

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:)	CAC No. 17-015-08
Department of Labor Enforcement)	
and Compliance Section, and)	
Rolando M. Gacayan Jr.,)	
Complainants,)	ADMINISTRATIVE ORDER
v.)	
)	
Hector DLC Sablan,)	
<i>dba</i> Pacific Island Cleaning Agency,)	
Respondent.)	
)	

This Compliance Agency Case came on for hearing on September 6, September 29, and October 12, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department of Labor Enforcement and Compliance Section was represented by Patrick C. King. Complainant Rolando M. Gacayan, Jr. and Respondent Hector DLC Sablan appeared without counsel. Hearing Officer Jerry Cody, presiding.

After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

This case is based on a Determination, Notice of Violation and Notice of Hearing (“Determination”) filed by the Department of Labor Enforcement and Compliance Section (“Enforcement”) in the Hearing Office on August 16, 2017, against respondent Hector DLC Sablan, *dba* Pacific Island Cleaning Agency (“Employer”). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

This case concerns several issues regarding Employer’s failure to pay wages and taking improper deductions. The detailed claims are discussed below.

Employer Failed to Pay Wages to Complainant Gacayan Jr. from June 5, to September 5, 2017.

Employer operated a manpower agency which contracted with Herman's Bakery to provide Employee's services as part of a manpower agreement. Complainant Roland M. Gacayan Jr. ("Employee") worked at Herman's Bakery under this manpower arrangement, but Employer continued to be obligated to pay Employee's wages. In about August 2017, Employee approached the Department of Labor ("DOL") and stated that his Employer had not paid his wages since June 5, 2017. Enforcement then began an Agency investigation of the matter, the results of which were summarized in its Determination. [Testimony of Mr. King.]

In its Determination, Enforcement charged that Employer had failed to pay wages to Employee for work performed by Employee at Herman's Bakery from June 5, 2017, through the date of the Determination – August 15, 2017. Employee stopped working for Employer on September 5, 2017.

At the first hearing on September 6, 2017, Enforcement amended the period of non-payment of wages to read: June 5 to September 5, 2017.

At the first hearing on September 6, 2017, Employer admitted that he owed back wages to Employee, but asked that he be given time to come up with the funds to pay the wages. Evidently, part of the problem was that Herman's Bakery had become concerned about Employee getting paid his salary, and thereafter, withheld certain payments to Employer. [Testimony of Mr. King and Mr. Sablan.]

Employer testified that he needed four weeks to gather the necessary funds and documents to pay Employee's back wages. The Hearing Officer agreed to give Employer time to arrange for payment and set a second hearing for September 29, 2017.

At the second hearing on September 29, 2017, Employer paid Employee **\$1,905.85** in two U.S. postal money orders; this amount represented Employee's net pay for work he performed from June 5 to July 28, 2017. At the hearing, Employee accepted these money orders as the correct amounts owed to him for that period. [Testimony of Mr. Gacayan Jr.] The case was continued until October 12, 2017, and Employer was ordered to produce pay stubs for the entire period of Complainant's claim: June 5 to September 5, 2017. In addition, Employer was ordered to come to the next Hearing prepared to pay all remaining unpaid wages for the period from July 29 to September 5, 2017.

At the third hearing on October 12, 2017, Employer produced all of the requested pay stubs for Employee for the period from June 5 to September 5, 2017. [Copies of these paystubs were collectively entered into evidence as Hearing Exhibit 5.] These records showed that Employer still owed to Employee unpaid wages of \$1,123.73 for the period from July 29 to September 5, 2017:

\$438.55 – July 29 – August 11, 2017

\$366.59 – August 12 - 25, 2017

\$318.59 – August 26 – September 5, 2017

\$1,123.73 – Total net wages owed to Employee (after deductions)

At Hearing on October 12, 2017, Employer admitted that he owed the above amounts but said he did not yet have the cash available to pay Employee. Employer noted that he expected to receive payment from another client on October 13, 2017, so he would be able to pay this debt within one day. The Hearing Officer gave Employer several extra days, ordering him to pay \$1,208.23 no later than October 17, 2017. [The total of \$1,208.23 represents \$1,123.73 in unpaid wages plus \$84.50 in reimbursement for improper deductions (see below).]

Subsequent to the hearing, Employer failed to deliver to the Hearing Office any portion of the owed wages by October 17, 2017. Employer also neglected to contact the Hearing Office to provide any explanation for his failure to pay any amounts to Employee.

Employer Improperly Deducted Amounts from Employee's Paychecks For Workmen Compensation Insurance.

It was discovered during the hearing that Employer had deducted \$6.50 for Worker's Compensation insurance from each of Employee's pay periods. This deduction is improper; all employers are required to cover that expense without deducting anything from a worker's paycheck. [see P.L. 6-33, 4 CMC § 9301 *et seq.*] The Hearing Officer ordered reimbursement of the \$6.50 amount to cover six months (13 paystubs) of wages. The amount to be reimbursed totaled **\$84.50** (13 x \$6.50 = \$84.50).

