitchen in Medford, Oregon. Claimant Cline worked for Respondent from August 18 through August 27, 2000. Cline, who also supervised the job, told Claimant Chisem when and where to show up for work and what his hours would be each day.

3) Respondent agreed to pay Claimant Chisem at least \$8.00 per hour for the first two hours of his employment and \$10.00 per hour thereafter.

4) Respondent agreed to pay Claimant Cline \$15.00 per hour for the work Cline performed for Respondent.

5) When Claimant Cline filed his wage claim, he provided the Wage and Hour Division compliance specialist a weekly calendar that shows the days worked and handwritten start and stop times for himself (“Marty”), Claimant Chisem (“Jim”), and another worker (“Leo”) between August 18 and August 27, 2000. The calendar denotes the following as the days and number of hours Cline and Chisem worked:

|                 | <u>Claimant Cline</u> | <u>Claimant Chisem</u> |
|-----------------|-----------------------|------------------------|
| August 18, 2000 | (12 hours)            |                        |
| August 19, 2000 | (6 hours)             |                        |
| August 20, 2000 | (10 hours)            |                        |
| August 24, 2000 | (5 hours)             | (5 hours)              |
| August 25, 2000 | (8 hours)             | (8 hours)              |
| August 26, 2000 | (5 hours)             | (9 hours)              |
| August 27, 2000 | (4 hours)             | (5 hours)              |

6) At the time they filed their wage claims, Claimants wrote down the hours they worked on blank calendars provided by the Agency. Claimant Chisem stated he worked 37.5 hours and Claimant Cline stated he worked 65 hours during the wage claim period.

7) Respondent admits, and the forum accepts as fact, that from August 23 through August 27, 2000, Claimant Chisem worked at least 31.5 hours. For two of those hours, Chisem earned \$16.00, calculated at the rate of \$8.00 per hour. For the remaining 29.5 hours, Chisem earned \$295.00, calculated at the rate of \$10.00 per hour, totaling \$311.00 in wages earned. Respondent did not pay Chisem for any of the hours he worked.

8) Respondent admits, and the forum accepts as fact, that from August 18 through August 27, 2000, Claimant Cline worked at least 62 hours. For those hours,

Cline earned \$930.00, calculated at the rate of \$15.00 per hour. Respondent paid Cline wages totaling \$320.00, leaving \$610.00 in wages due and owing.

9) Claimants' last day of work for Respondent was August 27, 2000.

10) On October 6, 2000, Respondent returned to the Agency a "Wage Claim Investigation/Employer Response" form on which she stated that Claimant Cline's "agreed upon rate at hire" and "agreed upon rate at termination" was "\$15.00 hourly." Respondent also stated the following: "I have not paid these people because my contract has not been paid by the business owner [and] I am being forced to take her to small claims court for \$2,850 [and] costs. I will settle up with Jim and Marty when I collect." Respondent certified that the document was a "complete, true and accurate statement of the facts relating to the claim to the best of my knowledge and belief."

11) At the time of hearing, Respondent had not paid Claimants all of their wages due and owing.

12) The forum computed civil penalty wages as follows for Claimant Chisem, in accordance with ORS 652.150: \$10.00 per hour multiplied by 8 hours per day equals \$80.00; \$80 per day multiplied by 30 days equals \$2,400.

13) The forum computed civil penalty wages as follows for Claimant Cline, in accordance with ORS 652.150: \$15.00 per day multiplied by 8 hours per day equals \$120.00 per day; \$120.00 per day multiplied by 30 days equals \$3,600.

#### **ULTIMATE FINDINGS OF FACT**

1) Respondent at all times material herein was a person doing business in the state of Oregon and engaged the personal services of one or more employees in the operation of that business.

2) Respondent employed Claimants Cline and Chisem between August 18 and August 27, 2000.

3) Respondent agreed to pay Claimant Chisem \$8.00 per hour for the first two hours he worked and \$10.00 for each hour thereafter.

4) Respondent agreed to pay Claimant Cline \$15.00 per hour.

5) Claimant Chisem worked 31.5 hours between August 23 and August 27, 2000. At the agreed upon rate of \$8.00 per hour, Claimant Chisem earned \$16.00 and at the agreed upon rate of \$10.00 per hour, Claimant Chisem earned \$295.00 in wages, totaling \$311.00 in wages earned.

6) Claimant Cline worked 62 hours between August 18 and August 27, 2000. At the agreed upon rate of \$15.00 per hour, Claimant Cline earned \$930.00 in wages.

7) Respondent owes Claimant Chisem \$311.00.

8) Respondent owes Claimant Cline \$610.00, which represents \$930.00 wages earned, minus \$320.00 in wages paid to Claimant Cline by Respondent.

9) Respondent willfully failed to pay Claimant Chisem the \$311.00 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.

10) Respondent willfully failed to pay Claimant Cline the \$610.00 in earned, due and payable wages. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.

11) Civil penalty wages computed for Claimant Chisem, pursuant to ORS 652.150, equal \$2,400.

