

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

DESTA KIFLEMARIAM

APPELLANT,

Determination of Compliance No. DOC-
213-16

OAH Docket No. 10-2016-LI-00263

NO. 2017-016-WPA

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 petition for administrative review filed by Desta Kiflemariam (the Appellant) regarding the Initial Order dated May 18, 2017, with the Director's Office, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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 Order on May 18, 2017.
2. The Office of Administrative Hearings mailed the Initial Order to the address of record of the Appellant.

3. The Director's Office received the petition for administrative review on June 28, 2017.

II. CONCLUSIONS OF LAW

1. RCW 49.48.084(3) provides, "Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order."

2. The Appellant did not file his petition for administrative review within the time period specified by RCW 49.48.084(3) and his petition is untimely.

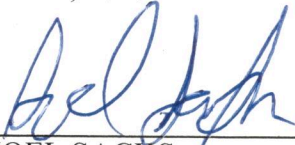
3. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal." Because the petition is untimely, the Initial Order became the final agency decision and there is no authority to review the Initial Order under RCW 49.48.084 and RCW 34.05.

4. The appeal is dismissed.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the June 28, 2017 petition for administrative review is dismissed and the May 18, 2017 Initial Order is the final agency order.

DATED at Tumwater this 18 day of September, 2017.



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, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 18 day of September 2017, to the following via U.S. Mail, postage prepaid.

Desta Kiflemariam
14354 30th Avenue NE
Seattle, WA 98125

Diana Cartwright
Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Rosario Desta
Island Transport Logistics, LLC
212 Brandon Street
Seattle, WA 98108

Gable Eaton
Island Transport Logistics, LLC
212 Brandon Street
Seattle, WA 98108

DATED this 18 day of September, 2017, at Tumwater, Washington.

Lisa Rodriguez

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

DESTA KIFLEMARIAM,

Wage Claimant.

Docket No. 10-2016-LI-00263

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND INITIAL ORDER**

Agency: Department of Labor and Industries
Program: Wage Payments
Agency No. DOC-213-16

**If you need assistance reading these documents, call: 1-800-583-8271.
Yoo Gargaarsa Turjumaanaa barbaadani: OAH 1-800-583-8271.**

1. ISSUES: Did the Department of Labor and Industries (L&I) properly determine that Island Transport, LLC did not violate Washington wage payment law in failing to pay Appellant Desta Kiflemariam¹ wages and deductions in the amount of \$9,443.50, as set out in the Determination of Compliance issued July 17, 2016?
2. ORDER SUMMARY
 - 2.1. Desta Kiflemariam was not an employee of Island Transport, LLC.
 - 2.2. The Determination of Compliance issued July 17, 2016 is **AFFIRMED**.
3. HEARING
 - 3.1. Hearing Date: March 14, 2017
 - 3.2. Administrative Law Judge: Debra H. Pierce
 - 3.3. Appellant: Desta Kiflemariam
 - 3.4. Agency: Department of Labor and Industries
 - 3.4.1. Representative: Diana S. Cartwright
 - 3.4.2. Witnesses:
 - 3.4.2.1. Cindy Sparks, Industrial Relations Agent
 - 3.4.2.2. Rosario Desta, owner, Island Transport Logistics, LLC
 - 3.4.2.3. Gable Eaton, Operations Manager, Island Transport Logistics, LLC

¹ The Appellant's name in the style of this case is indicated as "Kiflemariam Desta." This is incorrect; the Appellant's given name is "Desta," and his surname is "Kiflemariam." The employer representative's surname is "Desta."

- 3.5. Exhibits: Exhibits 1 through 14 were admitted; Appellant's proposed exhibits were not admitted.
- 3.6. Interpreter: Assefa Berhane interpreted throughout the hearing from Tigrinya to English and English to Tigrinya.
- 3.7. Other: Yosief Kiflemariam, Wage Claimant's brother, attended the hearing to assist the Appellant, but did not represent him, or testify. Employer representatives, Rosario Desta and Gable Eaton also attended, and testified for L&I. The Employer did not request to intervene in this matter, and is not a party to the proceedings.

