

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: GATEWAY TRANSPOT LLC,
Citation and Notice of Assessment Nos.
W-264-15

OAH Docket No. 2015-LI-00086

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on December 2, 2015, having considered the petition for review filed by Gateway Transport LLC (the Appellant) with the Director's Office on December 29, 2015, briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein, issues this Director's Order. This Order intends to resolve the contested issue of whether the Appellant failed to pay all the wages due to Gurminder Bajwa in violation of the wage payment and minimum wage laws. **The Appellant is ordered to pay wages to Gurminder Bajwa in the amount of \$4,252.17. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages.**

The parties in this matter are the Department of Labor & Industries and the Appellant.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on December 2, 2015, following an administrative hearing on October 14, 2015. The Initial Order modified the Department's February 13, 2015 citation and notice of assessment, and ordered the Appellant to pay Gurminder Bajwa wages in the amount of \$4,252.17, plus interest.
2. On December 29, 2015, the Appellant timely filed a petition for review with the Director.
3. On January 8, 2016, the Director asked for briefing from the parties. Appellant filed a brief on February 6, 2016. Appellant filed another brief on February 16, 2016, which attached additional evidence in the form of a letter dated February 12, 2016. On March 21, 2016, the Department filed its brief.
4. The Director adopts and incorporates all the Initial Order's Findings of Fact.
5. The Director also adopts and incorporates the Initial Order's "Issues" statement, the "Order Summary" and the "Hearing" summary.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Department has the burden of proving by a preponderance of the evidence that the violation asserted in the citation occurred and that the wage and interest calculations are appropriate.
3. The additional evidence submitted by the Appellant in the form of a letter dated February 12, 2016, and arguments related thereto, were not part of the administrative hearing record and may not be considered here on appeal to the Director. RCW 34.05.464; *see Towle v. Dep't of Fish & Wildlife*, 94 Wn. App. 196, 205-06, 971 P.2d 591 (1999). Appellant had a full opportunity to present such evidence at the administrative hearing on October 14, 2015.

4. The Director adopts and incorporates the Initial Order's Conclusions of Law and Initial Order.

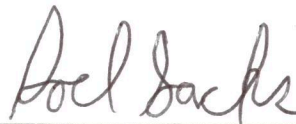
5. Interest Calculation: Because the Appellant failed to pay its employee full wages, the Department ordered the Appellant to pay wages owed, plus interest at one percent per month under RCW 49.48.083(2). The Appellant is ordered to pay interest on the unpaid wages in the amount of one percent per month under RCW 49.48.083(2). **The interest payment obligation is ongoing until paid in full.**

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Citation and Notice of Assessment is MODIFIED and the Initial Order of December 2, 2015, is incorporated by reference herein.

1. Payment of wages. See Citation and Notice of Assessment (February 13, 2015) for payment information and the effect of the failure to pay wages and interest. The Appellant is ordered to pay wages to Gurminder Bajwa in the amount of \$4,252.17. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages. The Appellant is also ordered to pay interest of one percent per month under RCW 49.48.083(2) for these wages. The Appellant is ordered to make these payments within thirty days of the date of service of this final Director's Order.

DATED at Tumwater this 22 day of April, 2016.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Luis Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 22 day of April 2014, to the following via certified mail, postage prepaid.

Paramjit Singh
Gateway Transport, LLC
1415 Second Street SE
Auburn, WA 98002

Gurminder Bajwa
306 Tenth Avenue North
Algona, WA 98001

Katy J. Dixon
Assistant Attorney General
800 Fifth Ave, Suite 2000
Seattle, WA 98104

DATED this 22 day of April, 2016, at Tumwater, Washington.

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of the assessment of wage
payment violations against

Gateway Transport LLC
and
Paramjit Singh and Spouse, and the marital
community thereof,

Appellants.

Docket No. 05-2015-LI-00086

INITIAL ORDER

Agency: Dept. of Labor & Industries
Program: Wage Payments
Agency No. W-264-15

For translation of this document, please call OAH, 253-476-6888. ਇਸ ਦਸਤਾਵੇਜ਼ ਦੇ
ਅਨੁਵਾਦ ਦੀ, 253-476-6888 ਨੂੰ ਫੋਨ ਕਰੋ.

