

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL A. MURPHY,)
)
 Plaintiff)
)
v.) Civil No. 01-105-B-S
)
LOVELY’S TRUCKING,)
)
 Defendant)

MEMORANDUM OF DECISION¹

Plaintiff, Michael A. Murphy, has filed a motion for summary judgment in this action to recover wages, unpaid overtime compensation, and liquidated damages pursuant to 29 U.S.C. § 216(b) and 26 M.R.S.A. §§ 626, 626-A. Defendant has failed to respond to the motion. I now **GRANT** Murphy’s motion and direct that the clerk enter judgment for him in the amount of \$3652.70, plus costs. I further direct that Murphy’s counsel may submit a request for attorney’s fees in accordance with Local Rule 54.2.

SUMMARY JUDGMENT STANDARD

A party moving for summary judgment is entitled to judgment in its favor only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the non-movant. Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 50 (1st Cir. 2000). “The failure of the nonmoving party to respond to a summary judgment motion

¹ Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

does not in itself justify summary judgment.” Lopez v. Corporacion Azucarera de Puerto Rico, 938 F.2d 1510, 1517 (1st Cir. 1991). It is incumbent upon the moving party to demonstrate undisputed facts entitling it to summary judgment as a matter of law. Id.

FACTUAL BACKGROUND

The facts are taken from Murphy’s statement of undisputed facts as supported by record citations in accordance with Local Rule 56(e). Murphy was employed by Lovely’s Trucking, Inc., a covered employer under 29 U.S.C. §§ 201-219 the Fair Labor Standards Acts (“FLSA”). On April 15, 2001, Marvin Lovely, the owner of the defendant corporation engaged Murphy to transport various goods to locations in various states. Murphy worked from April 16 through April 29, 2001, for a total of fifty-one and one quarter hours the first week and thirty-seven hours the second week.

The company received \$5,347.60 in gross receipts as a result of Murphy’s services and, pursuant to the contractual understanding between Murphy and Lovely, Murphy should have received \$1,336.90 in wages. In accordance with company policy, Murphy submitted his required paperwork for the trip by May 1, 2001. Murphy expended \$200.00 of his own money for a new tire during the April trip. On June 19, 2001, Murphy made demand on Lovely’s Trucking for the payment of wages due. He did not receive any payment until July 17, 2001, when the company sent him a check for \$358.00. On August 14, 2001, more than eight days after his demand for full payment, Murphy filed his Amended Complaint, specifically seeking the remedies available to him under 26 M.R.S.A. § 626-A.

DISCUSSION

Murphy seeks recovery under both the FLSA and under the Maine statute for unpaid wages upon the cessation of employment, 26 M.R.S.A. § 626. It is undisputed on these facts that he did not receive the wages due to him. Under the FLSA Murphy is entitled to recovery for his hourly wages and at a rate not less than one and one-half times the regular rate for any hours in excess of forty during any workweek, 29 U.S.C. § 207(a)(1). Since Murphy's contractual understanding did not provide for any hourly wage, he would be entitled at the minimum to the federal minimum wage of \$5.15² per hour for up to forty hours totaling \$206, and an additional \$255.60³ for the eleven and one-quarter hours overtime that he worked in week one. During the second week of his employment he worked thirty-seven hours at \$5.15⁴ per hour, for a total of \$190.55. These figures sum to a hourly regular and overtime wages due of \$652.15. I double this because Murphy is also entitled to an amount equivalent to his unpaid wages as liquidated damages pursuant to 29 U.S.C. § 216(b).⁵ Therefore I conclude that under federal law Lovely's Trucking is

² Murphy quotes 29 U.S.C. § 206(a)(1) as setting a \$5.15 an hour minimum wage commencing on September 1, 1997. This figure is the standing post-September 1, 1997, § 206(a)(1) minimum wage figure. Inexplicably Murphy uses \$5.25 as the minimum wage. Applying the § 206(a)(1) minimum wage figure to this dispute concerning April 2001 compensation I conclude that Murphy is entitled to \$206 for this week's non-overtime wages.

