U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, LA 70460

(985) 809-5173
(985) 893-7351 (FAX)

Issue Date: 03 May 2006

CASE NO.: 2006-CLA-2

IN THE MATTER OF

ADMINISTRATOR, WAGE AND HOUR DIVISION,
Prosecuting Party

v.

TRITON INDUSTRIES, LLC dba
TRITON INDUSTRIES,
MICHAEL JAMES and LISA JAMES,

Respondents

DECISION AND ORDER

This proceeding arises under the Child Labor Provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 201 *et. seq.* (hereinafter referred to as "the Act"), and in accordance with the regulations promulgated thereunder at 29 C.F.R. Parts 570, 579 and 580. Respondents request review of the imposition of a civil money penalty imposed pursuant to Section 16(e) of the Act for alleged violations of the Child Labor Provisions.

Findings of Fact

As shown by the stipulations found at ALJ Exhibit 3, as well as Respondents' representative's concessions at the outset of the hearing, most every detail has been agreed upon by the parties except the appropriateness and reasonableness of the civil penalties imposed upon the Respondents.[1]

[1] The James are managing owners of the limited liability corporation and employed Karl Mitchell Mayeux in the summer of 2003.

The hearing involved seven witnesses and dealt with a 6-week period in the summer of 2003 during which time Karl Mitchell Mayeux (minor), then 16 years of age, was in the employment of Respondents for approximately 16 days (AX 1).

The minor acquired the job at his father's, Karl Keith Mayeux, request. Mr. Mayeux himself worked as a welder for Respondents and had prevailed upon the James to hire his son as a "helper" to clean up the shop because the young man was saving to purchase a stereo for his automobile.

Once employed, the minor testified he spent half of his employment time at the James' home cutting grass and on occasion babysitting. The remaining half of his work time was spent at the shop sweeping, moving hoses and picking up parts. According to the minor, his father and Paul Lacourt told him what to do when he was at the shop and he only interacted with the James at the shop a few minutes a day.

His father and Mr. Lacourt instructed the minor on the operation of forklifts located at the shop, and on occasion the minor said he would move pallets with the machines while cleaning. He also testified at this father's and Mr. Lacourt's requests he on occasion drove the company vehicles to retrieve parts and/or to get gas.

The minor's father readily agreed that there were times when his son drove the forklifts to move pallets and drove the vehicles to get gas, but adamantly denied that he knew there were any DOL prohibitions concerning such activities.

Paul Lacourt was the shop foreman in 2003 and too testified at the hearing. He acknowledged the minor's occasional driving. As far as the forklifts, he clarified the minor never moved more than trash and denied that even this occurred on a daily basis. As far as the James, Mr. Lacourt could not say they ever saw the minor engaging in these activities, and he explained Mr. James only dropped by the shop once a day to tell Mr. Lacourt what needed to be done, and Mrs. James, when there, worked in the office.

Jody Majors who worked for Respondents during 2003 remembered the minor, but never saw him driving trucks or forklifts. He only remembers seeing the minor doing cleanup work such as sweeping.

Mrs. James testified she worked in the office and never saw the minor on a forklift. Mr. James explained the minor was hired as a favor to the minor's father and the minor's jobs were to clean the shop, wash the vehicles and work at the James' home. While he agreed he never expressly prohibited the minor from driving either a company vehicle or a forklift, Mr. James denied he ever saw the minor operate either nor did he ever instruct the minor to do so.

Troy Moulton was the Department of Labor inspector who initiated the charges against Respondents. He had been involved in a wage and hour investigation (which settled) and happened upon information that a minor had engaged in prohibited activities while in the brief employment of Respondents.

Mr. Moulton agreed that the James denied any knowledge of these activities, had no previous history of any such violations and exhibited no willfulness in allowing such activities to take place. Nevertheless, Mr. Moulton explained that because no precautions were taken to avoid such occurrences he charged the Respondents with violations of Hazardous Occupation Orders 2 and 7.

At the conclusion of Mr. Moulton's testimony, I inquired of Mr. Moulton regarding his discretion in matters such as this and if he thought the assessed penalties reasonable in this instance (Tr. 98-101). Mr. Moulton replied that when reporting such violations he had no discretion to waive the penalties, but in this instance had recommended the penalties be reduced:

> "I based my recommendation on the absence of investigative history, and my understanding that the James' may not have been present when the minor performed the operation, and that the assessment may not have been appropriate, or, necessary at that level to achieve future compliance. (Tr. 100)."

Discussion and Findings

The purpose of my investigation is to independently review the appropriateness of the assessed civil penalties. In this instance, I find the arbitrary imposition of $2,400.00 in civil penalties for the violation of two HO orders should be mitigated and tailored by the circumstances of this particular case and that such penalties are unnecessary as a deterrent to future violations.

29 C.F.R. § 579.5(c) provides factors relating to the gravity of the violation, including any history of prior violations, evidence of willfulness or failure to take reasonable precautions to avoid violations, the number of minors illegally employed, the age of minors so employed and exposure of such minors to hazards and any resultant injury to such minors, the duration of such illegal employment, and the hours of the day and whether such employment was during or outside school hours. Subsection (d) deals with mitigating factors of a violation and the determination of whether a civil penalty would be necessary to achieve the purposes of the Act. In other words, whether the violations were de minimis, whether there is no previous history of child labor violations, whether the employer's assurance of future compliance is credible, and whether exposure to obvious hazards was inadvertent rather than intentional.

While classified as dangerous activities, the minor here had a valid drivers license at the time he drove the vehicles and knew to wear a seat belt. As to the forklift, he testified that the equipment had roll cages, that he never lifted anything more than a foot off the ground and on the few occasions he operated the machines no accidents ever occurred (Tr. 38, 39). These details coupled with the fact that the minor totally worked at the shop no more than 8 days during which time he, for the most part, simply swept and cleaned up the area, that neither of the James knew of his operating company vehicles and equipment nor had the James ever before or since been charged with such violations, causes me to find it is far more appropriate that a de minimis civil penalty of $100.00 for each violation be imposed.

While, of course, it can be argued that admitted violations occurred and that Respondents should have had the foresight to instruct the minor's father and the shop supervisor as to precisely what activities the minor could or could not engage in, such omissions were at most inadvertent and not intentional. No injuries occurred, and the activities themselves spanned only an 8-day period and then only for brief periods.

In conclusion, given the ordeal these charges have caused Respondents, I feel confident it is branded in their minds to see such activities on the part of a minor employee shall not occur again.

ORDER

Based upon the foregoing, I find that the civil penalties imposed against Respondents should be reduced to $100.00 each for a total of $200.00.

So ORDERED this 3rd day of May, 2006, at Covington, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Administrative Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days of the date of issuance of the administrative law judge's decision.

See 29 C.F.R. § 580.13. The address for the Board is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. *See* Secretary's Order 1-2002, 67 Fed. Reg. 64272 (2002). Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the appeal with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 580.13.

If no appeal is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 580.12(e).