

In the Matter of

ILYA SIMCHUK

dba

West Coast Motor Company

Case No. 60-01

Final Order of the Commissioner Jack Roberts

Issued September 21, 2001

SYNOPSIS

Respondent employed Claimant as a car painter at the rate of \$10.00 per hour. Claimant was not an independent contractor as claimed by Respondent, but an employee who was entitled to the agreed upon rate for all hours worked. Respondent kept no record of the hours Claimant worked and the Commissioner awarded Claimant \$4,237.50 in unpaid wages based on Claimant's credible testimony concerning his rate of pay and the amount and extent of work he performed. Respondent's failure to pay was willful and the Commissioner ordered Respondent to pay \$2,400 in civil penalty wages in addition to the unpaid wages. ORS 652.140; ORS 652.150; ORS 653.010; ORS 652.610.

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 May 15, 2001, in the Bureau of Labor and Industries hearing room located at 800 NE Oregon Street, Portland, Oregon.

Peter McSwain, an employee of the Agency, represented the Bureau of Labor and Industries ("BOLI" or "the Agency"). Sergey Karman ("Claimant") was present throughout the hearing and was not represented by counsel. Ilya Simchuk ("Respondent") was present throughout the hearing and was not represented by counsel.

In addition to Claimant, the Agency called Claimant's father, Vasily Karman, and Pavel Malik as witnesses.

Respondent called as witnesses: Sergey Bazlov, Artistic Auto Body employee; Vitaly Zagaryuk, Respondent employee and Respondent's brother-in-law; Vyacheslav Zagaryuk, Respondent employee and Vitaly Zagaryuk's cousin; Nick Vedernikov, Nick's Auto Body owner; and Vitaly Malik.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-10;
- b) Agency exhibits A-1 through A-5 (filed with the Agency's case summary);
- c) Respondent exhibits R-2, R-3 (filed with Respondent'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 June 21, 2000, Claimant filed a wage claim form in which he stated Respondent had employed him from November 29, 1999, through January 31, 2000, and failed to pay him the agreed upon rate of \$10.00 per hour for all hours worked.

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

3) On December 3, 2000, the Agency served Respondent with an Order of Determination, numbered 00-4860. The Agency alleged Respondent had employed Claimant during the period November 29, 1999, through January 31, 2000, at the rate of \$10.00 per hour and that Claimant had worked a total of 505.5 hours, 116.5 of which were hours worked in excess of 40 in a given work week. The Agency concluded

Respondent owed Claimant \$4,137.50 in wages, plus interest. The Agency also alleged Respondent's failure to pay was willful and Respondent, therefore, was liable to Claimant for \$2,400.00 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.

4) Respondent filed a timely answer and request for hearing. Respondent's answer stated, in pertinent part:

"In answer to the letter 'Order of Determination No. 00-4860,' Sergey Karman did not work at West Coast Motor Company therefore I do not owe him \$4,137.50. I pay my employees only by payroll checks. I did not do that for Sergey Karman. I did not hire him and I could not because I did not have his social security number. Therefore, I should not pay the penalty wage written about in paragraph III also. Sergey Karman did not sign any legal papers that state he was to work for me."

5) On February 14, 2001, the Agency requested a hearing. On March 14, 2001, the Hearings Unit issued a Notice of Hearing stating the hearing would commence at 9:00 a.m. on May 15, 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. Also included was a notice in eight different languages, including Russian, that stated:

"Warning! Enclosed are important documents concerning your legal rights and responsibilities. You may need to respond to these documents within a limited time. If you do not read English, you should have a qualified person interpret them for you as soon as possible."

6) On April 4, 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 May 4, 2001, and advised them of the possible sanctions for failure to comply with the case summary order.

7) On April 12, 2001, the Agency filed its case summary.

8) On May 3, 2001, the forum received a letter from Respondent stating, in pertinent part:

“I am writing you this letter regarding of Carman Sergey. Since Mr. Sergey no respond to the item yet that I request from him I’m not able to show you all elements of this claim for that due date of this case summary. If I’m able to show you my defenses to this claim by May 4 pleas [sic] let me know. If I will need to show you more then [sic] only defenses please move this hearing to another date. Please consider this letter to help me show you better elements of this case.”

The forum interpreted Respondent’s letter as a request for an extension of time to submit his case summary or, in the alternative, a postponement of the hearing.

