No. 44714-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

JON C. JAMES
Petitioner,

V.

EMPLOYMENT SECURITY DEPARTMENT
Respondent,

APPEAL FROM THE SUPERIOR COURT
THURSTON COUNTY
HONORABLE ERIC PRICE

AMENDED/PERFECTED BRIEF OF APPELLANT

pm 9/16/13

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Issues pertaining to Assignment of No. 1

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Whether or no WAC 192-150-135(4); RCW 50.12.010; 50.20.050(2)(b)(v through x) are unconstitutionally overbroad?

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7. The Appellant court and all others err by not intertwining and considering:

   - WAC 192-150-130(2)
   - WAC 192-150-135(2)
   - WAC 192-150-140(2)(c)(emphasis added)
   - WAC 192-150-145(1)
   - RCW 50.20.050(2)(b)(v through x)

Issues pertaining to Assignment of No. 7

Whether or not voluntarily quitting for unsafe/illegal changes in working conditions is nothing more than a difference between right and wrong tantamount to sincere moral beliefs that our current safety/legal labor standards actually work, protect and notify (emphasis added) Washington State employers of safe/legal labor standards upon being granted a business license, L&I certificate, Employment Security No. etc.?

Whether or not WAC 192-150-135(2) specifically, "could jeopardize safety or is contrary to other federal and state laws" is unconstitutionally overbroad, ambiguous.

Whether or not WAC 192-150-130(2) WAC 192-150-135(1 through 2), RCW 50.12.010; RCW 50.020.050(2)(b)(v through x) are unconstitutionally overbroad?

Whether or not WAC 192-150-140(2)(c) specifically, not requiring employees to notify employers of right and wrong applies to unsafe/illegal working conditions orchestrated by actual employer collectively?

II. STATEMENT OF FACTS

On April 25, 2012 the Respondents filed the Certified Appeal Board Record (Agency Record) (CP-8) There was additional documentation that contained basic knowledge of all interested parties and the "expert fact finding" document that contained unknown statements by Employer, Mark Dringle (Dringle) to public officials alleging it was his employees discretion (emphasis added) when to take statutory rest periods. (CP-8)(Agency Record 169-171) The Superior Court refused to admit as evidence and consider Agency Record 169-171 after pre-trial motion hearing and reconsideration as well as at telephonic Bench Trial. (CP-31) (CP-36)

This timely appeal follows:

III. ARGUMENT

A. The Respondents erred prohibiting "conditional benefits" pursuant to WAC 192-120-050

I, was entitled to "conditional" benefits mandated by law WAC 192-120-050 for the (4) weeks at issue yet, received none as the Respondents conducted L&I safety/lawful working condition investigations. The Respondents interpretation and application of WAC 192-120-050 is reviewable by this court de novo. *City of Redmond v Central Puget Sound Growth Mgmt. Hearings Bd.* 136 Wash.2d 38, 46, 959 P.2d 38, 46, 959 P.2d 1091 (1998).

The court is not bound by the Respondents interpretation of WAC 192-120-050 that in-short prohibits "conditional" benefits if claimants voluntarily quit or are terminated. The Respondent's practices and procedures substantially prejudiced my ability to seek and be available for safe/legal work, provide food, clothing, and shelter for myself up until I,

accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570(1)(d)(3)(c).

B. The Respondents erred by conducting a WAC 296-126-226 meal and rest period investigation pursuant to WAC 192-150-135(1).

The Respondents went out of their way to investigate Washington State Labor and Industries (L&I) Standards of Labor laws and rules (Standards of Labor) for several weeks as the initial investigation state official contact. Standards of Labor civil and/or criminal investigations are the sole jurisdiction of L&I who also has police power authority to enforce investigative findings of facts and conclusions of law.

The Respondents had no jurisdiction to initiate a WAC 296-126-226 investigation that ultimately substantially prejudiced my ability to seek and be available for safe/legal work, provide food, clothing and shelter for myself up until I, accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570(1)(d)(3)(b through d)

C. The Respondents erred by granting a WAC 296-126-092(5) meal and rest period variance pursuant to WAC 192-150-135(1).

After investigating L&I Standards of Labor, with no expertise the Respondents effectively granted a L&I Meal and Rest Period variance in-short finding landscaping is not continuous labor therefore, no scheduled rest periods were required. (CP-8) The only evidence relied upon at this WAC 192-120-050(1-5) due process procedural time was the documents that will become to be known as the Expert Fact Finding document that originates while, Respondent officials verbally interview employees, employers and witnesses.

