

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

In the Matter of:)	Labor Case No. 16-018
Teresita Reyes,)	
Complainant,)	ADMINISTRATIVE ORDER
v.)	
)	
ABO International Corporation,)	
<i>dba</i> ABO Rent-a-Car,)	
Respondent.)	
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This case was heard on November 22, 28, 29 and 30, 2016, in the Administrative Hearing Office of the CNMI Department of Labor. Complainant Teresita Reyes appeared without counsel. Respondent ABO International Corporation, *dba* ABO Rent-a-Car, appeared through its President, Bo Zhang, and its legal counsel, George Hasselback.¹ The Department of Labor appeared through investigator Ben Castro and Asst. Attorneys General Michael Witry and Martin De Los Angeles. Ms. Yu, Xue Mei and Ms. Elvira Atalig testified in support of the Respondent. Mr. Pandiyan Sevugan testified in support of Complainant. 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:

Complainant Teresita Reyes (“Employee”) filed this labor complaint against her former employer, ABO International Corporation, *dba* ABO Rent-a-Car (“Employer”) on August 29, 2016, alleging that Employer had failed to pay her thousands of dollars in wages for hours she claimed to have worked for Employer. [A copy of the Complaint was entered into evidence as Hearing Exhibit 1.]

Employer operated a car rental business and a tourist business; it also maintained several apartments which were used by its tourist clients. In addition, Employer leased or rented two houses in Saipan. [Testimony of Mr. Zhong.]

¹ On November 28, 29 and 30, 2016, the hearing of L.C. No. 16-018 was consolidated with the hearing of L. C. No. 16-017, *Pandiyan Sevugan v. ABO International Corporation, dba ABO Rent-a-Car*. Mr. George Hasselback already represented ABO in L.C. No. 16-017. On November 28, 2016, ABO hired Mr. Hasselback to represent ABO in L.C. No. 16-018, as well.

FINDINGS OF FACT

Employee was hired by Employer in September 2015, to work as a cleaner, but later, she also worked as a driver and office worker. Her assigned tasks included: cleaning the ABO car rental office, cleaning rental cars, cleaning various apartments in San Vicente, Koblerville and Susupe, cleaning a house in Chinatown and a house in Kagman, and driving certain persons to various locations as directed by Employer's President, Mr. Zhong. In addition, Employee sometimes was asked to sit at the car rental office and answer the telephone. [Testimony of Ms. Reyes; Determination at p. 2, ¶ 4 (Hearing Exhibit 5).]

When Employee was hired, she thought her only job would be to clean the office. She was told by Mr. Zhong to come to the office from 8 a.m to 5 p.m., five days per week. Soon after the job started, however, Employee began to be called into the car rental office every weekend. On Saturday and Sunday, she would sit in the office and answer the phone. Someone else, Ms. Yu (not Yu, Xue Mei), worked alongside her in the office. [Employee believes that person went back to China and is no longer in the CNMI.] [Testimony of Ms. Reyes.]

Initially, the parties agreed that Employer would pay Employee \$300 per month for the services she performed. This was an oral agreement entered into between Ms. Reyes and Mr. Zhong – there was no written contract. [Testimony of Ms. Reyes and Mr. Zhong.] Employee testified that she was paid the \$300 per month in cash for many months. But sometime in 2015, when she realized how many hours she was working, Employee began complaining about her low salary. In response, President Bo Zhong told her several times that he would pay her more once business improved. [Testimony of Ms. Reyes.]

Employer paid Employee \$300 in cash each month from September 2015 through August 2016, except that in March 2016, Employee was paid \$150 and in two other months, she was paid \$400. (These amounts are noted in the Determination, prepared by investigator Ben Castro - see Hearing Exhibit 5). When Employee was paid, she was paid in cash and she was never provided a list of her work hours, hourly rate of pay, deductions taken, etc. *Id.*

Employee testified that she was expected to work every day, including weekends, so she went to work at the car rental office every weekend and answered phones. As a result of working every weekend, Employee incurred hundreds of hours of overtime.

Total Workforce Listing: Employer’s Total Workforce Listing, signed under penalty of perjury by President Zhong on February 17, 2016, lists Employee as a full-time employee (rental agent) paid monthly in an unspecified amount. [A copy of the Total Workforce Listing, signed on 2/17/2016, was entered into evidence as Hearing Exhibit 17.]

