

COMMONWEALTH OF PENNSYLVANIA

WAYNE HAMMOND : BEFORE THE BOARD OF CLAIMS  
 :  
VS. :  
 :  
COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF TRANSPORTATION : DOCKET NO. FC-1115-96

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**FINDINGS OF FACT**

1. The Plaintiff is an adult individual who was employed by the Pennsylvania Department of Transportation. (N.T. 8)
2. Defendant is Commonwealth of Pennsylvania, Department of Transportation.
3. On January 19, 1996, Plaintiff was employed by Defendant as a Contract Management Engineer in Highway Plans Engineering District 9. (N.T. 8, 84-85)
4. Plaintiff's immediate supervisor was Mr. Vincent Dodson. (N.T. 13)
5. Mr. Vincent Dodson's immediate supervisor was Mr. Al Laich. ( N.T. 13)
6. Mr. Laich's immediate supervisor was Mr. Earl Neiderhiser. (N.T. 13)
7. Mr. Neiderhiser was the District Engineer for District 9 and was in effect in charge of District 9. (N.T. 82)
8. On Friday, January 19, 1996, widespread severe flooding occurred in Pennsylvania Department of Transportation District 9, which is composed of six counties. (N.T.11 )
9. On Monday, January 22, 1996, there was a command center meeting of District 9 management personnel to coordinate the flood relief effort. (N.T. 13-14)
10. Mr. Hammond's recollection of that discussion is that Mr. Neiderhiser stated that he wanted everyone that worked overtime to keep track of the overtime in the remarks section of the payroll and that at a later time, if it was possible for Mr. Neiderhiser to pay the management people for overtime, that he wanted a record of it so that he could do that. (N.T. 14)
11. Mr. Hammond testified that based upon those remarks, that he agreed to coordinate the entire flood control effort for the District. (N.T.14)

12. Ken Shade who was present at the January 22, 1996 meeting recalled Mr. Neiderhiser stating “if we can pay the overtime we will or something to that effect”. ( N.T. 65)

13. Mr. Al Laich was present at the January 22, 1996 meeting and recalled that Mr. Neiderhiser said “he would try to do something if he received authority to do it”. Mr. Laich further testified that he understood the words “do something” to mean pay. (N.T. 145)

14. Mr. Vince Dodson was present at the January 22, 1996 meeting and testified “that Mr. Neiderhiser was not sure if he had the authority to grant the overtime or not so it was basically summed up that he would look into it. He would contact the central office to determine whether or not he was authorized to pay overtime; that he would do what he could for us, ... but to keep track of the overtime and to mark it in the remarks column of the payroll in the event that he could do something for us.” (N.T. 159)

15. At the time of the January 22, 1996, meeting Mr. Neiderhiser did not realize that he had the authority to approve overtime for management employees including Plaintiff. He thought the Deputy Secretary had to authorize such overtime. (N.T. 95-96).

16. At some time later, Mr. Neiderhiser determined that he indeed did have the authority to grant overtime to management personnel under Attachment 3 to a December 3, 1993, Department of Transportation overtime policy period. (N.T. 106, Exhibit, D-3)

17. Plaintiff and Defendant stipulated that Plaintiff worked 358 hours of overtime between January 22, 1996 and March 26, 1996. (N.T. 6-7)

18. Plaintiff was told in May of 1996 that he would not be paid for all of his overtime hours. (N.T. 31)

19. Plaintiff and Defendant stipulated that Plaintiff was only paid for 140 overtime hours at the straight time rate of \$29.41. (N.T. 6)

20. Plaintiff and Defendant stipulated that the Plaintiff was seeking payment of the additional 218 hours at a straight time rate of \$29.41 per hour plus interest. (N.T. 6-7)

21. Plaintiff’s testimony is credible.

## CONCLUSIONS OF LAW

1. The party seeking to establish a cause of action based on promissory estoppel must establish that:

(1.) The promisor made a promise that he should have reasonably expected would induce action or forbearance on the part of the promisee: (2.) The promisee actually took action or refrained from taking action in reliance on the promise: (3.) An injustice can be avoided only by enforcing the promise.

2. Mr. Earl Neiderhiser, an authorized agent of Defendant, promised to Plaintiff that Plaintiff would be paid overtime for the hours that Plaintiff worked if Mr. Neiderhiser was authorized to approve such overtime.