1. ISSUES

- 1.1. From January 27, 2014, through May 12, 2014, did Gateway Transport LLC violate RCW 49.52.050 by failing to pay Gurminder Bajwa for 24,943 miles at an agreed rate of 35 cents per mile, such that Mr. Bajwa is owed \$4,668.49, plus interest, for work performed during that period?
- 1.2. If the violation occurred, is the penalty of \$1,000.00 appropriate under RCW 49.48.083?

2. ORDER SUMMARY

- 2.1. From January 27, 2014, through May 12, 2014, Gateway Transport, LLC violated RCW 49.52.050 by failing to pay Gurminder Bajwa for all miles driven at the agreed rate such that Mr. Bajwa is owed \$4252.17 for work performed during that period.
- 2.2. Nevertheless, the penalty of \$1000 is not appropriate under RCW 49.48.083.

3. HEARING

- 3.1. Hearing Date: October 14, 2015
- 3.2. Administrative Law Judge: Terry A. Schuh

3.3. Appellants: Gateway Transport LLC, and Paramjit Singh and Spouse

3.3.1. Representative and Witness: Paramjit Singh, only member, Gateway

3.4. Agency: Department of Labor and Industries

3.4.1. Representative: Katy J. Dixon, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Gurminder Singh Bajwa, Wage Claimant

3.4.2.2. Jodhva Singh¹, Driver

3.4.2.3. Ana Gamino, Industrial Relations Agent, Dept. of L&I

3.5. Intervenor: Gurminder Singh Bajwa, Wage Claimant

3.6. Exhibits: Exhibits 1 through 16 were admitted.

3.7. Observer: Gurvinder Bajwa, the wage claimant's spouse, attended the hearing as an observer.

3.8. Interpreter: Raghbir Sandhu, World Language Services, LLC, appeared as a Punjabi interpreter.

3.9. Court Reporter: Laura A. Gjuka, Central Court Reporting, appeared as court reporter.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1. On February 13, 2015, The Department of Labor and Industries ("the Department") issued to Gateway Transport LLC ("Gateway") and to Paramjit Singh ("Mr. P. Singh") and Spouse, and the marital community thereof, Citation and Notice of Assessment No. W-264-15 ("Citation and Notice of Assessment"). Exhibit ("Ex.") 1.

4.2. Copies of the Citation and Notice of Assessment were served on Gateway and on Mr. P. Singh by certified mail on February 13, 2015. Ex. 1, p. 12.

¹ The record contains more than one spelling of Jodhva Singh's name. I rely on the spelling he gave when he provided testimony. If I misunderstood and have misspelled this gentleman's name, I apologize.

4.3. Mr. P. Singh filed an appeal on behalf of himself and Gateway, which was received by the Department on March 17, 2015. Ex.15.

Pay received by Gurminder Singh Bajwa from Gateway

4.4. Gateway paid Mr. Gurminder Singh Bajwa ("Mr. Bajwa") with three checks, \$2283.00, dated April 7, 2014; \$2585.00, dated May 5, 2014; and \$824.28, dated May 28, 2014. Bajwa Testimony; Ex. 7, pp. 3-5; Ex. 4, p. 5.

4.5. Accordingly, Gateway paid Mr. Bajwa \$5692.28² for the term of Mr. Bajwa's employment with Gateway.

Mr. Bajwa: dates of employment, hours worked, minimum wage calculation

4.6. Mr. Bajwa obtained his commercial driver's license in January 2014. Bajwa Testimony.

4.7. Mr. Bajwa's first employer was Gateway. Bajwa Testimony. Mr. P. Singh came to Mr. Bajwa's house on January 20, 2014, and offered Mr. Bajwa a driver's job. Bajwa Testimony.

