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California Court Validates Piece-Rate Pay for Drivers

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In a significant victory for trucking companies operating in California, in *Carson v. Knight Transportation Care Se*, No. VCU234186, Tulare County Superior Court Judge Lloyd Hicks decertified a class of California truck drivers who alleged that it is illegal to have a "combined" piece rate – a piece rate that covers both driving and non-driving duties – when compensation for the "piece" is based generally on the number of miles driven. The decertification order is particularly important not only because it is the first state court order addressing the legality of a combined piece rate, but also because three federal courts in California's Northern and Central Districts have concluded that such a combined piece rate runs afoul of California's law prohibiting the "averaging" of hours worked.

Factual and Procedural Background

In *Carson*, the plaintiffs, two former drivers, filed a class action on behalf of current and former "over-the-road" drivers employed by Knight Transportation. In their complaint, the plaintiffs alleged several California Labor Code violations arising from Knight's compensation policy, which followed the industry standard of paying drivers a mileage-based rate covering both driving and non-driving duties to transport a load from shipper to consignee. The plaintiffs alleged that because drivers are paid "per mile" they are only paid for actual driving, but not for non-driving activities such as pre-trip and post-trip inspections, fueling, or detention time. They claimed that either these "non-driving" duties are not covered by Knight's piece rate, or a piece rate that covers both driving and non-driving activities is illegal.

The court initially certified a class of Knight drivers to determine whether it was legal under California law to have a piece rate that covered both driving and non-driving duties associated with transporting a load. The parties subsequently filed cross-motions for summary judgment. Although the court denied both motions, it ruled that a piece rate defining delivery of the load as the "piece," the compensation for which is based on a "mileage rate," was not illegal under California law if that was the parties' agreement. Based on this ruling, Knight moved to decertify the class, arguing that, if the combined piece rate is not per se illegal, the plaintiffs' claims would require an individualized inquiry into the circumstances of each driver's claim to determine the terms, and even the existence, of a contract between that driver and Knight.

A Combined Piece Rate that Covers Both Driving and Non-Driving Activities Is Not Illegal

The plaintiffs made two arguments against decertification, each of which was rejected by the court. First, based on *Cardenas v. McLain FoodServices, Inc.*, 796 F. Supp. 2d 1246 (C.D. Cal. 2011), the plaintiffs renewed their argument that a combined piece rate is a form of "averaging," which is illegal in California. Unlike federal law, California requires that an employee be compensated at the contractual hourly rate for each hour worked, even if the average of all of the hours worked amounts to more than what the employee would have earned had he or she been paid an hourly minimum wage. Yet, from the fact that an employer must pay for each hour an employee works, the *Cardenas* court concluded that each *duty* covered by a piece rate must be separately compensated, regardless of the compensation agreement: "Even if [the employer] communicated to its employees that this piece-rate formula was intended to compensate for pre- and post-shift duties, the fact that it did not separately compensate for those duties violates California law." Piece workers, however, are compensated by the "piece," not by each "duty" necessary to complete the piece, and no statute, and no case prior to *Cardenas*, had ever held that duties must be separately compensated, regardless of the contract. Nevertheless, the *Cardenas* decision has been followed, largely without additional discussion, by two other district courts in *Quezada v. Con-Way Inc.*, 2012 U.S. Dist. LEXIS 98639 (N.D. Cal. July 11, 2012) and *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040 (C.D. Cal. 2011).

In grating the decertification motion, the Carson court rejected *Cardenas*, finding its reasoning "to be circular" because the *Cardenas* court simply assumed that a piece-rate contract that calculates compensation based on mileage doesn't cover non-driving work: "This assumes the lack of a contract to the effect that the formula is compensation for all work, without discussion or analyzing that issue." Instead:

> The court [in *Cardenas*] took the formula for fixing the *amount* of the pay, and said because non-driving time wasn't in the formula for the amount, it didn't pay for it. That does not necessarily follow if in fact there was a contract to the effect that the amount determined by the formula was the agreed upon pay for all work done.

The Carson court thus concluded that *Cardenas* was not persuasive and that there was no authority "for the proposition that Defendant's pay formula is illegal on its face." But if Knight's combined piece rate was not "illegal on its face," the plaintiffs no longer had a statutory but a *contractual* cause of action. Accordingly, the court asked the parties to provide further briefing on the contractual issue.

Ambiguity About Whether a Piece Rate Covers Both Driving and Non-Driving Duties Does Not Mean It Covers Only Driving Duties

The court rejected the plaintiffs' argument that, even if their cause of action were contractual, because Knight allegedly failed to communicate "clearly" that the piece rate covered non-driving duties, drivers were not being compensated for the time spent on those duties. The defect in this position is that it assumes either that if there is no contract that the piece rate covers all work, then there was a contract that it did not, or, as a matter of law, because the pay was expressed in terms of miles driven, it only covered miles driven and not non-driving work. Neither result follows.

In its order decertifying the class, the court explained that if there was a lack of mutual agreement, then there was "no contract at all," *i.e.*, there was no agreement between the parties as to whether the piece rate *did* or *did not* cover non-driving activities. Likewise, that compensation under the piece rate is determined by the approximate number of miles driven "does not necessarily mean that it is pay only for the miles driven."

Plaintiffs' Contract Claims Cannot Be Determined on a Class-Wide Basis Because of the Individual Inquiries that Would Be Required

Having concluded that a combined piece rate is not illegal, and that any alleged ambiguity of Knight's communications did not create a contract pursuant to which the piece rate covered only driving activities, the court found that the plaintiffs' action could not be determined on a class-wide basis:

> The problem is, we do not know exactly what was said to each driver (or even less than exactly) before they started driving, let alone what they understood what they were told to mean. To be amenable to class treatment, each driver would have to have been told the same thing.

Noting that the plaintiffs appeared to have admitted that "the finder of fact will determine what the drivers were told at the time of contract formation," the court concluded:

> In short, there is no way to determine whether there even was an agreement, let alone what the terms were, without an individual inquiry, not only of each driver, but of each of the numerous presenters at the orientation sessions.

Accordingly, the court held that no apparent wage and hour violation occurs when drivers are paid at least the minimum wage for all hours worked (assuming no contrary agreement exists), and that there was no way to determine whether drivers were not paid at least the minimum wage without conducting individual inquiries concerning each trip and/or day.

Conclusion

The court's decertification order is the first time a California state court has directly addressed the legality of piece-rate pay, common among long-haul carriers, that is based upon mileage, but is intended to compensate for both driving and non-driving duties. Thus, the decision is a positive one for the state's trucking industry, particularly as it rejects the federal courts' interpretation of California law. The court's affirmation that California employers can contract with their employees for any compensation system that does not violate minimum wage provisions, and, moreover, that such contracts will be interpreted according to ordinary contract principles, provides a significant obstacle to class claims challenging such pay policies.

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