Wage Claimant did not notify L&I or Island Transport of his intended witnesses, although he filed a list with names and telephone numbers with OAH. The intended witness testimony was not relevant to the overarching issue of whether Appellant was an employee of Island Transport or an independent contractor. The testimony was offered to show that Appellant worked for Island Transport, and that he was owed money by Island Transport. The testimony was not allowed.

4. FINDINGS OF FACT

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

Jurisdiction

- 4.1. Desta Kiflemariam filed a Worker Rights Complaint with L&I on February 24, 2016. He alleged that he was employed by Island Transport Logistics, LLC ("Island Transport"), and that this entity failed to pay his wages in full, made unlawful deductions from his pay, did not pay him at the agreed rate, and failed to properly pay or distribute the funds from legal Federal and State deductions, in violation of the Washington Wage Payment Act, RCW 49.48.084. *Exhibit 4.*
- 4.2. L&I determined that Island Transport did not violate Washington's Wage Payment Act. A Determination of Compliance was issued and served to Desta Kiflemariam ("Wage Claimant" or "Appellant") by certified mail on June 17, 2016. *Exhibit 1.*
- 4.3. On July 14, 2017, L&I received Wage Claimant's appeal of the Determination of Compliance. *Exhibit 2.*

Investigation of Wage Complaint.

- 4.4. On February 25, 2016, L&I acknowledged the wage complaint by letter to Appellant, explaining the investigation process. *Exhibit 5.*
- 4.5. On February 26, 2016, Cindy Sparks, an industrial relations agent employed by L&I, was assigned to investigate the wage complaint filed by Appellant.
- 4.6. On March 4, 2016, Ms. Sparks met with the Wage Claimant/Appellant and requested additional information about the hours he worked and his rate of pay. The Appellant provided logs, driver pay settlement statements, check stubs, and

invoices showing he was paid by Island Transport and that deductions were made from his pay.

- 4.7. After further discussion by telephone, and a second in-person meeting with the Wage Claimant on March 16, 2016, Ms. Sparks mailed a letter to Rosario Desta and Island Transport Logistics, LLC, advising them of Desta Kiflemariam's wage complaint. The letter explained how to respond if the company agreed with the complaint, how to respond if it disagreed with the complaint, and requested a response no later than April 5, 2016.
- 4.8. Rosario Desta, owner of Island Transport and Gable Eaton, Operations Coordinator, responded; Ms. Sparks met with them on March 29, 2016.
- 4.9. A contractor/carrier operating agreement between Desta Kiflemariam and Island Transport dated January 4, 2011 was among the documents provided. *Exhibit 11, page 12-22*. A Department of Transportation (DOT) Motor Carrier Identification Report showing wage claimant's Motor Carrier Application for U.S. DOT Number (Exhibit 11, page 7), DOT Vehicle Examination Reports, and proof of fleet insurance were provided. Internal Revenue Service (IRS) forms 1099 issued to Wage Claimant by Island Transport for tax years 2012 and 2013 (Exhibit 11, pages 5 and 6) and a Vehicle Registration Certificate (Exhibit 11, page 4) were collected.
- 4.10. Both the Wage Claimant and Island Transport filled out questionnaires provided by L&I and returned them to Ms. Sparks.
- 4.11. Based on the information received and meetings with the Wage Claimant and Island Transport, Ms. Sparks recommended that the Determination of Compliance issue because Desta Kiflemariam was an independent contractor with Island Transport Logistics, LLC, and not an employee.

Relationship between Wage Claimant and Island Transport

- 4.12. Island Transport Logistics, LLC was a drayage company in the business of transporting containers from port to port. To provide that service, Island Transport contracted with drivers, such as Desta Kiflemariam.
- 4.13. Rosario Desta and Desta Kiflemariam are members of the same cultural community.
- 4.14. Island Transport is no longer an active business; it is closed.
- 4.15. The parties agree that Desta Kiflemariam drove a leased truck transporting commodities for Island Transport. He was paid by the load, and when the Wage Claimant ended the relationship, Desta Kiflemariam confronted Rosario Desta about money and disputed deductions.

