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Issue Date: 20 December 2019

CASE NO.: 2019-TAE-00024

IN THE MATTER OF

ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR
Complainant

v.

WICKSTRUM CATTLE, LLC
Respondent

APPEARANCES:

For the Administrator: **Austin Case, Esq.**
Office of the Solicitor, U.S. Department of Labor
Kansas City, Missouri

For the Respondent: **Sharon Wickstrum (*pro se*)**
Wickstrum Cattle, LLC
Westmoreland, Kansas

Before: **Angela F. Donaldson**
Administrative Law Judge

DECISION AND ORDER

This is an enforcement action by the Administrator of the Wage and Hour Division ("Administrator") H-2A provisions of the Immigration and Naturalization Act ("INA" or "the Act"), as amended, 8 U.S.C. § 1101(a)(15)(H)(ii)(a) and applicable regulations at 29 C.F.R. Part 501. The Administrator alleges two violations: (1) that the Company failed to comply with the requirements of the job order because deductions were made from workers' pay that were not included in Respondent's ETA Form 790 ("Agricultural and Food Processing Clearance Order" also referred to as job order) (citing 20 C.F.R. § 655.121(a)(3)), and (2) that the Company failed to comply with the requirement that a copy of the work contract be provided to all workers including corresponding workers (citing 20 C.F.R. § 655.122(q)), contending that a corresponding worker did not receive a copy of the work contract. The Administrator seeks to impose civil money penalties of $ 1,823.80 for these violations. The time period relevant to the investigation and subsequent violations is March 23, 2015, to March 22, 2017.

I held a hearing by telephone on November 25, 2019. Attorney Austin Case represented the Administrator, and Wickstrum Cattle (at times herein "the Company") was self-represented by Sharon Wickstrum, an owner and officer of this family business. Susan Lang, Wage and Hour Investigator, testified for the Administrator. Witnesses for the Company included Troy Wickstrum and Sharon Wickstrum. I admitted the Administrator's Exhibits (CX) A through U. Respondent did not submit exhibits. Both parties timely filed closing briefs, which I have considered in reaching this Decision.

I. Factual Background

The H-2A Application for Temporary Employment Certification

Wickstrum Cattle LLC, is a family-owned business that operates a feedlot with a 12,000 head capacity, and has its principal place of business at 11870 Highway 13, Westmoreland, Kansas. (CX-T; Hearing Testimony of Sharon Wickstum). It typically employs about 8 to 12 total employees, of which three are typically H-2A temporary agricultural workers. (CX-T at 1).

The Company filed an H-2A Application requesting workers for the position of "Farmworker, Livestock." (CX-U). According to the Statement of Temporary Need in the H-2A Application,

> Beginning late December through March, livestock are penned and checked daily, during extreme weather conditions cattle are checked multiple times/day. Calving season beings mid-January and lasts through mid-April. Hauling hay, checking water, and monitoring health during this season is critical to the health and well-being of cattle. From April November [sic], livestock are pastured and checked once or twice a week, usually do not require hay supplement, and require less time to maintain health.

According to the job description, the worker was expected to "[o]perate feed trucks with computerized load & delivery systems. Assist with cow/calf operation. Sort/separate cattle. Pair, tag, and feed livestock. Check water, clean bunks." (CX-U at C4b).

The Administrator's Investigation

In March 2017, Susan Lang, a Wage and Hour Investigator located in Chicago, Illinois, began conducting an investigation of the Company, covering the time period of March 23, 2015, to March 22, 2017. (CX-L). The investigation began with Wickstrum Harvesting, LLC, a family-owned company related to Wickstrum Cattle[1]; Wickstrum Harvesting primarily engaged

[1] Wickstrum Farms, LLC, Wickstrum Ranch, LLC, Wickstrum Harvesting, LLC, and Wickstrum Cattle, LLC, are owned by members of the Wickstrum Family (Sharon and her husband Larry, and their sons Todd and Troy), who also serve as officers in the businesses. Wickstrum Harvesting and Cattle share employees. Wickstrum Ranch sells the cattle of Wickstrum Cattle. Wickstrum Farms owns various equipment needed and leased by Wickstrum operations. Investigator Lang concluded that the various Wickstrum businesses comprised a single enterprise due to common control and shared business purpose.

in the harvesting of wheat and other grains. (CX-T, p. 1). Wage and Hour opened the investigation after receiving a complaint that a worker of both Wickstrum Harvesting and Wickstrum Cattle was terminated, was not paid return transportation, and during his employment received reduced wages as well as deductions from his pay for damage to property. (CX-T, Wickstrum Cattle FLSA Narrative).