12) Civil penalty wages computed for Claimant Cline, pursuant to ORS 652.150, equal \$3,600.

### **CONCLUSIONS OF LAW**

1) During all times material herein, Respondent was an employer and Claimants were employees subject to the provisions of ORS 652.110 to 652.200 and 652.310 to 652.405. During all times material herein, Respondent employed Claimants.

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.

3) ORS 652.140 provides in pertinent part:

“(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, whichever event first occurs.”

Claimants’ last day of work was August 27, 2000, but the record does not establish whether they quit or were fired. Even assuming Claimants quit without notice, their wages would have been due no later than September 1, 2000. Respondent violated ORS 652.140(2) by failing to pay Claimants all wages earned and unpaid by that date. For Claimant Chisem, those wages amount to \$311.00. For Claimant Cline, those wages amount to \$610.00.

4) 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 rate 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 a financial inability to pay the wages or compensation at the time they accrued.”

Respondent is liable for \$2,400 in civil penalties under ORS 652.150 for willfully failing to pay all wages or compensation to Claimant Chisem when due and \$3,600 in civil

penalties under ORS 652.150 for willfully failing to pay all wages or compensation to Claimant Cline when due as provided in ORS 652.140(2).

5) Under the facts and circumstances of this record, and according to the applicable law, 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**

When Respondent failed to appear at hearing and no one appeared on her behalf, the forum found Respondent in default pursuant to OAR 839-050-0330. The Agency, therefore, needed only to establish a prima facie case on the record to support the allegations in its charging document. *In the Matter of Sealing Technology, Inc.*, 11 BOLI 241 (1993). Respondent's only contribution to the record was her answer filed with her request for hearing. Where default occurs, the forum may give some weight to unsworn assertions contained in an answer unless other credible evidence controverts them. If a respondent is found not to be credible the forum need not give any weight to the assertions, even if they are uncontroverted. *In the Matter of Keith Testerman*, 20 BOLI 112, 127 (2000). In this case, the forum credited Respondent's answer only to the extent that it contains admissions of a party opponent.

### **AGENCY'S PRIMA FACIE CASE**

The Agency was required to prove: 1) that Respondent employed Claimants; 2) Respondent agreed to pay Claimant Chisem \$10.00 per hour and Claimant Cline \$15.00 per hour for the work each performed; 3) that Claimants performed work for which they were not properly compensated; and 4) the amount and extent of work Claimants performed for Respondent. *In the Matter of Barbara Coleman*, 19 BOLI 230

(2000). Based on Respondent's answer, the forum finds there is no dispute that Respondent employed Claimants during the relevant period, that she agreed to pay them at a fixed rate higher than the minimum wage, and that she did not pay them for the work they performed. The remaining issues are the specific amount of the agreed upon rate and the amount and extent of the work Claimants performed for Respondent.

## **AGREED UPON RATE**

### **A. Claimant Chisem**

Claimant Chisem testified his starting pay was \$9.00 per hour and that on his second workday Respondent increased his pay to \$10.00 per hour. Claimant Chisem acknowledged, however, that it was Claimant Cline, and not Respondent, who told him what his wage rate would be before he started work for Respondent. Neither Respondent nor Claimant Cline testified and the evidence in the record is insufficient to determine whether Cline had the authority to offer Chisem a specific amount of compensation on behalf of Respondent. Respondent admits, however, and the forum concludes, that she agreed to pay Claimant Chisem \$8.00 per hour for the first two hours he worked and \$10.00 per hour thereafter.

### **B. Claimant Cline**

Claimant Cline did not testify, but on his wage claim form he claimed his pay rate was \$15.00 per hour. Respondent's contention in her answer that she agreed to pay Cline only \$10.00 per hour is contradicted by her initial response to the Agency in which she certified that the "agreed upon rate of pay at hire" and the "agreed upon rate at termination" was \$15.00 per hour. The forum finds the latter more reliable because it was a contemporaneous certified statement, made to the Agency before a charging document in this matter was issued, and concludes Respondent agreed to pay Claimant Cline \$15.00 per hour for the work he performed.

## HOURS WORKED

ORS 653.045 requires Respondent to keep and maintain proper records of wages, hours and other conditions and practices of employment. Where the forum concludes an employee performed work for which he or she was not properly compensated, it becomes the employer's burden to produce all appropriate records to prove the precise hours and wages involved. *In the Matter of Diran Barber*, 16 BOLI 190 (1997), *quoting Anderson v. Mt. Clemens Pottery Co.*, 328 US 680 (1946).

Here, Respondent does not deny Claimants performed work for which they were not properly compensated. Moreover, in her answer, Respondent acknowledged that, according to her records, Claimant Chisem worked 31.5 hours and Claimant Cline worked 62 hours. Evidence shows Respondent's "records" were never turned over to the Agency and she did not appear at hearing with evidence to support her statement of the hours Claimants worked.