- 4.16. All drivers providing transportation services for Island Transport were paid by the container transported. The Wage Claimant signed a Contractor/Carrier Operating Agreement (operating agreement) providing he would be paid by the load, like all other Island Transport drivers. That agreement requires the driver to provide both the equipment and labor to transport, load and unload commodities as offered by Island Transport. *Exhibit 11, page 12-22.*
- 4.17. When one of Island Transport's customers requested carriage services, an Island Transport dispatcher offered one of the contracted drivers the assignment. The assigned driver drove his truck to the port, attached a chassis loaded with a container to his truck and transported the container to another port to offload the container as instructed by the customer. Island Transport took orders from customers and assigned the services ordered to contracted drivers.
- 4.18. Different chassis are capable of transporting certain maximum weights. The chassis used to transport a container might be provided by Island Transport, or by the customer or port, but it is not provided by the driver.
- 4.19. The Wage Claimant leased a truck from Island Transport. He was the registered owner of the vehicle because he leased it. He used his leased truck to transport containers for Island Transport under the terms of the operating agreement.
- 4.20. Appellant was responsible for insurance, service, maintenance and repair of the truck leased from Island Transport, according to his agreement with Island Transport. The operating agreement provides that drivers, or contractors, are responsible for compliance with all safety regulations, and for correcting any safety defects in the equipment used to transport the containers.
- 4.21. Island Transport deducted insurance and lease payments from Appellant's pay, with his agreement. No taxes were deducted.
- 4.22. The operating agreement assigned Wage Claimant responsibility for damages caused by his negligence while hauling for Island Transport, and for other damages which could occur, regardless of fault. For example, he was responsible for damages for failure to deliver a load he contended were not his fault. *See Exhibit 11, page 16, paragraph D.*
- 4.23. The operating agreement does not require the Wage Claimant to lease his truck from Island Transport. It provides for Wage Claimant's responsibility for his own employees, if any. The Wage Claimant could potentially have multiple trucks and drivers performing the contracted work.

- 4.24. The operating agreement covers responsibility for safety compliance. The contractor is responsible for maintaining federally required logs, inspections, documentation and equipment.
- 4.25. Wage Claimant could use the truck he leased to haul for other carriers, although additional insurance coverage would be required. A non-competition agreement limited Claimant only if he became a carrier. He could haul for Island Transport's competitors, but he could not become a competitor himself.
- 4.26. Wage Claimant could drive the truck where and when he wanted, take it home, or park it elsewhere. He had complete control of the truck.
- 4.27. According to the operating agreement, the Wage Claimant was under no obligation to accept a transport assignment from Island Transport's dispatch. It was up to the Wage Claimant whether he worked on a given day, how he routed his loads, and how many assignments he accepted.
- 4.28. Claimant rarely refused an assignment. He needed the money, he knew the dispatcher offered the less desirable assignments to drivers who refused loads, and he did not want to be "fired".
- 4.29. Once accepted, drivers were required to carry out the assignment in accordance with the customers' order. If failure to perform the assignment as instructed by the customer resulted in financial consequences, or damage to Island Transport, the driver was responsible to Island transport in accordance with the operating agreement.
- 4.30. Deductions were made from Wage Claimant's pay for a variety of expenses assigned to him by the operating agreement. Deductions were made for, among other things, failure to deliver a load, truck repairs, port "charge backs," and fees, along with truck lease and insurance payments.
- 4.31. Wage Claimant disputes the propriety of certain deductions from his pay under the operating agreement. He disagreed that he was responsible for payment of some of the charges deducted. He and Rosario Desta also disagreed on whether the Wage Claimant was still owed for hauling a load. His view of the driver's financial responsibilities differs from Island Transport's.
- 4.32. In August, 2013, after he stopped accepting work from Island Transport, Appellant stopped paying his lease and returned the truck keys to Island Transport. Desta Kiflemariam confronted Rosario Desta about the money he thought he was owed, without resolution.
- 4.33. Wage Claimant last performed any services under the operating agreement in August, 2013. His disagreement with Rosario Desta over the money he argues he is owed continued until he finally filed his wage complaint in 2016.