On November 29, 2017, the Administrator issued to Wickstrum Cattle, LLC, a Notice of Determination of Assessing Civil Money Penalties, advising that the Company had failed to comply with Section 218 of the INA and applicable regulations concerning the employment of H-2A workers. According to the Administrator's Summary of Violations, the Company:

- Failed to comply with the requirements of the job order. Specifically, the investigation disclosed that deductions were made from workers' pay that were not included in the current contracts, citing 20 C.F.R. § 655.121(a)(3).
- Failed to comply with the requirement that a copy of the work contract be provided. Specifically, the investigation disclosed that a corresponding worker did not receive a copy of the contract, citing 20 C.F.R. § 655.122(q).

The Administrator assessed the regulatory maximum penalty of $1,658 for each violation, with a reduction of 40 percent for the violation concerning identifying the deductions in contracts (resulting in penalty of $994.80), and a reduction of 50 percent for the violation concerning the provision of contracts to all workers (resulting in penalty of $829). The reductions cited mitigating factors of no misrepresentation of working conditions, that there was payment at the AEWR (adverse effect wage rate), that the employer was committed to compliance, and the violations did not result in financial gain to the employer. (CX-T FLSA Narrative; Hearing Testimony of Susan Lang). The combined penalties totaled $1,823.80. (Hearing Testimony of Susan Lang; Summary of Violations).

On December 22, 2017, Sharon Wickstrum, on behalf of Wickstrum Cattle, requested a hearing. On July 16, 2019, the Administrator filed an Order of Reference attaching the November 29, 2017, Notice of Determination and Respondent's Request for a Hearing. The matter was originally scheduled for a hearing on August 15, 2019, and was rescheduled after counsel for the Administrator advised that discovery responses were owed by the Company. At that time, the matter was reassigned to the undersigned Administrative Law Judge, and, after a conference call with the parties, the hearing was rescheduled for November 25, 2019.

Testimonial Evidence and Credibility Determinations

The undersigned fully considered the testimony of the witnesses at the hearing. As the finder of fact in this matter, the undersigned is entitled to determine the credibility of witnesses, to weigh evidence, and to draw her own inferences and conclusions from the evidence, and is not bound to accept the opinion or theory of any particular witness. *Bank v. Chicago Grain Trimmers Assoc., Inc.*, 390 U.S. 459, 467 (1968), *reh'g denied*, 391 U.S. 929 (1968) (part of witness's testimony may be accepted without accepting it all).

Investigator Lang testified that she has been a Wage and Hour Investigator for at least 34 years and has conducted thousands of investigations including approximately 300 hundred investigations involving the H-2A program. Investigator Lang testified credibly regarding the scope of this investigation, the facts developed during the investigation, at times referencing particular documents she gathered, and her recommendations at the conclusion of the investigation. She came across as knowledgeable regarding the applicable regulatory framework, as well as the details of the investigation, and her statements were largely consistent with documentary evidence and other witnesses. Therefore, I have given her testimony great weight. **Sharon Wickstrum** likewise provided credible testimony explaining the Company's operations and its attempts to comply with the various regulatory provisions regarding employment of H-2A temporary workers. I have also given her testimony great weight, along with the testimony of **Todd Wickstrum**, whose testimony was brief but nonetheless was overall consistent with the other witnesses and evidence of record.

Facts Regarding Violation No. 1 (failure to comply with the requirements of the job order)

Investigator Lang testified that the Company made deductions to the wages of H-2A workers for personal use of the Company vehicle and to recover property damage the workers had caused. Investigator Lang found that such deductions were described in Company policies and in the Company's employment contracts. However, Investigator Lang testified that all potential wage deductions must be set forth in the ETA Form 790/job order completed by the Company as part of its H-2A Application for Temporary Employment Certification (ETA Form 9142A). Investigator Lang concluded that Wickstrum Cattle failed to identify these deductions on its ETA Form 790. According to Investigator Lang, the deductions must be stated in the ETA Form 790/job order to give an employee considering the position, including U.S. workers, enough information at that stage to accept or reject employment. Investigator Lang clarified that the violation here was based on the error in the documentation (i.e., the deductions were missing from ETA Form 790), and that the Administrator was not stating the Company made impermissible deductions.