The Respondents variance decision was supported by the unknown verbal employer evidence and L&I Standards of Labor raising questions of mixed fact and law reviewable by this court de novo. *Dermond,* 89 Wash App. at 132, 947 P.2d 1271

Anyone who has had landscaping done or seen crews installing sprinklers, trees (emphasis added) soil, sod, rock, etc. knows firsthand it is factually continuous employment not intermittent as initially decided by the Respondents moreover, the smokes and restroom opportunities intertwined by Respondents at this stage are a series of one minute periods and not rest periods as defined by the Standards of Labor laws.

The Respondents had no authority to broadly decide landscaping is not continuous employment this action continued to substantially prejudice my ability to seek and be available for safe/legal work, provide food, clothing and shelter for myself up until I, accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570(1)(d)(3)(b through d)

D. The Trial Court erred by not conducting a reasonable fact finding hearing to review the meal and rest period variance granted by the Respondents pursuant to WAC 192-150-135(1)

The first Trial Court tapes were erased immediately when my employer began to testify and the Expert Fact Finding document not disclosed to Administrative Law Judge (ALJ) and myself. The second Trial Court found and concluded it had no laws or rules requiring my employer to provide any rest periods scheduled or not scheduled, it also was not provided Expert fact Finding documents.

Facts could and were not properly before the only independent (emphasis added) credibility due process decision maker virtually skipping the scales of Justice offering two bites of the forbidden fruit to an employer who certainly was not going to correct unsafe/unlawful/immoral prohibitions of rest periods.

It is futile to argue witness credibility regarding the Standards of Labor Laws at his point because the ALJ, certainly did not. The Trial Court had the Standards of Labor Laws and Rules and relevant facts but, just did not want to decide first;

- continuous employment questions WAC 192-150-130(2); WAC 192-150-135(1); second
- employer witness Eric Meade (Meade) testimony on the final day of employment that only one task and one tool occurred from 6:45am - 12:00am "planting trees;" and
- Meade testimony before the final day of employment a meeting occurred because of me allegedly "disappearing" from "tasks."

The Trial Court had facts, laws and rules and simply avoided the substantive issue before it's jurisdiction and authority this action continued to substantially prejudice my ability to seek and be available for safe/legal work, provide food, clothing and shelter for myself up until I, accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570(1)(d)(3)(b through d)

E. The Respondents Appellant Court erred by amending the Trial Court's finding of facts and conclusions of law re-enforcing WAC 296-126-092(1-4) initial investigation and consequential WAC 296-126-092(5) variance decision controlling case pursuant to WAC 192-150-135(1)

Simply assumed because, the ALJ avoided the meal rest period laws and rules like the plague the Respondents amend the ALJ's findings and conclusions right back to WAC 296-126-092(5) by finding times that I, changed tools and/or tasks was the time for my rest periods and that it occurred up to 5-times a day for as long as 15 minutes.

Mixed question of fact and law really no different than Arguments presented at C above. The Respondents truly make no sense whatsoever, as I, thought;

- my employer did not schedule rest periods; and
- Meade clearly and concisely testified he scheduled tool and task changes glean to my disciplinary meeting with him; and
- The Respondents have the undisclosed Expert Fact Finding document

The witness credibility fact finding process was effectively skipped all while the Expert Fact Finding document suppressed not to mention that first hearing tape erased demonstrating obvious reckless abuse of the judicial proceeding process.

The Respondent's Appellant Court had facts, laws and rules and recklessly amended the avoided the substantive issues before the ALJ's jurisdiction and authority this action continued to substantially prejudice my ability to seek and be available for safe/legal work, provide food, clothing and shelter for myself up until I, accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570(1)(d)(b through d)

F. The Respondents erred by not disclosing the only evidence used to make the initial WAC 296-126-092(1-5) variance decision pursuant to WAC 192-150-135(1) governed by WAC 192-120-040.