³ Murphy reports this figure at \$261.28, but if I accept the overtime rate of \$22.72 per hour, which I do, and multiply it times 11.25, which I did, I keep arriving at \$255.60. I have used my figure in these calculations. At the overtime rate of \$22.72 per hour Murphy's figures reflect 11.50 hours. His pleadings refer consistently to 11.25 hours of overtime. This formula for computing overtime is derived from 29 C.F.R. 778.112.

⁴ The § 206(a)(1) calculation works out to \$190.55. Murphy, using a \$5.25 minimum wage, overshoots this mark. See footnote 2.

⁵ Murphy argues that I should not subtract the \$358 the defendant paid Murphy prior to filing the complaint, an approach that would leave \$294.15 of unpaid wages for purposes of calculating liquidated damages. In support of his approach Murphy cites Biggs v. Wilson, 1 F.3d 1537 (9th Cir. 1993) and Brooklyn Savings Bank v. O'Neil, 325 U.S. 697 (1945). The First Circuit has not weighed in on this question and there is no need for this court to weigh in on what is by no means a clear-cut issue because Murphy seeks entry of judgment under the Maine statute.

required to pay Murphy \$1304.30, minus the \$358 paid by defendants, leaving a total of \$946.30.

However, under the Maine statute Murphy's recovery, based upon the contractual understanding of the parties, would be greater than the recovery under the FLSA. Murphy acknowledges that he cannot recover under both statutory provisions, and requests that I enter judgment pursuant to the Maine statutory scheme. (Pl.'s Mem. at 6).

Murphy states in his undisputed, unopposed statement of facts that the parties agreed that he would receive twenty-five percent of the gross receipts for the trip. As the gross receipts were \$5,347.60, twenty-five percent of that amount equals \$1,336.90.⁶ Furthermore, pursuant to 26 M.R.S.A. § 626–A, Murphy is also entitled an “amount equal to twice the amount of unpaid wages as liquidated damages.”⁷ Under the Maine statute Murphy's recovery amounts to \$4010.70, minus the \$358.00 paid before the amended complaint was filed, leaving \$3652.70. Additionally, Murphy is entitled to costs and reasonable attorney's fees, if sought in accordance with Local Rule 54.2

Murphy also seeks \$200.00 as reimbursement for the tire that he replaced with his own money during his trip for defendant. However, nowhere does he indicate that the parties agreed that he would be entitled to reimbursement for such an expense and there is nothing in the record supporting this conclusion beyond Murphy's assertion that he advanced this sum as a cost of the trip. (See Murphy Aff. ¶ 11; Statement Material Facts

⁶ This figure is a quarter of the total receipts, two cents shy of the figure used by Murphy.

⁷ As under the Federal act Murphy argues that the \$358 paid by the defendant should not be deducted prior to the calculation of the liquidated damages. He cites Purdy v. Community Telecommunications Corp., 663 A.2d 25 (Me. 1995). Though I do not view this case as entirely determinative of the question, the position is defensible and the defendants have chosen not to counter Murphy's legal argument. I will not bend over-backwards to do so for them. See footnote 5.

¶ 12.) Though I might divine that this request rested on some theory of unjust enrichment I decline to grant Murphy this relief out of thin air.

CONCLUSION

Based upon the undisputed record before me, I am satisfied that Michael Murphy is entitled to judgment entered on his behalf in the sum of \$3652.70 plus costs.

So Ordered.

January 3, 2002

Margaret J. Kravchuk
U.S. Magistrate Judge
CLOSED STNDRD

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-105

MURPHY v. LOVELY'S TRUCKING

Filed: 05/31/01

Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK ury demand: Both

Demand: \$0,000

Nature of Suit: 710

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 28:1331 Fed. Question: Fair Labor Standards

MICHAEL A MURPHY

DONALD F. FONTAINE

plaintiff

207 772-0108

[COR LD NTC]

FONTAINE & BEAL, P.A., 482 CONGRESS ST

P.O. BOX 7590, PORTLAND, ME 04112 879-1879

v.

LOVELY'S TRUCKING INC

EDMOND J. BEAROR, ESQ.

defendant

[COR LD NTC]

RUDMAN & WINCHELL, 84 HARLOW STREET

P.O. BOX 1401, BANGOR, ME 04401

(207) 947-4501