4.34. Appellant filed the wage complaint in order to collect what he believes he is owed. He said, "The reason that I am doing this is because I was not paid my money. I am not doing all this for nothing."

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 herein pursuant to RCW 49.48.084 and chapter 34.05. RCW.

Wage Complaints

5.2. If an employee files a wage complaint, L&I must investigate. RCW 49.48.083(1). Desta Kiflemariam filed a wage complaint and L&I was required to investigate that wage complaint.

5.3. If L&I determines that the employer violated one or more wage payment requirements, a Citation and Notice of Assessment identifying the unpaid wages and assessing interest of 1% per month of unpaid wages is issued. RCW 49.48.083. If L&I determines that no violation occurred, a Determination of Compliance issues. RCW 49.48.083(1).

5.4. A wage payment standard is compensation at a rate no less than an established minimum wage, pursuant to the Minimum Wage Act, Chapter 49.46 RCW. Employers must pay employees age 18 and above no less than the established minimum wage. RCW 49.46.020. Wage payment requirements are those "set forth in RCW 49.46.020,² 49.46.130,³ 49.48.010,⁴ 49.52.050,⁵ or 49.52.060, and any related rules adopted by the department." RCW 49.48.082.

5.5. "Wage" is statutorily defined as "compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value...." RCW 49.46.010(7); RCW 49.48.082(10). *The wage payment requirements only apply to "employees."*

5.6. An "employee" includes "any individual employed by an employer." RCW 49.46.010(5). To "employ," in turn, means "to permit to work." RCW 49.46.010(3). For agreed wage violations, an employee is an "employee who is employed in the business of the employee's employer by way of manual labor or otherwise." RCW 49.48.082(5)(b); RCW 49.52.050.

² obligation to pay at least minimum wages

³ employees entitled to overtime rate

⁴ final pay

⁵ failure to pay employee under applicable statute ordinance or contract

- 5.7. If a party disagrees with the decision issued pursuant to RCW 49.48.083, that party may appeal by filing a notice of appeal with the director within thirty days of the Department's decision. An administrative law judge with the Office of Administrative Hearings then conducts an adjudicative hearing de novo in accordance with Chapter 34.05 RCW, the Administrative Procedures Act.
- 5.8. The initial burden of proof falls to the wage claimant; the burden shifts to the employer (and/or L&I) to show the precise amount of work performed, or to negate the wage claimant's evidence of hours worked. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); *MacSuga v. Cy. Of Spokane*, 97 Wn.App.435, 445, 983 P.2d 1167(1999), *review denied*, 140 Wn.2d 1008, 999 P.2d 1259 (2000). Unless the Wage Claimant establishes a prima facie case, the burden will not shift to the employer or L&I to show otherwise. See *MacSuga*, 97 Wn.App. at 445-446.
- 5.9. If the Wage Claimant was not an employee, but an independent contractor, neither L&I, nor this Tribunal has jurisdiction to address his claims that he was not paid all he is owed under the operating agreement. The Wage Payment Act, chapter 49.48 RCW, does not apply to independent contractors.
- 5.10. The standard of proof is a preponderance of the evidence. A preponderance of the evidence is that evidence which produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).

