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NO. 96264-2

SUPREME COURT OF THE STATE OF WASHINGTON

VALERIE SAMPSON and DAVID RAYMOND, on their own behalf and
on behalf of all others similarly situated,

Plaintiffs/Petitioners,

v.

KNIGHT TRANSPORTATION, INC., an Arizona corporation,
KNIGHT REFRIGERATED, LLC, an Arizona limited liability company,
and KNIGHT PORT SERVICES, LLC, an Arizona limited liability
company,

Defendants/Respondents.

**AMICUS CURIAE BRIEF OF THE
ATTORNEY GENERAL OF WASHINGTON**

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I. INTRODUCTION

Minimum wage laws exist to protect workers from “the evils and dangers resulting from wages too low to buy the bare necessities of life.” *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012) (quoting *United States v. Rosenwasser*, 323 U.S. 360, 361, 65 S. Ct. 295, 89 L. Ed. 301 (1945)). That protection is particularly strong in Washington State, which has a “long and proud history of being a pioneer in the protection of employee rights.” *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000).

The commercial truck drivers in this case are Washington residents who are protected by the Washington Minimum Wage Act (MWA). They are paid a “piece rate” for completing trips but receive no separate compensation for non-driving work, such as pre-trip inspections, fueling, or washing trailers. This wage scheme violates the MWA by depriving the drivers of their right to “separate hourly compensation” for all time worked, including time spent performing tasks outside of piece-rate work. *Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612, 626, 416 P.3d 1205 (2018).

In response to the federal district court’s question, this Court should hold that non-agricultural workers, like the truck drivers here, enjoy a statutory right to separate, minimum, hourly compensation for non-piecework time.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Commercial truck drivers and other non-agricultural workers need to know how they will be paid for their non-piecework time, and employers need to know how to properly compensate that time. The Attorney General submits this amicus curiae brief to advocate for a resolution that protects worker rights and clarifies the law for employers.

In 2018, this Court accepted the Attorney General’s amicus curiae brief in *Carranza*. The parties in the present matter have cited the Attorney General’s statements in that brief regarding a Department of Labor and Industries regulation concerning “workweek averaging.” The Attorney General believes the Department’s regulation must be interpreted and applied in light of this Court’s decision in *Carranza*. Thus, the regulation should not be read to allow non-agricultural employers to avoid paying a separate, hourly, minimum wage for non-piecework time.

III. ISSUE ADDRESSED BY AMICUS CURIAE

This brief will address the federal district court’s certified question: “Does the Washington Minimum Wage Act require non-agricultural employers to pay their piece-rate employees per hour for time spent performing activities outside of piece-rate work?” The Attorney General believes an affirmative answer is mandated by the MWA’s plain language.

IV. STATEMENT OF THE CASE

The commercial truck drivers in this case earn per-mile and per-load piece rates. Long-haul drivers receive a piece rate for each mile driven—typically 34 to 54 cents per mile. Short-haul drivers receive a piece rate for each load delivered—typically \$35 to \$500 per delivery. But, crucially, long-haul and short-haul drivers earn no separate compensation for non-driving tasks, such as pre-trip inspections, fueling, or washing trailers. Pet’rs’ Opening Br. at 5–6.

Because non-driving time may be substantial relative to driving time, it is possible that a worker’s total wage divided by the number of hours worked will fall below the minimum hourly rate prescribed by law. In such cases, the worker’s employer subsidizes the total so that it meets or exceeds the applicable minimum wage. Resp’ts’ Br. at 3. This scheme is known as “workweek averaging.”

Workweek averaging has a potential downside for workers who perform a mix of piecework and non-piecework. For these workers, if the piece rate wage standing alone exceeds the minimum hourly rate for a given time period, the worker receives no additional compensation. This is true even if the worker would have earned more money under a straight hourly rate that accounts for each work hour separately. *See* Pet’rs’ Opening Br. at

21 (providing example of how workweek averaging may shortchange a worker who performs a mix of piecework and non-piecework).