The full name of ETA Form 790 is "Agricultural and Food Processing Clearance Order ETA Form 790," and provides various details about the job being filled, including period of employment, anticipated hours of work per week, whether any meals or transportation is provided, the job description, various job requirements (such as licenses or certifications and exertional requirements of the job), and wage rates and wage deductions. (CX-U at C5d through C5k). ETA Form 790 includes Box 17 for providing information about "wage rates, special pay information and deductions." Here, Wickstrum Cattle's ETA Form 790 identified deductions that would be taken for Social Security, Federal and State Taxes, and "Other (specify)." (CX-U at C5g). Box 18 of the form provided space to give "more details about the pay," and Wickstrum Cattle provided more details about the wage rate being offered, without mentioning deductions. (*Id*.). Box 19 of the form addresses "transportation arrangements," and provides in relevant part that the Company will provide transportation "between the place where the employer has provided housing to the actual work site & return at the end of the workday. Such transportation will be without cost to the worker." Box 28 of the form provided more space for "additional supporting information," and in this space, Wickstrum Cattle included 17 numbered items with more details about the terms of the employment it was offering. (*Id*. at C5i). Item no. 9 stated,

"Equipment Damage/Misuse: Workers will be responsible for proper use of equipment. Repair costs of damaged equipment due to misuse, carelessness, or not following instructions will be deducted from worker's earnings. Deductions cannot cause worker's pay to fall below FLSA minimum." (*Id.*).

Sharon Wickstrum testified at the hearing that the Company advised employees of its policy to deduct property damage from wages in many various ways, including its employment contracts and a written policy provided to employees. She also believed that H-2A workers were provided a copy of their employment contracts by someone at the embassy in their home country, and thus that the workers knew of the policy about deductions before leaving their country. She also stated that she had a hard time getting signed contracts back from employees. She and Troy Wickstrum did not dispute at the hearing that ETA Form 790 did not include this information on the page of the form that contains Box 17 for identifying wage deductions.

Facts Regarding Violation No. 2 (failure to provide a copy of the work contract)

Investigator Lang testified that the Company was required to provide contracts to H-2A workers in their home country and also to corresponding workers when those corresponding workers arrived for their first day of work. Investigator Lang testified that one worker she interviewed, Aaron Ohlde, was a corresponding worker and gave a statement that he was not provided a contract. (Hearing Testimony of Lang; Ohlde Interview Statement at CX-B9 to B10).

According to Mr. Ohlde's Interview Statement, which he read and approved before signing, Mr. Ohlde "had no written contract, just a verbal agreement with my hire with Wickstrum." (CX-B9 to B10). Mr. Ohlde stated his job title was "feed truck driver," and his duties included feeding the cattle in the feedlot and also pasture cattle, loading feed into the truck from silos, and driving the feed truck. (*Id.*). As such, Investigator Lang found that he was a corresponding worker with regard to the "Farmworker, Livestock" position described in the Company's H-2A Application.

Ms. Wickstrum and Mr. Wickstrum both took issue with characterizing Mr. Ohlde as a corresponding worker, because he was the manager of the Company's mill and mainly supervised workers who did the "Farmworker/Livestock" position, rather than performing those duties himself. According to Mr. Wickstrum, Mr. Ohlde trains the workers and also buys the feed commodities and ensures the proper use of the feed. When asked about Mr. Ohlde's statement to Investigator Lang that he worked as a feed truck driver, Mr. Wickstrum testified that Mr. Ohlde probably drove the feed truck 30 to 80 percent of the time, depending on the weather and the availability of other workers. Mr. Wickstrum agreed that Mr. Ohlde assisted with the cow/calf operation, sorted/separated cattle, and paired/tagged/fed livestock. These were among the duties assigned to the position of "Farmworker/Livestock," according to the H-2A Application. (CX-U at C5f).

II. Analysis

In my decision I "may affirm, deny, reverse, or modify, in whole or in part, the determination of the WHD Administrator." 29 C.F.R. § 501.41(b).

