

COMMONWEALTH OF KENTUCKY
MADISON CIRCUIT COURT
DIVISION NO. 1
CIVIL ACTION NO.: 18-CI-00294

ENTERED
TIME 2:00 A.M./P.M.
AUG 22 2019
MADISON CIRCUIT COURT
DAVID FERNANDEZ, CLERK

RONALD D. HELD, JR., AND CAROL
LEAR, on behalf of themselves and all other
persons similarly situated,

PLAINTIFFS

v.

HITACHI AUTOMOTIVE SYSTEMS
AMERICAS, INC.,

DEFENDANT

ORDER GRANTING
PLAINTIFFS' MOTION TO CERTIFY CLASS PURSUANT TO CIVIL RULE 23

Pending before the Court is Plaintiffs Ronald D. Held, Jr. and Carol Lear's Motion for Class Certification. For the reasons discussed below, Plaintiffs' Motion is GRANTED.

Findings of Fact

1. Plaintiffs and those they seek to represent are current and former supervisors (including without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors) at Hitachi's Berea, Kentucky, production facilities (the "Supervisors").

2. Hitachi has employed more than 150 Supervisors at its Berea production facilities since April 24, 2012. Plaintiff Held worked as a Supervisor for Hitachi from the early 2000s until December 2013. Plaintiff Lear is currently employed as a Supervisor by Hitachi and has worked in that position for the entire time period covered by this lawsuit.

3. The Supervisors, including Plaintiffs, work/worked in excess of 40 hours in a workweek.

4. Hitachi tracks and records the number of regular hours and overtime hours (*i.e.*, hours over 40) worked by the Supervisors to the minute. However, Hitachi does not pay these

Supervisors an overtime premium for hours worked over 40 in a workweek. Instead, until June 2016, Hitachi paid for all of these “overtime” hours at the same hourly rates as “regular” hours.

5. Since June 2016, Hitachi has capped the number of paid hours at 50 in a workweek for the Supervisors.

6. Hitachi has applied the above-described pay policies uniformly to all Supervisors.

Conclusions of Law

I. Class Certification Standard

The proposed class defined below should be certified because all requirements of Kentucky Rule of Civil Procedure 23 (“CR 23”) are satisfied, including those of CR 23.01 and CR 23.02.

II. CR 23.01(a) Requirements

Plaintiffs meet all four requirements of CR 23.01(a)—numerosity, commonality, typicality, and adequacy of representation.

A. Numerosity

Plaintiffs’ proposed class will contain more than 150 members. Therefore, the Court finds that Plaintiffs’ proposed class is sufficiently numerous to satisfy CR 23.01(a).

B. Commonality

Under CR 23.01(b), Plaintiffs must also show that there are questions of law or fact common to the class. Here, the overarching common contention asserted by the Plaintiffs is that Hitachi paid the Supervisors on an hourly basis and, therefore, they are not exempt from the KWA’s overtime pay requirements. Hitachi contends that the Plaintiffs are paid on a “salary basis,” and provided extra compensation by the hour. Plaintiffs contend that if it is determined that they were paid on a “salary basis,” they are still owed overtime because their guaranteed

minimum amount of pay was not reasonably related to their extra hourly pay. Plaintiffs claim that if their extra hourly pay is not reasonably related to their guaranteed minimum amount of pay, then they must be paid overtime compensation.

This Court finds that all of the proposed class members were paid in the same manner, and whether this uniform pay system meets the definition of a “salary basis” or not is a common question to the claims of all members of the proposed class. Thus, the resolution of this common contention will resolve an issue that is central to the validity of each one of the claims in this litigation.

The proposed class members have suffered the same alleged injury. While the degree of injury suffered by those within the proposed class may differ, the factual and legal issues presented by the putative class members are common questions of law and fact capable of class-wide resolution. Thus, the Court finds that the class members’ claims satisfy the burden to establish commonality under CR 23.01(b).

C. Typicality

The “typicality” prerequisite of CR 23.01(c) requires that Plaintiffs demonstrate that the claims or defenses of the representative parties are typical of the claims or defenses of the class.

Here, the harm allegedly suffered by the Named Plaintiffs is typical of the harm allegedly suffered by the entire class. The alleged wrong of failing to pay Supervisors overtime pay in accordance with the KWA’s requirements arises from the same practice or course of conduct that gives rise to the claims of other class members. The claims of the Named Plaintiffs and the class members are based on the same legal theories. There is but one wrong: denial of an overtime premium.

Plaintiffs' claims are typical of the class of fellow Supervisors. If Plaintiffs establish liability on the part of Hitachi, that would establish liability for the entire class. Thus, the Court finds the typicality requirement is satisfied.

D. Adequacy

CR 23.01(d) requires that the court find that the class representatives "will fairly and adequately protect the interest of the class." The Court finds that Plaintiffs will fairly and adequately represent the Class. Plaintiffs Held and Lear do not have any interests antagonistic to those of the Class, and Plaintiffs' counsel has significant experience in prosecuting class actions such as this one.

The representative Plaintiffs and unnamed class members have common interests in recovering the unpaid wages to which each claims to be entitled. This Court finds that no known conflicts exist between the Plaintiffs and the class members in this case. Plaintiffs Held and Lear have no known interests antagonistic to the interests of the absent class members. The Plaintiffs are challenging the same conduct and seeking the same relief as the remainder of the class.