Employee’s Time Records (Hearing Exhibit 2): Employee kept her own personal record of the number of hours she worked on a daily basis. She made time record entries every day in a special notebook that she kept for that purpose. In the notebook, Employee did not break down the various times that she spent on different tasks (ex.: cleaning office vs. cleaning houses in Kagman); she just recorded the date and time that she worked. During investigation and at Hearing, Employee produced the original and a copy of the notebook. [Employee’s original notebook of time records was entered into evidence as Hearing Exhibit 2; a correct copy of Employee’s notebook was entered into evidence as Hearing Exhibit 4.]

Investigator’s Summary of Wages Earned and Owed (Hearing Exhibit 3): The investigator relied on Employee’s time records (Exhs. 2 or 4) because he found her records to be reliable. (For discussion of Employer’s time records, see pp. 5-6.) The investigator used Employee’s notebook entries and prepared a weekly summary of Employee’s work hours, calculating regular and overtime wages based on the then-applicable statutory minimum wage of \$6.05 per hour. [Testimony of Mr. Castro.] [A copy of the investigator’s wage summary was entered into evidence as Hearing Ex. 3.] In his Determination (Hearing Ex. 5), the investigator calculated the following amounts of earned and unpaid wages:

<u>Months</u>	<u>Amount</u>	<u>Less Cash Rec’d</u>	<u>Amounts Due</u>
September 2015:	\$1,321.93	\$300.00	\$1,021.93
October 2015:	\$1,434.00	\$300.00	\$1,134.00
November 2015:	\$1,410.22	\$300.00	\$1,110.22
December 2015:	\$1,956.42	\$400.00	\$1,556.42
January 2016:	\$1,506.42	\$400.00	\$1,106.42
February 2016:	\$1,066.52	\$300.00	\$766.52
March 2016:	\$943.26	\$150.00	\$793.26
April 2016:	\$1,426.29	\$300.00	\$1,126.29
May 2016:	\$1,256.89	\$300.00	\$956.89
June 2016:	\$964.98	\$300.00	\$664.98
July 2016:	\$544.50	\$300.00	\$244.50
August 2016:	\$590.80	\$300.00	\$290.80
		<u>Total Due</u>	<u>\$10,772.23</u>

Corroborating Testimony From Employee's Co-worker: Employee's co-worker, Pandiyan Sevugan, worked as a driver/supervisor for Employer from January 2015 to July 24, 2016.² It should be noted that Mr. Sevugan also filed a labor complaint against Employer for non-payment of wages (see Labor Case no. 16-017), which was heard in a consolidated hearing with this case. Mr. Sevugan's testimony, taken on November 22, 2016 (afternoon session), corroborated portions of Employee's testimony. Sevugan had introduced Employee to the company and considers her a personal friend.

First, Sevugan testified that Employee was paid \$300 per month in cash by Employer (President Bo Zhong); Sevugan knows this because he was present on numerous occasions when Employee was paid by Mr. Zhong. Sevugan testified that many times, he asked President Zhong to raise Employee's salary. In response, Mr. Zhong would say: "Yes, later on I give" or words to that effect. Mr. Sevugan was paid his salary in cash on a monthly basis, just like Employee was paid. He asked Mr. Zhong for a receipt by never received a receipt. [Testimony of Mr. Sevugan.]

Second, Sevugan confirmed that Employee worked weekends because he also worked weekends at the ABO Rent-a-Car office and he regularly saw Employee working at that time. *Id.*

Third, Sevugan confirmed that Employee performed multiple tasks, including: cleaning the rental car offices, cleaning apartments in various villages on Saipan, and cleaning the personal home of President Zhong. Several times each month, at the direction of Mr. Zhong, Sevugan would call Employee and give her an assignment to clean apartments in San Vicente, Susupe and Koblerville, and sometimes Sevugan would drive Employee to those assignments. *Id.*

Fourth, Sevugan testified that in the time he worked for Employer, the company never kept track of his work hours or Employee's hours. He advised Employee to keep track of her own work hours. *Id.*

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² The Total Workforce Listing (Hearing Exhibit 17) lists Mr. Sevugan as a Manager/Supervisor. Mr. Sevugan testified that part of his job was to drive tourists at the direction of Mr. Zhong. He also supervised the renovation of certain apartments.

Employer’s Time and Payroll Records Are Deemed Unreliable; Therefore, They Shall Not Be Used To Calculate Employee’s Earned or Owed Wages.

Two of the central questions in this case are: (1) How many hours did Employee work for Employer in a given month; and (2) how much was Employee paid?

Employer offered an answer to both questions by producing its own set of time and payroll records concerning Employee. The most relevant documents for consideration are: Hearing Exhibit 11 (records that allegedly show Employee’s actual hours worked in ABO’s car rental office in 2016); Hearing Exhibit 15 (payroll summaries for each month of 2016); and Hearing Exhibit 19(b) (records that allegedly show out-of-office assignments worked by Employee in 2016). All of these exhibits consist of computer records compiled by Employer’s unofficial bookkeeper, Ms. Yue, Xue Mei, in 2016.