Where the employer produces no records, the Commissioner may rely on evidence produced by the Agency "to show the amount and extent of the employee's work as a matter of just and reasonable inference and then may award damages to the employee, even though the result be only approximate." *Id.* at 196-97, *quoting Anderson v. Mt. Clemens Pottery Co.*, 328 at 687-88. This forum will accept testimony of a claimant as sufficient evidence to prove work was performed and from which to draw an inference of the extent of that work - where that testimony is credible. *In the Matter of Graciela Vargas*, 16 BOLI 246 (1998). In this case, there is a discrepancy between the hours each Claimant reported they worked on the Agency form calendars and the hours recorded for both on the calendar Claimant Cline provided to the Agency when he filed his wage claim.<sup>1</sup> Claimant Cline did not testify, and Claimant Chisem did not explain the discrepancy during his testimony. Moreover, Chisem testified that he

filled out the form calendar using a personal time record he maintained during his employment, but that he could not produce it at hearing because he had turned his records over to the Agency during the wage claim investigation. Since the only evidence of what can be construed as a contemporaneous record is Cline's calendar, which conflicts with the form calendars Claimants filled out for the Agency, the forum finds Chisem's testimony and the documentary evidence of hours worked unreliable and insufficient to determine the amount and extent of the work Claimants performed. The forum will not speculate or draw inferences about wages owed based on insufficient, unreliable evidence. *In the Matter of Ann L. Swanger*, 19 BOLI 42, 57 (1999), *citing In the Matter of Burrito Boy, Inc.*, 16 BOLI 1, 12 (1997).

On the other hand, despite Respondent's failure to provide the Agency with any time records, she admits Claimants performed a specific number of hours that is not radically different than the number reported by Claimants. The forum, therefore, finds Claimant Chisem performed 31.5 hours of work for Respondent. He was entitled to receive \$8.00 per hour for the first two hours he worked and \$10.00 per hour thereafter, for a total of \$311.00. Contrary to Respondent's unsworn assertion in her answer, there is no evidence that Respondent advanced or otherwise paid Claimant Chisem any wages. Respondent therefore owes Claimant Chisem \$311.00 in unpaid wages.

The forum further finds Claimant Cline performed 62 hours of work for Respondent. He was entitled to receive \$15.00 per hour for the hours he worked, for a total of \$930.00. Respondent paid Claimant Cline \$320 in wages and therefore owes him \$610.00 in unpaid wages.

## **PENALTY WAGES**

An award of penalty wages turns on the issue of willfulness. Willfulness does not imply or require blame, malice, wrong, perversion, or moral delinquency, but only

requires that that which is done or omitted is intentionally done with knowledge of what is being done and that the actor or omittor be a free agent. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976).

Respondent, as an employer, had a duty to know the amount of wages due to her employees. *McGinnis v. Keen*, 189 Or 445, 221 P2d 907 (1950); *In the Matter of Jack Coke*, 3 BOLI 238 (1983). In her answer, Respondent argues that she intended to pay Claimants when her “customer” against whom she had legal action pending paid her. That circumstance does not pose a defense. Indeed, it only serves to show she voluntarily and as a free agent failed to pay Claimants all of the wages they earned from August 18 through August 27, 2000. The forum finds Respondent acted willfully and is liable for penalty wages under ORS 652.150.

Claimants’ last day of work was August 27, 2000. Their wages were due and payable on September 1, 2000. See ORS 652.140. Penalty wages, therefore, are assessed and calculated in accordance with ORS 652.150 in the amount of \$2,400 and \$3,600 for Claimants Chisem and Cline, respectively. These figures are computed by multiplying, in Claimant Chisem’s case, \$10.00 per hour, and, in Claimant Cline’s case, \$15.00 per hour by 8 hours per day multiplied by 30 days. See ORS 652.150 and OAR 839-001-0470.

### **ORDER**

NOW, THEREFORE, as authorized by ORS 652.332, and as payment of the unpaid wages, **Usra A. Vargas**, is hereby ordered to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant James John Chisem, in the amount of TWO THOUSAND SEVEN HUNDRED AND ELEVEN DOLLARS (\$2,711), less appropriate lawful deductions, representing \$311.00 in gross earned, unpaid, due and payable wages and \$2,400 in penalty wages, plus interest at the legal rate

on the sum of \$311.00 from September 1, 2000, until paid and interest at the legal rate on the sum of \$2,400 from October 1, 2000, until paid; and

A certified check payable to the Bureau of Labor and Industries, in trust for Claimant Martin Dean Cline, in the amount of FOUR THOUSAND TWO HUNDRED AND TEN DOLLARS (\$4,210), less appropriate lawful deductions, representing \$610.00 in gross earned, unpaid, due and payable wages and \$3,600 in penalty wages, plus interest at the legal rate on the sum of \$610.00 from September 1, 2000, until paid and interest at the legal rate on the sum of \$3,600 from October 1, 2000, until paid.

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<sup>1</sup> See Findings of Fact – The Merits 5 & 6