Furthermore, Plaintiffs Held and Lear have shown their willingness and ability to take an active role in the litigation and to protect the interests of class members. They have participated in the retention of counsel and have monitored and assisted in this litigation. They have also retained attorneys competent and experienced in class actions and other complex litigation.

Thus, the Court finds that Plaintiffs Held and Lear are adequate representatives of the class, satisfying the requirements of CR 23.01(d).

III. CR 23.02(c) Requirements

In addition to satisfying the prerequisites of CR23.01, Plaintiffs seeking certification of a class for money damages must typically prove, pursuant to CR 23.02(c), that (1) questions of law

or fact common to the members of the class predominate over any questions affecting only individual members (“predominance”), and (2) a class action is superior to other available methods for fair and efficient adjudication of the controversy (“superiority”). CR 23.02(c).

i. Common Questions Predominate

The Court finds that the Plaintiffs have satisfied this prerequisite by listing the common factual and legal questions involved in this putative class action. These common questions include:

- (1) whether Hitachi pays members of the Class based on the hours they work;
- (2) whether Hitachi pays members of the Class on a salary basis; (3) if members of the Class are paid on a salary basis, whether the guaranteed minimum that they were paid reasonably related to the extra hourly compensation they were;
- (4) whether Plaintiffs and the Class are entitled to overtime premium pay for hours worked in excess of 40 hours per week, and for what time period; and (5) the formula to apply to Plaintiffs and the Class to pay them the overtime amount that they are owed..

Resolving these questions will require the application of the KWA to common facts regarding Defendant’s compensation of its Supervisors. These and other common questions ensure that common factual and legal questions will predominate over any individual issues in this matter.

ii. Class Action is Superior

When considering whether a class action is superior to other potential methods of resolving the dispute, the Court should consider the four non-exhaustive factors set out in CR 23.02(c):

- (i) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (iv) the difficulties likely to be encountered in the management of a class action.

All of the above factors favor maintaining the instant litigation as a class action. Given the significant cost of pursuing wage claims in court as compared to the typically modest amount

of any individual worker's lost wages, few individuals possess a rational interest in prosecuting their claims individually in separate actions.

This Court is the appropriate forum for this matter because the Defendant's manufacturing facilities at issue herein are located in Madison County, Kentucky; the representative Plaintiffs and known class members are located in Kentucky; and substantially all of the events at issue occurred here.

Finally, there will be no undue difficulty in the management of this litigation as a class action, when compared to the complications of managing more than 150 separate actions by the affected workers.

Thus, the Court finds that the proposed class meets the requirements of CR 23.02(c) because common issues of fact and law predominate and because a class action is the superior way to adjudicate these issues. Accordingly, certification of the proposed class pursuant to CR 23.02(c) is warranted.

IV. Conclusion

For the reasons set forth above, Plaintiffs have satisfied their requirements under CR 23.01 and 23.02, and the Court hereby GRANTS their motion for class certification. Accordingly, the Court certifies the following class:

All current and former supervisors (including, without limitation, Production Supervisors, Quality Supervisors, and Warehouse Supervisors) employed by Hitachi in its Berea, Kentucky, manufacturing facilities at any time since April 24, 2012, excluding all supervisors who have only worked on the south side of the Berea Motors facility since April 24, 2012.

(The "Class.")

Pursuant to CR 23.03(7), "[w]hen appropriate, a class may be divided into subclasses that are each treated as a class under this rule." Here, for the reasons set forth in the Memorandum in

Support of Plaintiffs' Motion, this Court find that it is appropriate to divide the Class into the following two subclasses, which should each be treated as classes pursuant to CR 23.03(7):

All Class Supervisors employed by Hitachi at any time from April 24, 2012 to the present.

(The "Hourly Basis Subclass.")

All Class Supervisors employed by Hitachi at any time from April 24, 2012 through June 13, 2016.


(The "Reasonable Relationship Subclass.")

The Court further designates Ronald D. Held, Jr. and Carol Lear as Class Representatives, for the reasons set forth above. Also, for the reasons set forth in the Memorandum in support of Plaintiffs' Motion, the Court appoints Barrett Johnston Martin & Garrison, LLC, Garmer & Prather, PLLC, and Chris Sanders Law, PLLC as Class Counsel.

Finally, the Class Notice submitted to this Court by Plaintiffs as Attachment 1 to their Motion to Certify Class Pursuant to Civil Rule 23 is hereby APPROVED. The Court finds that Plaintiff's proposed Class Notice clearly and concisely states all the necessary information contemplated under CR 23.01(4)(b).

Defendant is ORDERED to produce to Plaintiffs' counsel a list of all employees to receive notice (based on the definition above) ("Class List"), including their names, last known mailing addresses, and email addresses within seven (7) days from the date of this ORDER. Plaintiffs' counsel is hereby ORDERED to cause this Court-approved Class Notice to be sent to these class members within fourteen (14) days of receipt of the Class List via U.S. mail and electronic mail, thus satisfying CR 23.01(4)(b) requirement that "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Plaintiffs' counsel is also ordered to post this notice to a publicly available website.

SO ORDERED this 22nd day of August, 2019.


HON. JEAN C. LOGUE, JUDGE
MADISON CIRCUIT COURT

Prepared by:

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CLERK'S CERTIFICATE OF SERVICE

This is to certify that, pursuant to CR 5.02(2), a true and accurate copy of the foregoing document has been served by electronic means on August 22, 2019, to the following counsel and parties of record:

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