Employer argues that its own records should be relied upon by the Hearing Officer instead of the time records produced by Employee (Hearing Exhibits 2 or 4). But Employer has its own credibility problems:

1. Employer (President Zhong) failed to produce Employer’s computer printed records to investigator during his scheduled interview with investigator Ben Castro. [Testimony of Mr. Castro; Hearing Exhibit 5.] Later, at Hearing, Employer introduced the documents into evidence. As a result, the investigator never considered these documents in his calculations of Employee’s time.
2. All of Employer’s records were compiled by the company’s “unofficial” bookkeeper, Ms. Yu Xue Mei, who was also known by complainants to be President Zhong’s girlfriend. Ms. Yu was Treasurer and a Director of ABO. [See ABO’s Annual Corporate Report at Hearing Ex. 20.] She was also someone who entered the CNMI as a “tourist,” then overstayed her immigration visa by about 18 months while she “worked” or provided assistance, to ABO. Evidently, Ms. Yu had no legal authority to work, or even reside, in the CNMI during the relevant time periods of January to August 2016. [Testimony of Ms. Yu.]
3. Employer’s records (Ex. 11) are neat and orderly and tend to impress until one notices troubling details, such as a time entry that states that Employee worked one hour (11 a.m. to noon) on “6/31/2016” meaning June 31, 2016; except that *there is no valid date of June 31 because June ALWAYS only has 30 days – never 31 days.*

4. Employer's various time and payroll records contain different totals for the same time periods. Admittedly, the totals are "close," but the discrepancies raise questions as to the accuracy of the records. For example: For April 2016, Exhibit 19(b) lists Employee's total earnings as \$513, but Exhibit 15 lists the payment to Employee for that period as \$500. Such discrepancies are found between Exhibits 19(b) and 15 for the months of May, June, July and August 2016. Furthermore, although Exhibit 11 shows Employee working a certain number of office hours, the hourly rate used to calculate her payment for those hours remains a mystery. No rate is ever stated and if one multiplies the number of hours listed in Exhibit 11 by the minimum wage of \$6.05 per hour, that figure is not recorded in the totals listed in either Exhibit 19(b) or Exhibit 15. Such discrepancies raise serious questions about the accuracy of the documents.

5. Employer's time entries for March 2016 demonstrate the most blatant example of fake entries. The evidence is as follows. Employee testified that she spent several weeks in Guam in March 2016. Employee's own records (Ex. 2) show that she was absent from work from February 25 through March 20, 2016. In a post-hearing submission, Employee produced a copy of her World Tour and Travel itinerary which shows that Employee used her tickets to fly to Guam on 3/06/2016 and returned on a flight on 3/17/2016. [See Travel itinerary document submitted by Complainant, per instructions of the Hearing Officer, on 12/02/2016.] This is sufficient proof that Employee was off-island from March 6 through 17, 2016. Yet, Employer's time records for March 2016 (Ex. 11) show Employee working at ABO's car rental office in Saipan on March 8 (5 hrs.), March 9 (5 hrs.), March 10 (5 hrs.), March 11 (4 hrs.), March 15 (6 hrs.) and March 16 (4 hrs.). ***The Hearing Officer finds, based on the corroborating Travel Itinerary, that Employer's time entries in Exhibit 11 for March 2016 are incorrect, and most likely fraudulent.***

In conclusion, having reviewed Employer's time and payroll records in detail, the Hearing Officer finds that they are unreliable and, in some cases, fraudulent. Accordingly, these documents should not be relied upon to give an accurate picture of the actual hours worked by Employee, or the amounts paid to her, in 2016.³

³ **Staff Meetings:** Employer raised another line of defense at the Hearing regarding staff meetings. President Zhong claimed that in staff meetings held in January and March 2016, he notified Employee and Mr. Sevugan that their employment had been changed from full to part-time employment and their salaries had been reduced.

Both Employee and Mr. Sevugan denied that they attended these meetings or received any company notices or letters about changing their status from full to part-time employees. In any event, the salary of \$300 that President Zhong claimed was specified as a base salary for Employee in the March meeting, is the amount she claims to have been paid nearly every month from April through August 2016. (She

The Hearing Officer notes that the confusion surrounding Employee's work status and the hours she worked would have been resolved if Employer had followed the law and issued detailed paystubs with the payroll, identifying hours worked, rate of pay, deductions taken, etc. 4 CMC § 9232(c). [See discussion in Conclusions of Law, below.] Employer's failure to follow this law and issue detailed paystubs created the confusion that has led to this case.