Under the Act, foreign workers may receive visas to work temporarily in the United States when there are not enough U.S. workers able, willing, qualified, and available at the time and place needed to perform agricultural labor or services. Employers must petition for H-2A visas to admit these agricultural workers to the United States. 8 U.S.C. § 1184(a), (c)(1).

A. The Respondent Violated 20 C.F.R. § 655.121(a)(3) By Taking Deductions Not Identified in the Terms of the Job Order (ETA Form 790).

Pursuant to regulations at 20 C.F.R. § 655.121, the employer who applies for H-2A temporary employment certification must first submit ETA Form 790 to the State Workforce Agency ("SWA") serving the area of intended employment, which becomes the job order to be placed in connection with the employer's future Application for Temporary Employment Certification (ETA Form 9142A).[2] The job order is an offer made to both U.S. and foreign workers. See 20 C.F.R. § 655.103(b).

The job order "must satisfy the requirements for agricultural clearance orders in 20 C.F.R. part 653, subpart F[3] and the requirements set forth in § 655.122." 20 C.F.R. § 655.121(a)(3) (emphasis added). Section 655.122 governs the contents of job offers and subsection (p) specifically addresses "deductions," providing that the employer "must make all deductions from the worker's paycheck required by law. The job offer must specify all deductions not required by law which the employer will make from the worker's paycheck."

The Administrator asserts that the Company took two types of wage deductions that were not specified in ETA Form 790, specifically (1) deductions for property damage caused by the worker and (2) deductions for workers' personal use of the Company vehicle. The Company responded that its policy regarding such deductions was communicated in its H-2A Employment Contracts (CX-J), a 2015 H-2A Employee Policy Sheet (CX-Q), and Company Rules & Regulations (CX-R).

Deductions for Property Damage

I find that Wickstrum Cattle's ETA Form 790 for the time period at issue adequately identified the taking of deductions for property damage or misuse because the Company provided this detail in Box 28 of the form. (CX-U at C5i). In Box 28, employers may "provide additional supporting information" for other information supplied in the form. Statement no. 9 in Box 28 advises, "Repair costs of damaged equipment due to misuse, carelessness or not following instructions will be deducted from worker's earnings." (*Id.*).

[2] The SWA reviews the job order, works with the employer on any needed corrections, and initiates recruitment of U.S. workers. *See* https://www.foreignlaborcert.doleta.gov/h-2a.cfm

[3] 20 C.F.R. §§ 653.500 and 501 contain established procedures for the recruitment of agricultural workers. In order to initiate out-of-area recruitment for temporary agricultural work, the employer must use ETA Form 790 to list the job opening with the SWA and initiate recruitment efforts supporting the labor certification application. 69 Fed. Reg. 21578 (Apr. 21, 2004).

Wickstrum Cattle identified at Box 17 of ETA Form 790 that it would take "Other" deductions; the form required the Company to "specify" those deductions but did not provide space for the explanation in Box 17. The Company could have provided more information about the deductions at Box 18 (on the same page, under Box 17) and in fact, it did so on an ETA Form 790 covering a later time period (a job order for March 25, 2017 to December 31, 2017). (Compare CX-U at C5g and CX-F at 6). But the form does not on its face require that additional information about pay or deductions only be supplied at Boxes 17 and 18. Rather, Box 28 is another means for providing supporting information for information entered elsewhere on the form, and, here, Wickstrum Cattle used this section for identifying, among other things, the deductions that it would take for property damage or misuse. (CX-U at C5i). As such, I find and conclude that Wickstrum Cattle did not violate Section 655.121(a)(3) when taking deductions for damage to, or misuse of, property.

Deductions for Personal Use of Company Vehicle

As for transportation-related deductions, Wickstrum Cattle stated in ETA Form 790 that it was providing transportation between the worker's housing and place of work at no cost to the worker. (*Id*. at C5g). This is consistent with the requirements of 20 C.F.R. § 655.122(h)(3) ("*Transportation between living quarters and worksite.* The employer must provide transportation between housing provided or secured by the employer and the employer's worksite at no cost to the worker.").