9) On May 4, 2001, the forum issued an order extending the deadline for case summaries, and any supplemental case summary submitted by the Agency, to May 11, 2001.

10) On May 9, 2001, Respondent filed a case summary. On the same date, Respondent made a separate request that his friend Kerry Lehne act as his “case presenter” at the hearing and that a Russian or Ukrainian interpreter be provided for his benefit during the proceeding.

11) On May 14, 2001, Respondent copied the Hearings Unit with his informal request for discovery, pursuant to OAR 839-050-0200, directed to “Sergey Karman” with copies to the Agency case presenter and order processor. The Agency’s response to his request was included. On the same date, Respondent filed a supplemental case summary.

12) At the start of hearing, after a brief conversation with Respondent, the ALJ determined that Respondent would be able to participate effectively in the hearing, which involved subtle legal and factual issues, only with the services of an interpreter. Accordingly, the ALJ appointed a qualified Ukrainian interpreter, Galina Kogan, to translate the proceeding for Respondent. The interpreter advised the forum that she had another commitment during the afternoon proceeding and the ALJ appointed a qualified Russian interpreter, Victor Nikitin, to translate the remainder of the proceeding. Prior to interpreting the proceedings, both interpreters stated their credentials on the record and took an oath or affirmation to translate the proceedings truthfully and accurately to the best of their ability.

13) At the start of hearing, Respondent renewed his request that Kerry Lehne act as his “case presenter” or authorized representative during the hearing. The ALJ denied Respondent’s request based on the rules governing the representation of a party in a contested case hearing - OAR 839-050-0110.

14) At the start of hearing, Respondent stated that he had no questions about the Notice of Contested Case Rights and Procedures.

15) At the start of hearing, the ALJ verbally advised the Agency and Respondent of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

16) The ALJ issued a proposed order on August 28, 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 Ilya Simchuk operated an auto body shop under the assumed business name, West Coast Motor Company, and employed one or more individuals in Oregon.

2) At all times material herein, Respondent's auto body shop was located at SE 82nd and Harney in Portland, Oregon. During part of 1999, Artistic Auto, operated by Yuri Lupeha (phonetic), was located nearby in a different building.

3) In 1999, Claimant worked briefly for Artistic Auto to learn the business of buying wrecked cars and fixing them up for resale. He had never bought and sold used cars before and wanted to learn the business firsthand. He did not work for wages but Lupeha gave him money whenever he needed extra cash. On occasion, he would paint cars for Respondent but was paid by Lupeha, who usually paid him \$50 per car. Claimant had experience painting cars and had previously worked for Sam's Auto Body as a car painter, where he earned \$14.50 per hour.

4) Sometime in August 1999, Artistic Auto moved to a new location. When the business began having problems in late November, Claimant approached Respondent about possible employment. One of Respondent's car painters, his nephew, had recently left and Respondent agreed to pay Claimant at the same rate he paid his nephew - \$10.00 per hour - to sand, paint, and buff cars. Respondent told Claimant to report to work the next day at 8:00 a.m.

5) November 29, 1999, was Claimant's first day of work. Claimant understood that his workday was from 8 or 9:00 a.m. until 5 or 6:00 p.m.

6) While in Respondent's employ, Claimant worked primarily in the "painting booth," an enclosed structure used to paint cars. The painting booth was shared with other auto body shops located near Respondent's business. Claimant used his own paint gun and buffer. When the painting booth was in use by others, he prepared cars for painting, buffed cars that had been painted, and cleaned up the shop area. Frequently, when the painting booth was unavailable and there was a particular car that

needed painting, Respondent instructed Claimant to work after hours when the booth was available and the paint job could be completed.

7) Respondent inspected every car Claimant painted. Claimant sometimes made mistakes and Respondent told him when and how to correct them.

8) On several occasions, Claimant's father visited Respondent's shop and observed his son working. His visits were intentional and at random because Claimant was only 17 years old and his father wanted to make sure of his son's whereabouts.

9) Respondent kept no record of the hours Claimant worked.

10) During his employment, Claimant maintained a hand made calendar on which he noted the hours he worked and the amounts Respondent paid to him from November 29, 1999, through January 31, 2000.

11) Although Respondent initially told Claimant he would be paid once a month at the end of each month, he paid Claimant sporadically with cash in varying amounts.

12) Between November 29, 1999, through January 31, 2000, Claimant worked 505.5 hours, 136.5 of which were hours exceeding 40 per week. For those hours, Claimant earned \$5,737.50. Respondent paid Claimant only \$1,500.