"Economic Realities Test" applies, and includes the common-law "right to control" test

- 5.11. The "economic realities test" announced in *Bartels v. Birmingham*, 332 U.S. 126, 130, 67 S. Ct. 1547, 1550, 91 L.Ed. 1947 (1947) applies to determine whether a worker is an independent contractor or employee in Minimum Wage Act claims. *Anfinson v. FedEx Ground Package System, Inc.*, 174 Wn. 2d 851, 281 P.3d 289 (2012). No authority provides guidance on whether the economic realities test applies to Industrial Welfare Act claims (such as the Wage Claimant's "agreed wage" claim under RCW 49.52.050), or whether to apply the common-law "right to control" test.
- 5.12. The economic realities test consists of six factors, applied on a case-by-case basis; no single factor is determinative, rather, the court's appraisal depends on the "circumstances of the whole activity." *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730, 67 S. Ct. 1473, 1477, 91 L.Ed.1772 (1947). Those six factors are:
- a. The degree of control exerted by the alleged employer over the worker;
 - b. The worker's opportunity for profit or loss depending upon the worker's managerial skill;

- c. The worker's investment in equipment or materials required for the task, or employment of helpers;
- d. Whether the service the worker renders requires a special skill;
- e. The degree of permanence of the working relationship and;
- f. Whether the service rendered is an integral part of the alleged employer's business.

Real v. Driscoll Strawberry Assocs., 603 F.2d 748, 754 (9th Cir. 1979); *Afinson v. FedEx Ground Package System, Inc.*, 159 Wn. App. 35, 53, 244 P.3d 32 (2010), *aff'd*, 174 Wn.2d 851, 281 P.3d 289 (2012).

- 5.13. Exemptions are strictly construed against the employer. The employer bears the burden of proving that workers are independent contractors instead of employees. *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1125 (9th Cir. 2002).

Desta Kiflemariam was an independent contractor, and not an employee, of Island Transport

- 5.14. The more control an employer exerts over the worker and worker activities, the more likely the worker is an employee. *Driscoll*, 603 F. 2d at 755. In this instance, the only control exercised by Island Transport was in requiring compliance with regulations imposed by the Department of Transportation. Compliance with DOT regulation is addressed in the operating agreement. Otherwise, control of routes, hours worked, workload, maintenance of equipment, days off and dress were in control of the Wage Claimant. This factor supports a determination that the Wage Claimant is an independent contractor.

- 5.15. An independent contractor is able to adjust profit and loss by managing work methods, routes, efficiency and expenses, and controlling work and work hours. When a worker is able through management skill, to influence his profit and loss, the worker is most likely an independent contractor. *Desta Kiflemariam* had opportunity to control his profit and loss. The operating agreement casts responsibility for damages, repairs and expenses related to his driving activity on the Wage Claimant. He was paid a percentage of each load he delivered, but deductions were made for damages, repairs and expenses. The Wage Claimant could choose to work more or less, to drive a more or less efficient route, to perform preventive maintenance on his truck so that expenses were minimal, and exercise caution so that damages and expenses or charge-backs did not occur. He could have hired other drivers to work under him, or purchased or leased other trucks. This factor favors a determination that Wage Claimant was an independent contractor.