Upon filing an application for Judicial Review then and only then the Expert Fact Finding document surfaced that had my employer initially stated:

- It was the employee "discretion" when to take rest periods

Employee discretion has nothing to do with the respondent Initial and Amended rest period decision strengthening obvious abuse of the judicial proceeding below. Bit by bit the Respondents actions substantially prejudice my ability to seek and be available for

safe/legal work, provide food, clothing and shelter for myself up until I, accepted unlawful employment. The court has authority to grant relief pursuant to RCW 34.05.570???????

G. The Appellant court and all others err by not intertwining and considering:
   - WAC 192-150-130(2)
   - WAC 192-150-135(2)
   - WAC 192-150-140(2)(c)(emphasis added)
   - WAC 192-150-145(1)
   - RCW 50.20.050(2)(b)(v through x)

The initial actions by the Respondents turn this case upside down as they first ignore "conditional" payment laws and rules moving to L&I's Standards of Labor laws and rules harboring the employers unsafe/unlawful/immoral activities to be decided by an ALJ instead of internally.

Hindsight 20/20 reveals WAC 192-150-140(2)(c) is and should be applied to all safety and illegal activity claims as when I, notified Meade at are "disappearing" disciplinary meeting of rest period "safety" laws and rules the worksite relationships deteriorated glean to the meeting that followed again with Dringle that was basically a take it or leave it proposition not correcting rest period prohibitions.

- Employers are not required to notify employees of unsafe activities prior to termination;
- Employer are not required to notify employees of illegal activities prior to termination;

Nothing good comes from telling your actual employer she/he is orchestrating unsafe/illegal/immoral activities and for purposes of the Respondent's ACT laws and rules and resolution of relief requested it is requested injunctive orders mandate all further decisions made pursuant to the aforementioned intertwined WAC's encourage notifying

actual employers of unsafe/illegal/immoral activities but, more than likely futile if employer activities are long time practices.

It's a simple matter of right and wrong pursuant to the Respondents Act and accordingly it was wrong for the Respondents to;

- Withhold "conditional" weekly benefits pursuant to WAC 192-120-050; then
- Investigate Standards of labor laws pursuant to WAC 192-150-135(1); then
- Grant Standards of labor law variances pursuant to WAC 296-126-092(5); then
- Amend Standard of labor law variances pursuant to WAC 296-126-092(5); then
- Disclose the only evidence they relied upon pursuant to WAC 192-120-050.

It was wrong for the Trial Court to;

- Not conduct fact finding and conclusions of law regarding the Respondents finding of facts and conclusions of WAC 296-126-092(5)

The Respondents have no business deciding L&I Standard of Labor Laws but, did requiring permanent injunctive relief overall determining it to be futile to notify your employer of their own unsafe/illegal/immoral activities. Laws are laws and rules and rules and current rest period laws and rules certainly do not support the Respondent's initial and amended finding of fact and conclusions of law.

Unlike, all other argument this argument substantially prejudices and saddlebags me into investigation the Respondent's actions, laws and rules spending countless hours amending and perfecting this Brief, not for monetary relief but, moral relief, to establish right and wrong for the Respondents to curtail any future abuse of those employees similarly situated debating whether or not they notified there employer properly of their own unsafe/illegal/immoral activities that more times than not are simple conditions of

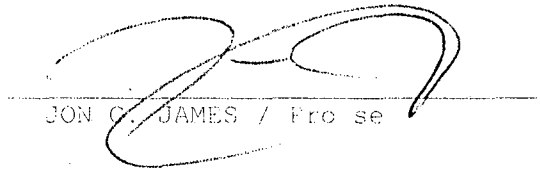
employment blackmailing all Washington employees into working in unsafe/illegal/immoral worksites from the Sound to the Palouse.

WAC 192-150-130(2) and WAC 192-150-135(2) notification provisos are unconstitutionally overreaching and certainly not tantamount to what a employer must do to achieve disqualifications pursuant to RCW 50.20.050(2)(b)(v through x).

CONCLUSION

For reasons set forth herein I, respectfully request the court grant individual relief and consider injunctive relief for all other Washington employees saddle bagged by the ambiguous, unconstitutionally overreaching WAC 192-150-130(2) and WAC 192-150-135(2); RCW 50.20.050(2)(b)(v through x)

Dated this 16th day of September, 2013



Certificate of Service

A copy of this motion was emailed and mailed prepaid postage to Eric Sonju at 1125 Washington Street, PO BOX 40110 Olympia, WA 98504.

Dated this 16th day of September, 2013