The Company also provided the option of personal use of the Company vehicle at some cost to the worker, but this is not stated in the ETA form. A Wickstrum Harvesting "Rules & Regulations" sheet from 2015 explained that a Company vehicle was available at $20 per trip for going to town for personal reasons and that the cost could be split by the number of people using the vehicle. (CX-R at 1). In the relevant time period, a couple of employees had deductions (totaling $201.67 for Johannes Haarhoff and $150.00 for Hendrik Kruger) for personal vehicle use. (CX-H at 7, 10). Another employee had no deductions for vehicle use (Roman Gromov). (CX-H at 9). The Company was clear that personal use of vehicles was a "privilege potentially offered for H2A workers by the employer on a per trip basis, and therefore is charged in accordance." (CX-Q). The personal use of the Company's vehicle was not guaranteed but rather could be "revoked, adjusted, or denied" for any reason. (*Id*.).

While the ETA Form 790 in this case was clear that transportation between the worker's housing and place of work was being provided at no cost, the form is silent as to the provision of transportation for personal use and deductions for such transportation charges. By at least 2015, the Company had a written policy regarding personal use of its vehicle, and anticipated that there would be per trip charges. (CX-Q at 1). While the Company did not guarantee it would always make such transportation available, it nonetheless foresaw offering it to H-2A workers with associated charges. The Administrator has not taken issue with the permissibility or reasonableness of the deductions for such transportation, only that the Company's ETA Form 790 did not identify the deduction. I agree with the Administrator that the regulations required the Company to specify in ETA Form 790 "**all deductions** not required by law which the employer will make from the worker's paycheck," and thus deductions for personal use of the

Company vehicle should have been included in the form. *See* 20 C.F.R. § 655.122(p) (emphasis added).

In its post-hearing arguments, the Company focuses on the notice of deductions to employees via its employment contracts and credibly describes its efforts to provide accurate contracts to its workers. The Company further describes its efforts to treat employees fairly and seeks leniency for any oversight in how it communicated its policy regarding deductions. I find that the Company very credibly described its efforts to communicate and fairly implement its policies regarding deductions, but that, as far as the deductions for certain personal transportation costs, the Company did not ensure that the job order included notice of the deductions. The omission truly appears to be an oversight, which is taken into account below for penalty purposes.

For all of these reasons, I find and conclude that Wickstrum Cattle took deductions for personal use of the Company vehicle that did not comport with the information in its job order (ETA Form 790) and thus violated 20 C.F.R. § 655.121(a)(3). However, the deductions for property damage were set forth in the job order, and accordingly, that portion of the cited violation is not affirmed.

B. The Respondent Violated 20 C.F.R. § 655.121(a)(3) Because a Copy of the Work Contract Was Not Provided to a Corresponding Worker.

According to § 655.122(q) (Disclosure of work contract):

> The employer must provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the worker in a language understood by the worker as necessary or reasonable. [] At a minimum, the work contract must contain all of the provisions required by this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and the certified Application for Temporary Employment Certification will be the work contract.

20 C.F.R. § 655.122(q)(emphasis added).

Workers of the employer who are not H-2A workers are referred to as "corresponding" workers as long as the worker does the "work included in the job order." *See* 20 C.F.R. § 655.103 (b) ("Corresponding employment. The employment of workers who are not H-2A workers by an employer who has an approved H-2A Application for Temporary Employment Certification in any work included in the job order, or in any agricultural work performed by the H-2A workers. To qualify as corresponding employment the work must be performed during the validity period of the job order, including any approved extension thereof.").

The Administrator asserts the work contract provided to H-2A workers was not provided to a corresponding U.S. worker, Aaron Ohlde. Mr. Ohlde's statement supports the Administrator's position. (CX-B9 to B10). His statement further supports the Administrator's characterization of Mr. Ohlde as a corresponding worker because he drove a feed truck and engaged in other "Farmworker, Livestock" duties described in the H-2A Application. (CX-U at C5f). In its post-hearing argument, Wickstrum Cattle contends that Mr. Ohlde was not a corresponding worker due to his oversight and management responsibilities, above the duties that the temporary workers performed; it also describes Mr. Ohlde and other U.S. workers as "incumbent employees, compared to the H2A workers." I agree with the Administrator here that the performance of similar, baseline duties is sufficient to render Mr. Ohlde a corresponding worker, despite his longer experience and additional supervisory duties. *See* Section 655.103(b).[4] Therefore, I find and conclude that the Administrator established a violation of § 655.121(a)(3).

C. Penalties

To enforce the employee-protection provisions under the H-2A program, the Secretary of Labor "is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment." 8 U.S.C. § 1188(g)(2). Here, the Administrator chose to enforce the employee-protection provisions by imposing civil money penalties.