13) Claimant quit his employment without notice to Respondent because Respondent refused to pay his full wages. Claimant's last day of work for Respondent was January 31, 2000.

14) Claimant's wages remain unpaid.

15) The forum observed Claimant's demeanor carefully throughout the hearing and found his testimony believable. He gave straightforward, nonevasive answers to all questions asked and made no attempt to portray Respondent in a bad light. The hand made calendar he maintained during his employment further bolstered

his credibility. Claimant not only noted on the calendar the hours and days he worked, he also noted the amounts, totaling \$1,500, Respondent paid him on eight separate occasions, a fact he could have easily left out had the calendar been created after the fact for litigation purposes. In addition, Respondent corroborated much of Claimant's testimony, such as the fact that Claimant performed work for Respondent and was offered \$10.00 per hour to perform that work.

16) Despite Vasily Karman's bias as Claimant's father, his testimony regarding his observations of his son working at Respondent's auto body shop was credible and corroborated by some of Respondent's witnesses, each of whom had observed Vasily Karman on different occasions visiting Claimant.

17) Respondent's testimony was limited in scope and substance. What little he said contradicted his statement in his answer that Claimant never worked at West Coast Motor Company. Respondent testified that Claimant "worked in the shop" and that he assigned the work Claimant was expected to perform. Moreover, although he disputes the timing of the offer to pay Claimant \$10.00 per hour, Respondent agrees he made an offer to employ Claimant at that rate. Although his intent was to establish Claimant as an independent contractor, Respondent's testimony, as a whole, only lends additional credence to Claimant's testimony and the forum has considered it only as corroboration of Claimant's version of what transpired and when.

ULTIMATE FINDINGS OF FACT

1) At all times material herein, Respondent conducted a 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 Claimant between November 29, 1999, and January 31, 2000.

3) Respondent and Claimant agreed Claimant would be paid \$10.00 per hour.

4) Claimant quit his employment on January 31, 2000, without notice to Respondent.

5) Claimant worked 505.5 hours between November 29, 1999, and January 31, 2000, 136.5 of which were in excess of 40 hours per week. For all of these hours, Claimant earned a total of \$5,737.50. Respondent paid Claimant \$1,500 and therefore owed Claimant \$4,237.50 in earned and unpaid compensation on the day Claimant's employment terminated.

6) Respondent owes Claimant \$4,237.50 for wages earned.

7) Respondent willfully failed to pay Claimant the \$4,237.50 in earned, due and payable wages no later than February 7, 2000, the fifth business day after Claimant quit his employment without notice to Respondent. Respondent has not paid the wages owed and more than 30 days have elapsed from the date the wages were due.

8) Civil penalty wages, computed pursuant to ORS 652.150, equal \$2,400.

CONCLUSIONS OF LAW

1) ORS 653.010 provides, in pertinent part:

“(3) ‘Employ’ includes to suffer or permit to work; * * *.

“(4) ‘Employer’ means any person who employs another person * * *.”

ORS 652.310 provides, in pertinent part:

“(1) ‘Employer’ means any person who in this state, directly or through an agent, engages personal services of one or more employees * * *.

“(2) ‘Employee’ means any individual who otherwise than as a copartner of the employer or as an independent contractor renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate, based on the time spent in the performance of such services or on the number of operations accomplished, or quantity produced or handled.”

During all times material herein, Respondent was an employer and Claimant was Respondent's employee subject to the provisions of ORS 652.110 to 652.200, 652.310 to 652.414, and 653.010 to 653.261.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondent herein.

3) ORS 653.261(1) provides:

"The Commissioner of the Bureau of Labor and Industries may issue rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. Such rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of such employees when computed without benefit of commissions, overrides, spiffs, and similar benefits."

OAR 839-020-0030(1) provides that except in circumstances not relevant here:

" * * * all work performed in excess of forty (40) hours per week must be paid for at the rate of not less than one and one-half times the regular rate of pay when computed without benefits of commissions, overrides, spiffs, bonuses, tips or similar benefits pursuant to ORS 653.281(1)."

Oregon law required Respondent to pay Claimant one and one-half times his regular hourly rate, in this case \$10.00 per hour, for all hours worked in excess of 40 per week. Respondent failed to pay Claimant at the overtime rate, in violation of OAR 839-020-0030(1).

4) ORS 652.140(2) provides:

"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 scheduled payday after the employee has quit, whichever event first occurs."