Employer Failed to Pay Wages Recorded in One Pay Stub (2/26 – 3/12/2017).

In addition to the other claim for unpaid wages described above, Employee also alleged that Employer had given him a copy of one paystub for the period from 2/28/17 to 3/12/17, but never actually paid the wages recorded on that paystub. [A

copy of the paystub was entered into evidence as Hearing Exhibit 4.] Employee made an oral motion to add this claim to his case; the Hearing Officer granted the Motion and took evidence from both parties regarding this issue.

Employee testified that on March 30, 2017, he had approached Employer and asked for two signed paystubs so that he could submit them in support of his CW-1 Petition for transfer employment. According to Employee, on March 31, 2017, he went to Employer's home and Mrs. Sablan paid him for one paystub, but Employer still owed for the other paystub covering the period from February 28 to March 12, 2017, in the amount of \$498.92. [Testimony of Mr. Gacayan Jr. and Exhibit 4.]

Employer admitted giving Employee the paystubs but claimed that he also paid all wages at the time the paystubs were signed by Employee. [See signed paystub at Hearing Exhibit 4.] Employer's wife, Elnora Sablan, testified that she did not recall ever paying any money to Employee. [Testimony of Mr. and Mrs. Sablan.]

Videotape evidence: In support of his claim, Employee produced a recording of a conversation that Employee had with Employer, which he had recorded surreptitiously on April 6, 2017, on his cell phone. The conversation between Employer and Employee was in the Ilocano language, a dialect of the Philippines. Employee produced a translated transcript of the recorded conversation, as well. [The digital recording and the translated transcript were entered into evidence as Hearing Exhibits 7 and 8, respectively.¹]

The Hearing Officer finds the testimony of Employee more credible than that of Mr. Sablan and his wife, especially given certain statements by Mr. Sablan, recorded on April 6, 2017, in which Sablan is heard to state several times that "the other one (paystub) is already paid but *the other one is for deposit...*(Gacayan says: "So, the 86 (hours) is not yet paid?... (Sablan answers) That is not yet paid." [Hearing Exhibits 7 and 8 (emphasis added).]

Based on the evidence presented, the Hearing Officer finds that Employer failed to pay **\$498.92** in wages, as reflected in the paystub at Hearing Exhibit 4. Employer shall be ordered to pay this amount, plus an equal amount in liquidated damages.

¹ Employee initially testified that he had translated the Ilocano language to English and embedded the English text into the video. After the Hearing, Employee submitted an Affidavit, attesting under the penalty of perjury that he had submitted an accurate translation from Ilocano to English. This Affidavit was entered into evidence as Hearing Exhibit 8.

LIQUIDATED DAMAGES

Under the Commonwealth Employment Act of 2007, at 3 CMC § 4947(d) (1), the Hearing Officer is authorized to award to a complainant unpaid wages plus amounts unlawfully deducted from wages. In addition, the Hearing Officer is authorized to assess liquidated damages in twice the amount of unpaid wages in any case in which a foreign national worker prevails on unpaid wages, unless the hearing officer finds extenuating circumstances. 3 CMC § 4947(d)(2).

In this case, after Employee waited two months to be paid for work performed in June 2017; by mid-August, Employee felt compelled to seek assistance from the Department of Labor to recover his unpaid wages. By the start of the hearing (September 6, 2017), unpaid wages amounted to \$3,029.58.

During the hearing process, Employer repaid \$1,905.85 in back wages for the period from June 5 to July 28, 2017; however, Employer still owes unpaid wages of \$1,123.73 (wages from 7/29 – 9/05/2017) as of the date of this Order.² In addition, Employee claimed, then proved, that he had never been paid for a \$498.12 pay stub (Exhibit 4) given to him in March 2017. This amount remains unpaid, as well. These two amounts total \$1,622.65.

Based on the long delays that Employee has endured, as well as having to bring litigation to induce his Employer to pay back wages, the Hearing Officer finds that liquidated damages should be calculated, and awarded, as follows:

- (1) For the wages (\$1,905.85) paid at the second hearing on September 29, 2017, liquidated damages should amount to **25%** of those wages: \$476.46.
- (2) For the remaining unpaid wage amounts \$1,123.73 (wages for 7/29/17 – 9/05/17) plus \$498.92 (wages for 2/28/17 – 3/12/17), liquidated damages should be awarded for **100%** of these wages: \$1,123.73 plus \$498.92 = \$1,622.65.

The total liquidated damage award (\$476.46 plus \$1,622.65) amounts to **\$2,099.11**.

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² Although Employer promised during the third hearing to pay \$1,123.73 in unpaid wages by October 17, 2017, he failed to pay and submitted no explanation for his failure to do so.

