



Issue Date: 27 June 2013

CASE NO.: 2012-TAE-00006

In the Matter of:

JOHN PEROULIS & SONS SHEEP, INC.,

et al.,

Respondents

DECISION AND ORDER

BACKGROUND

This matter arises under the H2-A provisions of the Immigration and Nationality Act, 8 U.S.C. § 1188, *et seq.*, as amended by the Immigration Reform and Control Act of 1986, (“the Act”), and the implementing regulations found at 20 C.F.R. Part 655 and 29 C.F.R. Part 501. By written notice issued 12 Oct 10, the Wage and Hour Division (WHD) of the U.S. Department of Labor’s Employment Standards Division found that Respondents failed to comply with Section 218 of the Act and its applicable regulations, directed the payment of back wages, and assessed civil money penalties (CMPs).

The facts of this case involve Respondents’ contract with Amador Inga Aquino (“the worker”) that covered the period of 11 Apr 08 to 10 Apr 09. On 17 Jul 08, Respondents terminated the worker after observing elk meat hanging near his sheep wagon on their ranch. A representative of the Colorado Division of Wildlife subsequently investigated Respondents’ claim that the worker had illegally killed an elk, and did not press any charges against the worker. Respondents did not pay the worker wages under the $\frac{3}{4}$ guarantee nor did they pay inbound or outbound transportation costs. WHD also alleged that Respondent failed to provide adequate housing.¹

WHD submitted a Motion for Partial Summary Decision, arguing that there is no genuine issue of fact that would allow a finding that (1) Respondents had sufficient cause to terminate the worker or (2) Respondents notified the Colorado Workforce Center of the worker’s termination within the requisite time.² It further submitted that Respondents violated applicable regulations when they failed to reimburse the worker for his inbound and outbound transportation expenses, or pay the $\frac{3}{4}$ guarantee. Respondents countered that they substantially complied with the notice requirements because they contacted the Colorado Division of Wildlife to report the “elk incident,” brought the worker to the Immigration and Customs Enforcement (ICE) office, telephoned the SWA office to tell them of the termination, and communicated the reasons for

¹ A separate case is also pending in which WHD alleges that Respondents failed to comply with minimum lodging requirements for its shepherd employees and seeks civil money penalties (2012-TAE-4).

² 20 C.F.R. § 655.102(b)(11).

terminating the worker to Wage and Hour Investigator Jose Garcia. Respondents submitted their own Motion for Summary Decision, arguing there is no genuine issue of fact they had sufficient cause to terminate the worker and that since he did not work at least 50 percent of the contract period he is not eligible for reimbursement of either the inbound or the outbound transportation costs.

In a 19 Mar 13 order, I granted part of WHD's motion and ruled that there was no genuine issue of material fact that would have allowed a finding that Respondent gave the requisite notice. I further determined that essentially mooted any questions about good cause for termination and made Respondents liable for the minimum contract guarantee and inbound and outbound costs. I then held the issuance of a final decision in abeyance pending the outcome of the remaining housing violation litigation and further discussions about the parties' dispute over the applicability of any civil money penalties.

WHD then moved for the issuance of a final decision, noting that it would dismiss that housing violation allegation upon the issuance of an order directing Respondents to pay a total of \$9,216.51 as follows:

¾ Guaranteed Pay	\$4,362.60	(and \$1,000.00 CMP)
Inbound Transport	\$741.56	(and \$1,000.00 CMP)
Outbound Transport	\$1,112.35	(and \$1,000.00 CMP)

Respondents filed a response, indicating that they did not object to the motion, as long as they retained all appellate rights; the record noted their objection to the 19 Mar 13 order as beyond the authority of the statute or Congressional authority under the Commerce Clause of the Constitution; and the record of decision in this case will incorporate by reference the case file in the other case.³

Accordingly, consistent with my summary decision, Respondent is ordered to pay as set forth above. The allegation of the housing violation is dismissed. Respondent retains all rights of appeal and I incorporate by reference the case file in 2102-TAE-4 as part of the record of decision in this case.

SO ORDERED.

PATRICK M. ROSENOW
Administrative Law Judge

³ 2012-TAE-4.