Respondent violated ORS 652.140(2) by failing to pay Claimant all wages earned and unpaid within five days, excluding Saturdays, Sundays and holidays, after Claimant quit his employment without at least 48 hours' notice to Respondent on January 31, 2000.

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.”

Respondent is liable for \$2,400 in civil penalties under ORS 652.150 for willfully failing to pay all wages or compensation to Claimant when due as provided in ORS 652.140(2).

6) 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 Claimant his earned, unpaid, due and payable wages and the civil penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

In order to prevail in this matter, the Agency was required to prove: 1) that Respondent employed Claimant; 2) Respondent agreed to pay Claimant \$10.00 per hour; 3) that Claimant performed work for which he was not properly compensated; and 4) the amount and extent of work Claimant performed for Respondent. *In the Matter of Barbara Coleman*, 19 BOLI 230, 263, 264 (2000). At hearing, Respondent denied employing Claimant and characterized him as an independent contractor who “performed a very limited amount of work for [Respondent], used his own hand tools, worked for other shops at the same time he worked for [Respondent], and [who] was

compensated for the work that he did perform.” The Agency established, however, by a preponderance of the evidence, that Respondent not only employed Claimant, he willfully failed to pay him all wages earned when due.

RESPONDENT EMPLOYED CLAIMANT

This forum has adopted and consistently applied an “economic reality” test to determine whether a claimant is an employee or independent contractor under Oregon’s minimum wage and wage collection laws. See *In the Matter of Ann L. Swanger*, 19 BOLI 42, 53 (1999); *In the Matter of Frances Bristow*, 16 BOLI 28, 37 (1997). The test, derived from one used by the federal courts when applying the Fair Labor Standards Act, helps to determine “whether the alleged employee, as a matter of economic reality, is economically dependent upon the business to which [he or she] renders [his or her] services.” *In the Matter of Geoffrey Enterprises, Inc.*, 15 BOLI 148, 164 (1996) (relying on *Circle C Investments, Inc.*, 998 F2d 324 (5th Cir 1993)). Having considered the following test criteria, the forum finds that credible evidence on the whole record establishes Claimant was economically dependent upon Respondent’s business.

A. The degree of control the alleged employer has over a worker

Claimant credibly testified that Respondent controlled the hours he worked and the manner in which he performed his work. Respondent told Claimant when to start and stop his workday and determined when and if he needed to work later than usual in the evening. Respondent also told Claimant which cars to paint and inspected every car Claimant worked on. When Claimant made mistakes, Respondent instructed Claimant on when and how to redo his work. Although he did not follow it, Respondent established the compensation method, including how much and when Claimant was to be paid. The forum finds Claimant was subject to Respondent’s control with regard to the time and manner of performing his work.

B. The extent of the relative investments of the worker and alleged employer

Claimant's investment in Respondent's business was his time and little else. Although Claimant brought with him his own paint gun and buffer, Respondent supplied everything else - the cars to be painted, the paint, the materials used to sand and mask the cars, the booth to paint in, and the site for the work to be performed. The forum finds Claimant could not have performed the work he did for Respondent without Respondent's vastly greater investment in the business.

C. The degree to which the worker's opportunity for profit and loss is determined by the alleged employer

Since Claimant had no investment in Respondent's business, he could earn no profit and suffer no loss. Respondent determined and exclusively controlled the amount of Claimant's hourly rate and the forum can conclude from that fact that Claimant was a "wage earner[] toiling for a living, [rather] than [an] independent entrepreneur[] seeking a return on [his] risky capital investments." See *Reich v. Circle C. Investments, Inc.*, 998 F2d 324, at 328 (5th Cir 1993), citing *Brock v. Mr. W. Fireworks, Inc.*, 814 F2d 1042 at 1051 (5th Cir), cert. denied, 484 US 924 (1987).

D. The skill and initiative required in performing the job

Evidence shows Claimant had the skills necessary to wield a paint gun and buffer and he had previous experience as a car painter working in a different auto body shop. The forum infers from the facts in the record that car painting is essential to auto bodywork. Since independent contractors generally do not perform services that are an integral part of the business, the forum concludes that Claimant possessed no special skills or talents that would have made him likely to be an independent contractor while working as a car painter for Respondent.