SANCTIONS

In its Determination, Enforcement asked that Employer be sanctioned for his conduct in failing to pay wages in a timely manner. [Hearing Exhibit 1 at p. 3.] In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle, that “[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings.” Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14).

The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified. The evidence in this case established that Employer failed to pay about \$3,000 in wages in a timely manner. Employer stopped paying wages in June, July and August 2017. This forced Employee to file litigation to recover his wages. Employer should be sanctioned for his long delay in paying earned wages. On the other hand, the Hearing Officer recognizes that Employer cooperated with the Department’s investigation and never denied owing the wages. Employer attended all three hearing sessions, produced payroll records when asked to do so, and ultimately, paid a certain portion of the wages on September 29, 2017. Such conduct should mitigate against imposing the maximum sanction. Finally, the Hearing Officer acknowledges that the liquidated damages that are assessed against Employer in this Order already serve as a type of sanction for failing to pay wages.

Holding: Based on the facts and considerations noted above, the Hearing Officer finds that Employer should be sanctioned \$1,500; however, half of the sanction shall be suspended for one year, then extinguished, on the condition that Employer fully complies with the payment terms of this Order. If Employer fails to pay the amounts as ordered, the suspended sanction may be reinstated. 3 CMC §§ 4947(d)(6) and (d)(11).

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Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Judgment is hereby entered against Respondent Hector DLC Sablan, and in favor of complainant Department of Labor Enforcement and Compliance Section and complainant Rolando C. Gacayan Jr. [3 CMC § 4947(d)(1) and Regs. at NMIAC § 80-20.1-485(c)(2).] Complainant Gacayan Jr. shall be awarded unpaid wages, unauthorized deductions and liquidated damages; and Complainant DOL shall be granted its request for sanctions, as set forth below.

2. **Unpaid Wages:** Judgment is entered against Respondent and in favor of Complainants on the charge of failing to pay wages in a timely manner. As of the date of this Order, Respondent owes net wages to Employee (after deductions) in the total amount of \$1,622.65, broken down as follows:

- (1) \$438.55 – [pay period: July 29 – August 11, 2017]
 - (2) \$366.59 – [pay period: August 12 - 25, 2017]
 - (3) \$318.59 – [pay period: August 26 – September 5, 2017]
 - (4) \$498.92 – [pay period: February 26 – March 12, 2017]
- \$1,622.65 – TOTAL

Respondent is ORDERED to pay **\$1,622.65** in unpaid wages to Complainant Gacayan, Jr., according to the Payment Schedule (below).

3. **Unauthorized Deductions:** For the reasons described above on page 3, Judgment is entered against Respondent Hector DLC Sablan and in favor of complainants in the following amount of **\$84.50**.

4. **Liquidated Damages:** For the reasons set forth above on page 5, Respondent Hector DLC Sablan is hereby ORDERED to pay **\$2,099.11** in liquidated damages to Complainant Gacayan Jr. [3 CMC § 4947(d)(2) and Regs. at NMIAC § 80-20.1-485(c)(3).]

5. **Payment Schedule:** Respondent Hector DLC Sablan is ORDERED to pay **\$1,622.65** in unpaid wages, plus **\$84.50** in unauthorized deductions, plus **\$2,099.11** in liquidated damages, **for a total of \$3,806.26**, by cashier's check or postal money order, payable to complainant Roland C. Gacayan Jr. and delivered to the Administrative Hearing Office no later than **thirty (30) days** after the date of issuance of this Order. 3 CMC § 4947(d)(2). 3 CMC § 4947(d)(11).

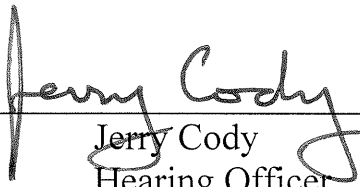
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6. **Sanctions:** Respondent Hector DLC Sablan is hereby SANCTIONED a total of one thousand five hundred dollars (\$1,500) for his conduct; however, half of this sanction shall be SUSPENDED for one year, then extinguished provided that Respondent fully complies with the payment terms of this Order and commits no further violations of labor laws during that period. Respondent is ORDERED to pay the remaining **\$750.00** in sanctions, payable to the CNMI Treasury, no later than **sixty (60) days** after the date of issuance of this Order. Proof of payment shall be submitted to the Hearing Office on or before the due date. 3 CMC §§ 4947(d)(6) and 4947(d)(11).

7. **Reinstatement of Suspended Fine:** If Respondent fails to comply with the terms of this Order, or commits further labor law violations during the one-year period, he shall be subject to a possible reinstatement of the suspended sanctions (\$750.00) plus added monetary sanctions, after a due process hearing on this issue.

8. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a).

DATED: October 23, 2017



Jerry Cody
Hearing Officer