4.8. Mr. Bajwa and Mr. P. Singh disagree regarding when Mr. Bajwa began his employment with Gateway. Mr. Bajwa testified that he started on January 20 or 21, 2014 and Mr. P. Singh testified that Mr. Bajwa started on either January 21 or 27, 2014. However, both agree that Mr. Bajwa was hired as a driver. The Driver's Daily Logs, submitted by Gateway constitute the evidence of when Mr. Bajwa drove. See Ex. 7, pp. 10-91. Therefore, I find that Mr. Bajwa was employed by Gateway from January 27, 2014, through May 12, 2014. Ex. 7, pp. 10-91.

4.9. During his employment with Gateway, Mr. Bajwa worked 571 hours. Ex. 3, pp. 3-4; Ex. 7, pp. 10-91.

4.10. At least 61.5 of those hours were overtime. Ex. 3, p. 1. So Mr. Bajwa worked 509.5 regular hours³ and 61.5 overtime hours.

4.11. Minimum wage during that period of time was \$9.32 per hour. Ex. 3, p. 2

4.12. At minimum wage per hour, Mr. Bajwa's wages would have been \$4748.54⁴ regular wages and \$859.77⁵ overtime wages for a total of \$5608.31.⁶ Accordingly, Mr. Bajwa was paid more than minimum wage.

² \$2283.00 + \$2585.00 + \$824.28 = \$5692.28

³ 571 - 62.5 + 509.5

Mr. Bajwa was paid per mile

- 4.13. Nevertheless, Mr. Bajwa was not paid per hour but, rather, per mile. Bajwa Testimony; P. Singh Testimony.
- 4.14. Mr. Bajwa never drove solo and drove only as a member of a team of two drivers. Bajwa Testimony; P. Singh Testimony.
- 4.15. The parties dispute what the rate per mile was. There was no written agreement. Bajwa Testimony; Jodhva Singh ("Mr. J. Singh") Testimony; P. Singh Testimony. The only written communication was on May 6, 2014, shortly before Mr. Bajwa and Mr. J. Singh quit working for Gateway. See Ex. 8, pp. 2-3; Ex. 9; and Ex. 14, p. 2. The parties disagree regarding which of those contents was actually communicated as well as what the communication meant. The dispute is two-fold, whether the rate per mile was 35 cents, 40 cents, or 42 cents, and whether the rate was per driver or per team of two drivers. However, Mr. Bajwa told the Department that he was to be paid 40 cents per mile. Testimony of Gamino; Ex. 4, p. 1. Moreover, that is what he claimed in his Worker Right Complaint. Ex. 4, p. 1. The only written documentation of a 42-cent offer was the May 6 communication and it addressed only the May trip. Ex. 9. Accordingly, I eliminate the 42-cent rate from consideration. Mr. Bajwa and Mr. J. Singh testified that the parties agreed to a rate per mile, *per driver*, for all team miles driven. However, the record is inconsistent regarding how much direct communication occurred between Mr. P. Singh and Mr. J. Singh and Mr. Bajwa was himself inconsistent regarding the wage rate per mile. On the other hand, Mr. P. Singh consistently testified that the rate was 35 cents per mile if driving solo and 40 cents per mile per team if a pair of drivers shared the cab. Moreover, I am persuaded that two drivers are not worth per mile twice as much as a solo driver. I am also persuaded that a team of two drivers will make a trip faster than a solo driver, which is of value to the employer, expressed in a higher rate per mile for the team than the rate for a solo driver. Therefore, having reviewed the totality of the evidence and the demeanor and motivation of the witnesses, and despite conflicting interpretations of what the agreement meant, I find that the agreed rate of pay per mile was 35 cents for driving solo and 40 cents per team for driving as a pair, the team rate to be split between the drivers.

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⁴ $509.5 \times \$9.32 = \4748.54