3. Mr. Neiderhiser was indeed authorized to approve such overtime at the time the promise was made.

4. Plaintiff relied on the Defendant's promise and commenced working 358 hours of overtime during the flood emergency.

5. It is admitted that Defendant obtained the benefits of Plaintiff's working 358 hours of overtime yet only paid Plaintiff for 140 hours.

6. An injustice against Plaintiff can be avoided only by enforcing the promise and requiring Defendant to pay Plaintiff for the remaining 218 hours of overtime actually worked plus the statutory 6% interest from June of 1996.

## OPINION

This matter was called to hearing before a panel, composed of Frederick D. Giles, Attorney Member and Conrad Kambic, Panel Engineer. The Panel Report has been submitted and reviewed.

In order for the Plaintiff to establish a cause of action based on promissory estoppel he must establish that:

1. The promisor made a promise that he should have reasonably expected would induce

action or forbearance on the part of the promisee: (2.) The promisee actually took action or refrained from taking action relying on the promise: (3.) An injustice can be avoided only by enforcing the promise. Crouse vs. Cyclopes Industries, \_\_\_ Pa. Super \_\_\_, 704 A.2d 1090 (1997) alloc. granted, 556 Pa. 691, 727 A.2d 1121 (1998), affirmed in part, reversed in part, 560 Pa. 394, 745 A.2d 606 (2000) In the case at bar, Plaintiff credibly testified that Defendant's agent, Mr. Earl Neiderhiser wanted all management personnel to keep track of overtime accrued during the flood relief effort. The reason for the record keeping was to pay the management people for overtime if Mr. Neiderhiser was authorized to do so. ( N.T. 14.) Defense witnesses, Mr. Al Laich and Mr. Vince Dodson essentially corroborated this aspect of Plaintiff's testimony. Mr. Laich testified that Mr. Neiderhiser said that "he would try to do something if he received authority to do it" and that he understood the words "do something" to mean pay. (N.T. 145) Mr. Vince Dodson testified that Mr. Neiderhiser was not sure if (Neiderhiser) had the authority to grant the overtime or not so it was basically summed up that he would look into it. Mr. Neiderhiser would contact their Central Office to determine whether or not he was authorized to pay overtime and that he would do what he could for us. ( N.T. 159). At the time of the January 22, 1996, meeting, Mr. Neiderhiser did not believe that he had the authority to approve overtime for Plaintiff, however, he later determined that he did indeed have the authority to grant overtime for the Plaintiff. (N.T. 106; Exhibit D-3) Further, Plaintiff credibly testified that based upon Mr. Neiderhiser's remarks he agreed to coordinate the flood effort for the District. ( N.T. 14)

It was stipulated by and between the parties that Plaintiff worked a total of 358 hours between January 22, 1996 and March 26, 1996, and was only paid for 140 overtime hours. (N.T. 6-7) Defendant agreed that Plaintiff's work performance was an excellent effort in coordinating and managing

the flood contracts. (N.T. 120) However, Defendant did not pay Plaintiff for the remainder of those hours due to the fact that Mr. Neiderhiser was concerned about uniformity among the districts. (N.T. 132)

Based on the above, Plaintiff has established a claim on the theory of promissory estoppel. Testimony showed that Mr. Neiderhiser made a promise to pay overtime. As an employer, he should have reasonably expected that a promise to pay overtime would induce an employee to work overtime. There was no limit on the number of overtime hours. It is undisputed that Plaintiff worked 358 hours of overtime between January 22, 1996 and March 26, 1996. It is further undisputed that Plaintiff was only paid for 140 overtime hours despite the fact that Plaintiff's work performance was excellent. (N.T. 120, 174) It appears that based on the totality of the evidence that Defendant's agent, while being concerned with some concept of uniformity, arbitrarily decided not to pay Plaintiff for 218 hours of overtime that was previously promised. Based on the above, the Board of Claims finds in favor of the Plaintiff and orders the Defendant to pay Plaintiff for 218 hours of overtime, at the straight time rate of \$29.41, plus the statutory 6% interest from June 1, 1996.

**ORDER**

**AND NOW**, to wit this 9th day of November, 2000, it is hereby **ORDERED** and **DECREED** that judgment is entered in favor of the Plaintiff in the amount of Six Thousand Four Hundred Eleven Dollars and Thirty Eight Cents (\$6,411.38) plus 6% interest from June 1, 1996.

Each party to bear its own costs and attorney fees.

BOARD OF CLAIMS

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David C. Clipper  
Chief Administrative Judge

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Louis G. O'Brien, P.E.  
Engineer Member

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James W. Harris  
Citizen Member

Opinion Signed