CONCLUSIONS OF LAW

I. The Hearing Office has original jurisdiction to adjudicate the labor complaint filed by Employee, pursuant to 3 CMC § 4942(a).

The Commonwealth Employment Act of 2007 ("Act") vests broad jurisdiction in the Administrative Hearing Office to resolve labor and wage disputes brought by U.S. citizens as well as by foreign workers. The Act states, in part, that: "The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth..." [3 CMC § 4942(a).]

II. Employer Failed to Follow CNMI Law Requiring Employers To Issue Detailed Payroll Information To Employees.

The CNMI Minimum Wage and Hour Act at 4 CMC § 9232(c), requires employers to provide detailed information to employees when wages are being paid. The statute states:

Every employer **shall furnish** each employee **at every pay period** a written statement showing the employee's total hours worked; overtime hours; straight-time compensation; overtime compensation; other compensation; total gross compensation; amount and purpose of each deduction; total net compensation; date of payment; and pay period covered. (Emphases added.)

For many months, Employer paid Employee in cash and provided no detail whatsoever to her regarding the number of hours being compensated, hourly rate of

claims that she was only paid \$150 in March 2016.) However, Employee alleges that her job responsibilities and assignments were never reduced; thus, she was simply required to work the same amount for less money. She complained about this to President Zhong through Mr. Sevugan and was reassured by Mr. Zhong, who told Mr. Sevugan that more money would be paid to her as soon as Zhong's financial matters in Greece were resolved. [Testimony of Ms. Reyes and Mr. Sevugan.]

pay, deductions taken, etc. Such conduct violated the CNMI Minimum Wage and Hour Act, as cited above.⁴

Furthermore, Employer's slipshod, erratic management created a chaotic environment in which employees were left to work without set schedules and with no idea what their hourly pay rate was turning out to be after their monthly cash payment was received. This, coupled with the employer's continued promises that wages would improve in the future, created an unsettled work environment that kept Employee guessing as to wages owed to her.

III. Employee's Time Records (Hearing Exhibits 2 or 4) Are Credible and Should Be Used To Compute Unpaid Wages.

Into the vacuum created by Employer's inconsistent and unsettled management, Employee kept track of her own work hours and continued pressing for more compensation. When Mr. Sevugan asked President Zhong to raise Employee's pay, Zhong responded: "Yes! Just wait!" [Testimony of Mr. Sevugan.]

Employer never established a set work schedule for Employee or her co-workers. Workers were told to "organize job by yourself" (Hearing Ex. 9), and were never given paystubs that tied their hours to wages. In this disorganized environment, Respondent's own witness, Ms. Atalig, testified that she kept track of her own work hours to "reassure" herself. Given the confused management, it is uncertain whether Employee's work on the weekend's at Employer's car rental business was complying with, or going against, Employer's directives. In any event, there is no evidence that management ever told Employee to leave the office, stop working, or stop coming to the office on weekends.

The Hearing Officer finds Employee's testimony as to how she kept daily records of her work hours, and the records themselves, are credible. Given Employer's failure to issue paystubs to Employee in violation of the CNMI Minimum Wage

⁴ Procedural Note: The Determination did not include a charge against Employer alleging a violation of this statute. At Hearing, Employer objected that its due process rights would be violated if the Hearing Officer imposed a sanction for a charge that had not been filed against it prior to the Hearing. On the final day of testimony (11/30/2016), the Department counsel and Employer's counsel agreed to meet and confer on this issue as to whether the Department would seek to amend its Determination to add the charge. The Department never filed any motion to address this matter after the hearing ended. Based on these facts, the Hearing Officer will not assess any sanction against Employer in this case for its violation of the CNMI Minimum Wage and Hour Act.

and Hour Act, as well as Employer's own discredited time records (see Order at pp. 5-6), the Hearing Officer concludes it is reasonable to rely on Employee's handwritten records to compute the number of hours worked by Employee.