E. The permanency of the relationship

Independent contractors are generally engaged to perform a specific project for a limited period. Respondent's reliance on the fact that Claimant was assigned specific jobs, i.e., particular cars to paint, to demonstrate Claimant was an independent contractor is misguided. That Respondent directed Claimant's work by determining which cars he painted only reinforces Claimant's status as an employee. Moreover, evidence in the record shows Respondent clearly intended Claimant's employment to be of indefinite duration as long as Claimant continued to perform his work satisfactorily. There is no evidence in the record that Claimant painted cars for other businesses while employed by Respondent or that he was economically independent of Respondent's business.

AGREED UPON RATE

Claimant credibly testified, and Respondent confirmed, that Respondent offered Claimant \$10.00 per hour to work for Respondent as a car painter. Respondent's testimony that he made the offer only after Claimant announced he was quitting his job defies logic. Claimant's credible testimony establishes and the forum concludes that when Claimant approached Respondent about employment as a car painter, Respondent offered to pay Claimant at the same rate he paid his previous car painter, which was \$10.00 per hour.

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. Where the employer produces no

records, the forum 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.” *In the Matter of Diran Barber*, 16 BOLI 190 (1997), *quoting Anderson v. Mt. Clemens Pottery Co.*, 328 US 680 (1946).

Here, Respondent kept no record of the days or hours Claimant worked. This forum has previously accepted, and will accept, the credible 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. *In the Matter of Graciela Vargas*, 16 BOLI 246 (1998). Claimant’s testimony was credible as to the amount and extent of the work he performed. In addition, he kept a contemporaneous record of the hours he worked. Respondent, on the other hand, produced no persuasive evidence to “negative the reasonableness of the inference to be drawn from the [Claimant’s] evidence.” *Id.* at 255, *quoting Mt. Clemens Pottery Co.*, 328 US at 687-88. The forum concludes, therefore, that Claimant performed work for which he was improperly compensated and the forum may rely on the evidence Claimant produced showing the hours he worked as a matter of just and reasonable inference. Claimant’s credible testimony establishes that he worked a total of 505.5 hours for Respondent, 136.5ⁱ of which were hours worked in excess of 40 per week. For all these hours, Claimant earned a total of \$5,737.50, based on the agreed upon rate of \$10.00 per hour. Respondent testified he gave Claimant \$1,292. Claimant’s calendar, that the forum found credible, shows he received \$1,500 from Respondent. Respondent owes Claimant \$4,237.50 in unpaid wages.

CIVIL PENALTIES

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 his employee. *McGinnis v. Keen*, 189 Or 445, 221 P2d 907 (1950); *In the Matter of Jack Coke*, 3 BOLI 238 (1983).

Respondent did not dispute at hearing that Claimant performed work for him. Respondent denied, however, that he “employed” Claimant. The facts and law prove otherwise. Respondent’s failure to apprehend the correct application of the law and Respondent’s actions based on this incorrect application do not exempt Respondent from a determination that he willfully failed to pay wages earned and due. *In the Matter of Locating, Inc.*, 14 BOLI 97 (1994), *aff’d without opinion*, *Locating, Inc. v. Deforest*, 139 Or App 600, 911 P2d 1289 (1996); *In the Matter of Mario Pedroza*, 13 BOLI 220 (1994). Respondent admits he did not pay Claimant \$10.00 per hour and the evidence shows his failure to pay the agreed upon rate was intentional. From these facts, the forum infers Respondent voluntarily and as a free agent failed to pay Claimant all of the wages he earned between November 29, 1999 through January 31, 2000. Respondent acted willfully and is liable for penalty wages under ORS 652.150.

Penalty wages, therefore, are assessed and calculated in accordance with ORS 652.150 in the amount of \$2,400. This figure is computed by multiplying \$10.00 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, Respondent **Ilya Simchuk** 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 Sergey Karman, in the amount of SIX THOUSAND SIX HUNDRED THIRTY SEVEN DOLLARS AND FIFTY CENTS (\$6,637.50), less appropriate lawful deductions, representing \$4,237.50 in gross earned, unpaid, due and payable wages and \$2,400 in penalty wages, plus interest at the legal rate on the sum of \$4,237.50 from February 7, 2000, until paid and interest at the legal rate on the sum of \$2,400 from March 7, 2000, until paid.

ⁱ In its charging document, the Agency asserted that Claimant had worked 116.5 hours in excess of 40 per week. The ALJ's calculations, based on Claimant's credible record maintained during his employment, reveal Claimant's actual overtime hours to be 136.5.