⁵ $61.5 \times \$9.32 \times 1.5 = \859.77

⁶ $\$4748.54 + \$859.77 = \$5608.31$

Miles Driven

- 4.16. The parties dispute how many miles Mr. Bajwa drove during his employment with Gateway. On behalf of Mr. Bajwa, the Department asserted he drove 27,943 miles. Gamino Testimony; Ex. 4, pp. 3-4. Mr. P. Singh testified that in order for Mr. Bajwa to have driven 27,943 miles, as a member of a team, the truck must have traveled at least 50,000 during that time period and that was not possible. P. Singh Testimony. I resolve the dispute as discussed below.
- 4.17. To determine how many miles Mr. Bajwa drove, I consider his employment in four periods. (1) From January 27, 2014, through March 1, 2014, Mr. Bajwa drove with Mr. P. Singh and was not paid. Ex. 7, pp. 10-39. I call this period "February". (2) From March 2, 2014, through April 6, 2014, Mr. Bajwa drove with Mr. P. Singh. Ex. 7, pp. 40-67. I call this period "March". (3) From April 7, 2014, through May 2, 2014, Mr. Bajwa drove with Mr. J. Singh. Ex. 7, pp. 68-82. I call this period "April". From May 3, 2014, through May 12, 2014, Mr. Bajwa drove with Mr. J. Singh. Ex. 7, pp. 83-91. I call this period "May".
- 4.18. I rely primarily upon the Driver's Daily Logs and the worksheet that summarizes those logs. See Ex. 7, pp. 10-91 and Ex. 4, pp. 3-4. I find the Driver's Daily Logs to be credible because they were completed daily, they constitute business records, they were the basis of providing information to the Department of Transportation, and they were provided to the Department by Mr. P. Singh on behalf of Gateway. P. Singh Testimony. I find the worksheet to be credible because the information it reports generally matches the Driver's Daily Logs.⁷ Moreover, when reviewing the Driver's Daily Logs, I find that each such log reported only the miles driven by the driver listed first on the log. See generally, Ex. 7, pp. 10-91. This is so for several reasons. One, there were two logs and Gateway needed both. P. Singh Testimony. The most reasonable explanation is that each driver had a log. Two, the document is titled *Driver's Daily Log* (singular), not *Drivers' Daily Log* (plural). Three, the log reports when the driver was off duty, in the sleeper berth, driving, and on duty – but there is no place there to distinguish between two drivers. Four, the bottom of the log reports the beginning and end of the trip, and the relevant locations in between are referenced in the center of the log. Regularly, when reviewing the last location on one day and the first location on the following day, there is a gap, suggesting that a different driver with a different log drove the distance in between. Five, when comparing periods of time for which the record contains evidence of both individual miles and team miles, in April and May, it is apparent that the distance reported on the daily logs was for individual miles driven only. Six, the amount of time that the driver reported as time

⁷ There is an exception, from April 10-18, 2014. However, as will be discussed later, that missing information is not critical.

spent driving corresponds to the miles reported, e.g., 7.25 hours spent driving 430 miles implies an average speed of 59 mph. See, Ex. 7, p. 19.

4.19. Therefore, during February, according to the logs, Mr. Bajwa drove 7294 miles. Ex. 4, p. 3; Ex. 7, pp. 10-39. The record contains no precise and direct evidence of how far the team drove. However, the team drove the following trips: Milton, WA to Vernon, CA; Redlands, CA to Sumner, WA; Sumner, WA to Tacoma, WA; Tacoma, WA to Simsboro, LA; Eldorado, AR to Woods Cross, UT; Grantsville, UT to Tacoma, WA; Seattle, WA to Cerritos, CA; Bloomington, CA to Langley, BC; Sumner, WA to Phoenix, AZ; Chino, CA to Sumner, WA; Tumwater, WA to City of Industry, CA; and, Los Angeles, CA to Tacoma, WA (returning on March 1.). An Administrative Law Judge may take "official notice" of "any judicially cognizable facts". RCW 34.05.455(5). Accordingly, I can make use of MapQuest to estimate the miles driven on these trips. Plugging these trips into MapQuest and totaling the trips implies total team miles in excess of 14,000. Thus, I find it credible that Mr. Bajwa himself drove 7294 miles during February.

4.20. During March, according to the logs, Mr. Bajwa drove 10,789 miles. Ex. 4, pp. 3-4; Ex. 7, pp. 40-67. Just as I did for the previous time period, I noted the trips reported at the bottom of the logs, used MapQuest, and I estimate that the team miles were in excess of 18,000 miles. Therefore, I find that Mr. Bajwa drove 10,789 miles during March.