- 5.16. When a worker invests significantly in the overall operation of a business, it is more likely the worker is an independent contractor. *Baker v. Flint Eng'g & Constr.*, 137 F.3d 1436, 1442 (10th Cir. 1998). When the worker is responsible for the expense of a vehicle and specialty tools, as in this case, the worker is most likely an independent contractor. *Herman v. Mid-Atlantic Installation Servs., Inc.*, 164 F. Supp. 2d 667, 675 (D. Md. 2000). Desta Kiflemariam was responsible for providing a truck and all equipment needed to provide carriage for Island Transport's customers. He leased a truck, paid for insurance and the expenses associated with maintenance, operation and repair.
- 5.17. The Wage Claimant was a commercial driver, and possessed specific, required skills to maintain a commercial drivers' license. He is a skilled tradesman, and must also exercise entrepreneurial skills to manage the expenses and regulatory concerns for which he was responsible under the operating agreement. Reliance on these skills indicate Wage Claimant is an independent contractor. *All Points Transp.*, 364 F. Supp. 2d 621 at 632.
- 5.18. Generally, employees work for only one employer in a continuous working relationship, during set hours and at given locations. A worker who is not responsible to a single employer during set times, but is free to engage in work for multiple individuals or entities at different job sites is usually an independent contractor. See *Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1372 (9th Cir. 1981). The Wage Claimant in this matter could use his leased truck to provide drayage service for other carriers if he chose to do so. He was not obligated to work for Island Transport only.
- 5.19. When a workers' services are integral to the employer's business, it is more likely that the worker is an employee. *Dole v. Snell*, 875 F.2d 802, 811 (10th Cir. 1989), *Martin v. Selker Bros. Inc.*, 949 F. 2d 1286, 1295-96 (3rd Cir. 1991). The service provided by the Wage Claimant was integral to Island Transport's trucking business. This single factor is not dispositive, but must be considered with all other factors and circumstances.
- 5.20. Under the common-law right to control test, "the ultimate inquiry is whether the employer has the right to control the worker's performance." *Anfinson*, 159 Wn. App. at 53. Right to control is the first factor of the economic realities test.
- 5.21. Island Transport did not exercise control of the work performed by the Wage Claimant. All aspects of the work were controlled by the driver, except as required by regulation. Island Transport did not control the Wage Claimant's schedule, days on which work was performed, start and stop times, breaks or completion of time sheets. No dress code was in place, no service area was assigned. The Wage Claimant provided the equipment to perform the service required, and was free to accept assignments or not. His work was not supervised or evaluated. Where the

right of control factor is determinative, Wage Claimant was an independent contractor, and not an employee.

5.22. While the Wage Claimant provided services which were an integral part of Island Transport's business, all other factors, including the right to control, require a conclusion that he was an independent contractor. Whether under the "economic realities test" or the common-law "right to control" test, Desta Kiflemariam was not an employee of Island Transport.

5.23. Because he was not an employee, Desta Kiflemariam has no claim under the Wage Payment Act. The Determination of Compliance was properly issued.

5.24. The dispute over payment under the operating agreement is a contractual matter between a contractor and carrier that cannot be decided by the Department of Labor and Industries or this Tribunal. No finding is made on the payment dispute.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. Determination of Compliance # 213-16 issued June 17, 2016 is AFFIRMED.

6.2. Desta Kiflemariam was not an employee of Island Transport Logistics, LLC; he was an independent contractor. His claim for payment from Island Transport cannot be made under the Wage Payment Act.

Issued from Tacoma, Washington on the date of mailing.



Debra H. Pierce
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS
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.⁶ You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review 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:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, 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. You must also provide a copy of your Petition for Administrative Review 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.⁷

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

⁶ RCW 49.48.084 and RCW 34.05.464.

⁷ RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2016-LI-00263

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

<p>Kiflemariam Desta 14354 30th Avenue NE Seattle, WA 98125 Appellant</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>Diana S. Cartwright Assistant Attorney General MS: TB-14 800 Fifth Ave., Ste. 2000 Seattle, WA 98104 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Rosario Desta Island Transport Logistics, LLC 212 Brandon Street Seattle, WA 98108 Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input 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>Gable Eaton Island Transport Logistics, LLC 212 Brandon Street Seattle, WA 98108 Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input 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: Monday, May 15, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant

AMENDED CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2016-LI-00263**

** this certificate of service is amended to serve the order via certified mailing to the appellant.

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

<p>Kiflemariam Desta 14354 30th Avenue NE Seattle, WA 98125 Appellant 91 7199 9991 7037 2235 0872</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>Diana S. Cartwright Assistant Attorney General MS: TB-14 800 Fifth Ave., Ste. 2000 Seattle, WA 98104 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Rosario Desta Island Transport Logistics, LLC 212 Brandon Street Seattle, WA 98108 Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input 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>Gable Eaton Island Transport Logistics, LLC 212 Brandon Street Seattle, WA 98108 Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input 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: Thursday, May 18, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant