

Gutierrez v. Brand Energy Services of California, Inc. (2020) 2020 DJDAR 5893

Trial court erred in interpreting Wage Order No 16, section 5(D) as permitting employees and employers to enter CBA's that waived right to all compensation for employer-mandated travel time.

FACTS: Carlos Gutierrez (P) worked for Brand Energy Services of California (D), erecting and dismantling scaffolding at various Northern California oil refineries. Under Brand's "in on the employee's time, out on the Company's" policy, scaffold workers were not paid for employer-mandated travel time to a job site. Gutierrez would arrive 30 to 40 minutes before his shift started in order to wait for an employer-provided bus to shuttle him and other employees to a mandatory safety meeting. Brand deemed the "Company's time" to begin with the start of the safety meeting.

- Gutierrez filed a putative class action against Brand, alleging its policy violated the Labor Code and Business and Professions Code.
- On June 23, 2017, months after Gutierrez's complaint, Brand and Gutierrez's union entered into a Letter of Understanding (LOU) that "intended to constitute a collectively bargained agreement" which waived union members' right to otherwise compensable pre-shift employer-mandated travel time, thereby amending the parties' existing Collective Bargaining Agreement (CBA).

PROCEDURAL POSTURE: Brand successfully moved for summary judgement, arguing that Industrial Welfare Commission Wage Order (IWC) No. 16-2001, section 5(D) barred Gutierrez's claim.

- The trial court held that section 5(D) permitted union-represented employees and their employers to enter into CBA's that waived the right to all compensation for employer-mandated travel time.

HOLDING: The First District Court of Appeal reversed the trial court's summary judgement in favor of Brand and remanded the case for further consideration.

DISCUSSION: The Court framed its analysis – "and the correctness of the trial court's summary judgement ruling" – on two "purely legal" questions: (1) whether an employer and its union-represented employees may execute a CBA that expressly waives the right to be paid minimum wage for otherwise compensable time; and (2) if so, whether the CBA in this case, as amended by the June 2017 LOU, expressly provided for the waiver of this right by the plaintiff and other covered employees. Answering the first question in the negative, the Court in *Gutierrez* did not have occasion to reach the second.

I. Section 5(D) does not permit CBA's which waive employees' non-waivable right to minimum wage for employer-mandated travel time.

Observing that the plaintiff's appeal raises issues of statutory interpretation, the Court noted that the relevant statutes in this case serve a remedial purpose. Accordingly, "[i]n furtherance of that purpose, [the Court] liberally construe[s] the Labor Code and wage orders to favor the protection of employees." With this principle of interpretation in mind, the *Gutierrez* Court turned to Wage Order 16, which mandates every employer to pay employees no less than the minimum wage for "hours worked." Citing the California Supreme Court in *Morillion v. Royal Plumbing* (2000), the *Gutierrez* Court stated that for purposes of Wage Order 16, "hours worked" encompasses "compulsory travel time, which includes the time spent waiting for [their employer's] buses to begin transporting them."

The Court then examined the meaning of Wage Order 16 section 5(D), which provides an exception to section 5(A). Section 5(A) states that "[a]ll employer-mandated travel that occurs *after the first location where the employee's presence is required by the employer* shall be compensated. . . ." However, section 5(D) states that "*this section shall apply to employees covered by a valid [CBA], unless the [CBA] expressly provides otherwise.*"

The Court explained that section 5(D) authorizes an employer and its union-represented employees to enter into a CBA that "expressly provides" for the waiver of employee's rights. However, section 5(D) states that it applies only to "[t]his section" – meaning *exclusively* section 5. Therefore, section 5(D) has no effect on rights arising from other sections. Section 5 "does not mention, much less override" Wage Order 16 section 4(B)'s *independent* requirement that employees receive compensation "not less than the applicable minimum wage for all *hours worked.*" Consequently, section 5(D) cannot be invoked to waive an employee's right to minimum wage for compulsory travel time.