4.21. During April, according to the logs, Mr. Bajwa drove approximately⁸ 6685 miles. Ex. 4, p. 4; Ex. 7, pp. 68 -82. Mr. P. Singh reported that the team drove 13,052 miles. P. Singh Testimony; Ex. 14, p. 3. Thus, I find credible that Mr. Bajwa drove approximately 6685 miles of the 13,052 miles that the team drove.

4.22. During May, according to the logs, Mr. Bajwa drove 2575 miles. Ex. 4, p. 4; Ex. 7, pp. 83-91. Mr. P. Singh paid Mr. Bajwa \$1005.00, less deductions, for his half-share of 40 cents per team mile driven. P. Singh Testimony. That implies that the team drove 5025⁹ miles. Accordingly, I find that Mr. Bajwa drove 2575 individual miles and that the team drove 5025 miles during May.

Deduction from Pay

4.23. Once, the team ran out of fuel. P. Singh Testimony. There is a charge beyond the cost of fuel to deliver fuel to a truck out on the highway. P. Singh Testimony. Mr. Singh deducted that service cost, \$180.00, from Mr. Bajwa's pay.

⁸ Some of the April logs are missing and/or inconsistent with the worksheet. However, as discussed later, that missing and/or inconsistent information is not critical.

⁹ $2 \times 1005 = 2010$; $2010 \text{ divided by } .40 = 5025$.

P. Singh Testimony. Mr. Bajwa did not run out of fuel intentionally. P. Singh Testimony.

Wages Earned

4.24. Gateway paid Mr. Bajwa nothing for February. Bajwa Testimony; P. Singh Testimony. Mr. J. Singh drove for another company, upon getting his license and before driving for Gateway. J. Singh Testimony. He was not paid for that time. J. Singh Testimony. It is common for new drivers to need training time and it is common for that time to be unpaid. P. Singh Testimony. Nevertheless, Mr. Bajwa and Mr. P. Singh dispute whether February was supposed to constitute unpaid training for Mr. Bajwa. No written agreement and no evidence corroborating Mr. P. Singh's testimony support the assertion that the time was unpaid training. Moreover, Mr. Bajwa drove while carrying freight on behalf of Gateway. Ex. 7, pp. 10-39. In other words, he performed services that benefitted Gateway. Therefore, I decline to find that this time period constituted unpaid training. As found above, Mr. Bajwa drove as part of a team, with Mr. P. Singh as his partner. As found above, the record reflects the miles Mr. Bajwa drove, 7294, but not the miles driven by the team. The record fails to establish what percentage of team miles Mr. Bajwa drove. Thus, it is not possible to extrapolate team miles from Mr. Bajwa's individual miles. Accordingly, the more accurate computation of wages earned for this period of time is to multiply Mr. Bajwa's individual miles by the solo rate of 35 cents per mile. Therefore, Mr. Bajwa's wages earned in February were \$2552.90¹⁰.

4.25. Mr. Bajwa individually drove 10,789 miles in March. The record does not include how many team miles he drove. The record fails to establish what percentage of team miles Mr. Bajwa drove. Thus, it is not possible to extrapolate team miles from Mr. Bajwa's individual miles. Accordingly, the more accurate computation of wages earned for this period of time is to multiply Mr. Bajwa's individual miles by the solo rate of 35 cents per mile. Therefore, Mr. Bajwa's wages earned in March were \$3776.15¹¹.

4.26. Mr. Bajwa drove approximately 6685 individual miles and his team drove 13,052 miles in April. Because the individual miles are only an estimate for April, the more accurate computation of wages earned during April is to multiply Mr. Bajwa's team's miles by 40 cents and divide in half. Therefore, Mr. Bajwa's wages earned in April were \$2610.40¹².

¹⁰ 7294 x .35 = \$2552.90

¹¹ 10,789 x 35 = \$3776.15

¹² 13,052 x .40 x .5 = \$2610.00

4.27. Mr. Bajwa drove 2575 individual miles and the team apparently drove 5025 miles in May for which, before deductions, each of the two drivers was paid \$1005.00. This implies 5025 team miles, which is credible. Thus, Mr. Bajwa's wages earned in May were \$1005.00.