IV. The Investigator's Calculations Correctly Summarize The Wages That Employee Earned and Is Owed.

Investigator Ben Castro testified as to how he used the time entries in Employee's notebook to extrapolate weekly totals of regular and overtime wages earned. The investigator then entered these weekly totals into the summary of wages (Hearing Exhibit 3) that were then included in his Determination (Hearing Exhibit 5). The Hearing Officer has reviewed the investigator's calculations at Hearing Exhibit 3 and finds them to be accurate. Accordingly, these calculated totals are hereby adopted as the correct summary of wages earned and incorporated into this Order. The Hearing Officer notes that there was a minor error made when the investigator transferred totals from Exhibit 3 to Exhibit 5.⁵ The correct figure was contained in Exhibit 3 and the Hearing Officer has used that figure to calculate the final award. Furthermore, the Hearing Officer agrees with the investigator's assessment that it is proper to apply the applicable wage rate of \$6.05 per hour, which was in effect in the CNMI from October 1, 2015 through September 30, 2016.

V. The Statute of Limitations For Administrative Labor Claims Limits the Period In Which Unpaid Wages May Be Recovered by Employee.

The applicable statute of limitations for labor claims filed in the Administrative Hearing Office is six months. 3 CMC § 4962(b). This means that a claimant must file her labor claim within 180 days of the "last occurring event" that gave rise to the claim. The Hearing Officer holds that Employer's legal obligation to pay minimum wages for work performed constitutes a "continuing" obligation that arises every day the employee works. Thus, even though Employer's non-payment of Employee's wages began in 2015, beyond the statutory period, there is coverage for that part of the claim that took place within 180 days (six months) of the date of filing of the Complaint. As Employee filed her complaint on August 29, 2016, the applicable period runs from **March 3, 2016 until August 29, 2016** (filing date).

⁵ The total wages earned in March 2016 read \$580.26 in Exhibit 3, but read \$943.26 in Exhibit 5. Somehow, the wrong figure was transposed into Exhibit 5. This has been corrected in the next Section.

VI. Employer Owes Unpaid Regular and Overtime Wages To Employee Amounting to a Total of \$3,613.72.

Complainant may recover unpaid wages, as limited by the applicable statute of limitations, for the period from March 3, 2016, until Employee stopped work on August 26, 2016. That period is comprised of 25 weeks and 5 days of work; in essence, 26 weeks of wages. The applicable minimum wage for that period was \$6.05 per hour; overtime was compensated at 1.5 times the regular rate.

As stated above, the investigator calculated each week of wages earned by the Employee, assessing overtime wages for weeks with more than 40 hours of work. (See Determination at Hearing Exhibit 3.) The Hearing Officer finds these calculations to be accurate (except for the minor error noted in fn. 4). The applicable months within the statute of limitations, are as follows:

<u>Months</u>	<u>Amount</u>	<u>Less Cash Rec'd</u>	<u>Amounts Due</u>
March 2016:	\$580.26	\$150.00	\$430.26
April 2016:	\$1,426.29	\$300.00	\$1,126.29
May 2016:	\$1,256.89	\$300.00	\$956.89
June 2016:	\$964.98	\$300.00	\$664.98
July 2016:	\$544.50	\$300.00	\$244.50
August 2016:	\$590.80	\$300.00	\$290.80
		<u>Total Due</u>	<u>\$3,613.72</u>

The wages owed to Employee for the applicable period, minus the amounts that were paid by Employer, total **\$3,613.72** in regular and overtime wages,

VII. Employee Shall Be Awarded Liquidated Damages in an Amount Equal To the Unpaid Regular and Overtime Wages: \$3,613.72.

The Commonwealth Employment Act of 2007 at 3 CMC § 4947(d)(2) authorizes an award of liquidated damages, amounting to twice the amount of unpaid wages, unless the Hearing Officer finds extenuating circumstances. Based on the evidence presented, the Hearing Officer finds that Employee should be awarded liquidated damages equal to the amount of unpaid wages owed to her, as set forth above. Liquidated damages amount to **\$3,613.72**.

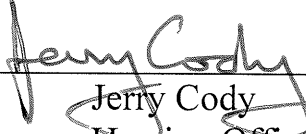
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The Department being fully advised and good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** Based on the findings above, judgment is hereby entered against Respondent ABO International Corporation and in favor of Complainant Teresita Reyes on her labor claim. Complainant is hereby awarded \$3,613.72 in unpaid wages. [3 CMC §§ 4942(a), 4947(d)(1), 4947(d)(11).]
2. **Liquidated Damages:** In addition to the above wage award, Complainant Teresita Reyes shall be awarded liquidated damages in an amount equal to the total wage award (\$3,613.72). [3 CMC §§ 4942(a), 4947(d)(2), 4947(d)(11).]
3. **Payment Schedule:** Respondent ABO International Corporation is ORDERED to pay the above-noted amounts (totalling **\$7, 227.44**) by cashier's check or postal money order, payable to Teresita Reyes, 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)(11).
4. **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: January 30, 2018



Jerry Cody
Hearing Officer