V. ANALYSIS

In *Carranza*, this Court held that the MWA's plain language requires employers to pay agricultural workers a separate, minimum, hourly wage for time spent performing activities outside of piece-rate work. *Carranza*'s distinction between agricultural and non-agricultural pieceworkers is immaterial for purposes of the federal district court's certified question. This Court should extend *Carranza* to non-agricultural pieceworkers and hold that the MWA requires non-agricultural employers to pay their employees a separate, minimum, hourly wage for time spent performing activities outside of piece-rate work.

A. The MWA Mandates Minimum Compensation for Each "Hour" Worked

The MWA provides that "every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than [minimum wage] per hour." RCW 49.46.020. The plain meaning of this statute is that workers enjoy a "right to compensation for each individual hour worked." *Carranza*, 190 Wn.2d at 619. Thus, "[t]ime spent performing activities outside the scope of piece-rate picking work must be compensated on a separate hourly basis." *Id.* at 615.

B. The Distinction Between Agricultural and Non-Agricultural Workers Is Immaterial

In *Carranza*, this Court held that agricultural workers must be paid a separate, minimum, hourly wage for activities outside of piece-rate picking work, such as traveling between orchards, attending meetings, and storing equipment. *Carranza*, 190 Wn.2d at 618–26. The Court expressly limited its holding to agricultural workers. *Id.* at 626.

Carranza's reasoning, however, applies equally to non-agricultural workers, like the truck drivers here. Because the Court relied on the MWA's plain language, the distinction between agricultural and non-agricultural workers is immaterial. The MWA applies to "every employer" and makes no distinction between agricultural and non-agricultural workers. RCW 49.46.020. Covered non-agricultural workers thus enjoy the same statutory right to separate, hourly compensation for non-piecework time.

C. To the Extent WAC 296-126-021 Allows Non-Agricultural Employers to Avoid Compensating Non-Piecework Time Separately, It Is Inconsistent With the Plain Language of the Minimum Wage Act

WAC 296-126-021, a regulation adopted by the Department of Labor and Industries, "authorizes employers to pay employees on a piecework basis and establishes a formula for calculating minimum wage compliance for such pay." *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 761, 426 P.3d 703 (2018). This Court has not yet decided whether

WAC 296-126-021 allows non-agricultural employers to avoid compensating non-piecework time separately. But under *Carranza*'s interpretation of the MWA, all covered workers enjoy a right to separate, minimum, hourly compensation for non-piecework time. Thus, post-*Carranza*, this Court should hold that WAC 296-126-021 authorizes workweek averaging only for the piecework component of a non-agricultural employee's wages.

Defendants cite the Attorney General's argument in *Carranza* that WAC 296-126-021 is a "valid resolution of [the MWA's] ambiguity for [non-agricultural] workers." Amicus Br. of Att'y Gen. of Wash. at 6, *Carranza*, 190 Wn.2d 612. To clarify, the Attorney General made this argument believing the MWA was ambiguous to the extent it specified no measure of compliance. *Id.* at 4. Post-*Carranza*, the legal landscape has changed. This Court has made clear that the MWA is *not* ambiguous; rather, it plainly prohibits workweek averaging as a means to avoid separate, minimum, hourly compensation for non-piecework time.

VI. CONCLUSION

Carranza forecloses Defendants' argument that the MWA allows employers to compensate non-piecework time through workweek averaging. If a pieceworker performs non-piecework activities, those activities must be compensated through a separate, minimum, hourly wage.

The MWA's plain language compels this conclusion, and WAC 296-126-021 is inconsistent with the MWA to the extent it provides otherwise.

RESPECTFULLY SUBMITTED this 1st day of April 2019.

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify under penalty of perjury under the laws of the state of Washington, that on April 1, 2019, I caused to be served a true and correct copy of the Amicus Curiae Brief of the Attorney General of Washington in the above-captioned matter upon the parties herein via U.S. Mail and using the Appellate Court Portal filing system, which will send electronic notification of such filing to the following:

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