4.28. Accordingly, Mr. Bajwa's total wages earned were \$9944.45.¹³ He was paid \$5692.28.¹⁴ The difference between what Mr. Bajwa should have been paid and what he was actually paid is \$4252.17.¹⁵

Mr. P. Singh's liability

4.29. Mr. P. Singh is the only owner of Gateway. Gamino Testimony. More precisely, Mr. P. Singh is the only member and the registered agent of Gateway. Ex. 16, pp. 3-4.

4.30. Mr. P. Singh was responsible for paying wages. Gamino Testimony.

4.31. Mr. P. Singh signed and issued the checks in payment for wages. Ex. 4, p. 5; Ex. 7, pp. 3-5; P. Singh Testimony; Gamino Testimony.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

5.1. I have jurisdiction over the persons and subject matter here under RCW 49.48.084 and Chapter 34.05. RCW.

Wage Complaints

5.2. If an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). Here, Mr. Bajwa filed a wage complaint. Accordingly, the Department was required to investigate that wage complaint.

5.3. If the Department determines that the employer violated one or more wage payment requirements, the Department issues a Citation and Notice of Assessment identifying the unpaid wages and assessing interest of 1% per month on all unpaid wages. RCW 49.48.083(1), (2). Here, the Department alleged that Gateway failed to pay agreed wages in apparent violation of RCW 49.50.050.

¹³ \$2552.90 + \$3776.15 + \$2610.40 + \$1005.00 = \$9944.45

¹⁴ \$2283.00 + \$2585.00 + \$824.28 = \$5692.28

¹⁵ \$9944.45 - \$5692.28 = \$4252.17

Accordingly, the Department properly issued Citation and Notice of Assessment No. W-264-15.

Gateway should have paid Mr. Bajwa for all of the miles he drove

- 5.4. Mr. P. Singh, on behalf of Gateway, argued that Mr. Bajwa's driving in February was training time, unpaid training time. However, I found that Mr. Bajwa never agreed to an unpaid training period and that Mr. Bajwa provided services that benefitted Gateway during February. Accordingly, as provided in RCW 49.52.050, Gateway must pay for Mr. Bajwa's services in February, at the agreed rate, which I calculated to constitute wages of \$2552.90.
- 5.5. Regarding March, April, and May, Gateway did not dispute that Mr. Bajwa should be paid wages for the services performed. Rather, the dispute was the calculation of those wages, both as to how many miles Mr. Bajwa drove and how much per mile he was to be paid. I resolved those factual disputes and calculated the wages earned as \$3776.15 in March, \$2610.40 in April, and \$1005.00 in May.
- 5.6. Therefore, as reflected in the Findings of Fact above, in conjunction with the provision of RCW 49.50.050, Mr. Bajwa earned \$9944.45 in wages during his employment with Gateway; Mr. Bajwa was actually paid \$5692.28; and so Gateway owes Mr. Bajwa \$4252.17 in unpaid wages.

Gateway cannot deduct the cost of an emergency fuel delivery

- 5.7. There are only four bases for deducting funds from an employee's wages. One, the employer may deduct from an employee's wages if federal law requires deduction. RCW 49.48.010; RCW 49.52.060; WAC 296-126-028(1)(a). Two, the employee may specifically authorize a deduction, if that authorization is written, is written prior to the deduction, and is for the benefit of the employee. WAC 296-126-028(2) Three, the employer may withhold deductions for medical, surgical, or hospital care or service. WAC 296-126-028(1)(b) Four, the employer may withhold "[t]o satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments." WAC 296-126-028(1)(c).
- 5.8. Here, Gateway deducted the \$180.00 cost of delivering fuel when Mr. Bajwa ran out of fuel on the highway. None of the circumstances cited above apply. Accordingly, Gateway could not lawfully deduct from Mr. Bajwa's wages the cost of delivering fuel.

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Interest on Unpaid Wages

5.9. Unpaid wages may accrue interest at the rate of 1% per month on all wages owed until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083(2). Therefore, the Department correctly included 1% per month interest on the wages Gateway owes Mr. Bajwa when it issued Citation and Notice of Assessment No. W-264-15.