Under the H-2A regulations the Administrator can administer civil money penalties "for each violation of the work contract, or the obligations imposed by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part." 29 C.F.R. § 501.19(a). The regulations further clarify that "each failure . . . to honor the terms or conditions of a worker's employment . . . constitutes a separate violation." 29 C.F.R. § 501.19(a).

The regulations provide,

> In determining the amount of penalty to be assessed for each violation, the WHD Administrator shall consider the type of violation committed and other relevant factors. The factors that may be considered include, but are not limited to, the following:
>
> (1) Previous history of violation(s) of 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part;
>
> (2) The number of H-2A workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

[44] I also note that "incumbent employees" are included in the definition of corresponding employment (and exceptions to same) for H-2B temporary workers, 20 C.F.R. § 655.5, but not included in the definition of corresponding employment for H-2A temporary workers, 29 C.F.R. § 655.103(b). The exceptions pertaining to H-2B corresponding workers do not appear in the regulation governing H-2A workers.

> (3) The gravity of the violation(s);
>
> (4) Efforts made in good faith to comply with 8 U.S.C. 1188, 20 CFR part 655, subpart B, and the regulations in this part;
>
> (5) Explanation from the person charged with the violation(s);
>
> (6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated 8 U.S.C. 1188;
>
> (7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

29 C.F.R. §§ 501.19(b), (c).

According to 29 C.F.R. § 501.41, the ALJ may alter or amend the penalty assessment. *See also Administrator Wage and Hour Div. v. John Peroulis*, ALJ No. 2012-TAE-004 (ARB Sept. 12, 2016). Thus, an ALJ can review de novo a penalty assessment and consider the mitigating factors in 29 C.F.R. § 501.19(b).

Regarding Violation No. 1, the Administrator assessed the maximum penalty of $1,658 with a reduction of 40 percent, resulting in a penalty of $994.80. The reduction was based on mitigating factors that Investigator Lang found applicable under § 501.19(b)(1), (3), (6) and (7). I find that additional mitigating factors apply, including Section 501.19(b)(2), because the violation affected a very small number of workers (particularly considering the Company's deductions for property damage were in compliance with regulatory requirements), and 501.19(b)(4), in that the Company made good faith efforts to comply. As such, I apply 6 mitigating factors, with a reduction of 10 percent for each factor, totaling a reduction of 60% and resulting in a penalty of $663.20 for this violation.

Turning to Violation No. 2, the Administrator assessed the maximum penalty of $1,658 with a reduction of 50 percent, resulting in a penalty of $829. However, the reduction was based on the same four mitigating factors under § 501.19(b)(1), (3), (6) and (7), and the Administrator did not explain why the application of the same factors resulted in a 40 percent reduction for one violation and a 50 percent reduction for the other. Even so, I find that the application of the same four mitigating factors applied by the investigator is appropriate, as well as the two additional mitigating factors under Sections 501.19(b)(2) and (4) that I have applied above (for the same reasons), resulting in a reduced penalty of $663.20. Therefore, the total combined, reduced penalty is $1,326.40.

ORDER

1. The assessed violation under 20 C.F.R. § 655.121(a)(3) is affirmed, in part, only with regard to the deductions made for personal use of the company vehicle that did not comport with the information in its job order (ETA Form 790).

2. The assessed violation under 20 C.F.R. § 655.122(q) is affirmed.

3. The Respondent is ordered to pay a civil money penalties of $1,326.40 for failing to comply with 20 C.F.R. §§ 655.121(a)(3) and 655.122(q).

So **ORDERED** this 20th day of December, 2019, at Covington, Louisiana.

ANGELA F. DONALDSON
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: Any party seeking review of this decision, including judicial review, shall file a Petition for Review (§Petition§) with the Administrative Review Board (§ARB§) within 30 days of the date of this decision. 29 C.F.R. § 501.42. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic

service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.
Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: https://dol-appeals.entellitrak.com. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition, only one copy need be uploaded.

Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. If the ARB does not receive the Petition within 30 days of the date of this decision, or if the ARB does not issue a notice accepting a timely filed Petition within 30 days of its receipt of the Petition, this decision shall be deemed the final agency action. 29 C.F.R. §501.42(a).