No Penalty for Willful Violation

5.10. "If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty" of ten percent of the total unpaid wages or \$1000, whichever is more, but not more than \$20,000. RCW 49.48.083(3).

5.11. Here, as concluded above, Gateway violated RCW 49.52.050 when it failed to pay Mr. Bajwa for all of the miles that he drove. At issue is whether those violations were willful.

5.12. RCW 49.48.082(11) defines "willful" as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute . . .". See also, *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159-60, 961 P.2d 371 (1998) (willful means the result of a knowing and intentional action); *Morgan v. Kingen*, 166 Wn.2d 526, 210 P.3d 995 (2009) (willful means volitional, knowledgeable, intentional).

5.13. Here, the parties disputed what rate per mile they had agreed to. I found that there was not a written agreement. Rather, given the evidence in the record, I found the rate that represented an agreed rate, given the conflicting interpretations of that agreement. Further, I did not find that there was an agreement regarding pay during Mr. Bajwa's training time, which constituted February. Rather, since I did not find an agreement for unpaid training, I held that the Gateway must pay Mr. Bajwa for the miles he drove in February. However, I also found that it was common for employers of newly licensed truck drivers to agree to an unpaid training time. Thus, I find there was a bona fide dispute between Gateway and Mr. Bajwa regarding the terms of wages. Accordingly, although Gateway's failure to properly pay Mr. Bajwa was knowing and intentional, it was nevertheless the result of a bona fide dispute. Therefore, the Department's assessment of a \$1000 civil penalty should be reversed.

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The Department may impose personal liability on Mr. P. Singh

5.14. "Employer' has the meaning provided in RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, and 49.52.060." RCW 49.48.082(6).

5.15. Here, the employer violated RCW 49.52.050. Thus, I look to the definition of employer in RCW 49.46.010.

5.16. "Employer' includes any individual, partnership, association, corporation, business trust, *or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.*" RCW 49.46.010(4) (emphasis added).

5.17. Here, Mr. P. Singh is the registered agent and the only member of Gateway. Moreover, he is the only person involved in hiring and paying drivers. Accordingly, for the purposes of this matter, Mr. P. Singh was an employer. Therefore, the Department may impose personal liability on Mr. P. Singh for the wages and interest owed to Mr. Bajwa.

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6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Department of Labor and Industries' action is MODIFIED.
- 6.2. Gateway Transport, LLC violated RCW 49.48.010 by failing to pay all wages owed to Gurminder Singh Bajwa in the amount of \$4252.17 and is liable for \$4252.17 in unpaid wages.
- 6.3. Gateway Transport, LLC shall pay interest in the amount of 1% of the unpaid wages for each month these wages were and remain unpaid and to accrue at the rate of 1% for each month that the interest is unpaid – all calculated accordingly by the Department of Labor and Industries.
- 6.4. Gateway Transport, LLC did not willfully violate the wage payment requirements of RCW 49.48.010 and is not liable for a penalty.

6.5. The Department of Labor and Industries may impose personal liability upon Paramjit Singh and Spouse, and the Marital Community Thereof, as an individual for the unpaid wages and interest recited above.

Issued from Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.¹⁶ A Petition for Administrative Review may be mailed to the Director or delivered to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and
Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

Director
Department of Labor and
Industries
7273 Linderson Way SW
Tumwater, WA 98501

Whether you mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. Part of filing a Petition is providing copies to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.¹⁷

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

CERTIFICATE OF MAILING IS ATTACHED

¹⁶ RCW 49.48.084 and RCW 34.05.464.

¹⁷ RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 05-2015-LI-00086

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

<p>Paramijit Singh Gateway Transport, LLC 1415 Second Street Southeast Auburn, WA 98002 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Katy J. Dixon, AAG 800 Fifth Avenue, Suite 2000 Seattle, WA 98110 <i>Agency Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gurminder Bajwa 306 Tenth Avenue North Algona, WA 98001 <i>Department Representative</i></p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Wednesday, December 02, 2015

OFFICE OF ADMINISTRATIVE HEARINGS

Julie Wescott

Julie Wescott
Legal Assistant 2