COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

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**D. RICHARD CASTELLANO and** [**www.mass.gov/dala**](http://www.mass.gov/dala)

**READY JET, INC.,** Docket Nos. LB-15-224, -225 and -226

(Citation Nos. #14-05-29542-002,

#14-05-29542-003 and #14-05-29542-004)

 Petitioners

 *v.*

**OFFICE OF THE ATTORNEY GENERAL,**

**FAIR LABOR DIVISION,**

Respondent

**Appearance for Petitioners**:

Rachel J. Eisenhaure, Esq.

White and Williams, LLP

101 Arch Street, Suite 1930

Boston, MA 02110-1103

**Appearance for Respondent**:

 Lisa Price, Assistant Attorney General

 Office of the Attorney General

 One Ashburton Place

 Boston, MA 02108

**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY OF DECISION**

 The Petitioners have failed to prove by a preponderance of the evidence that Citations #14-05-29542-002, #14-05-29542-003 and #14-05-29542-004 were issued erroneously. The Petitioners violated the Massachusetts Wage Act by failing to make timely payment of wages due and owing to their former employees; by failing to pay the proper overtime rate for hours worked in excess of forty hours; and by failing to keep true and accurate payroll records.

**DECISION**

INTRODUCTION

*Docket LB-15-224*

On May 14, 2015, the Respondent Office of the Attorney General (OAG) issued Citation #14-05-29542-002 pursuant to G.L. c. 149, § 148, imposing a restitution order of $9,497.26 and a civil penalty of $1,900.00 for non-willful failure to make timely payment of wages to 29 employees from May 19, 2012 to May 2, 2014, in violation of G.L. c. 149, § 148. (Exhibit 11.)

 *Docket LB-15-225*

On May 14, 2015, OAG issued Citation #14-05-29542-003 pursuant to G.L. c. 149 and c. 151, imposing a restitution order of $6,557.50 and a civil penalty of $1,300.00 for failure to pay proper overtime rate to the above-referenced 29 employees for hours worked in excess of forty in violation of G.L. c. 151, § 1B, from May 18, 2013 to May 2, 2014, in violation of G.L. c. 149, § 27B. (Exhibit 11.)

*Docket LB-15-226*

On May 14, 2015, OAG issued Citation #14-05-29542-004 pursuant to G.L. c. 151, § 19(3), imposing a civil penalty of $7,500.00 for failure to submit true and accurate payroll records from May 18, 2012 to May 2, 2014, in violation of G.L. c. 149, § 27B. (Exhibit 11.)

Pursuant to the provisions of G.L. c. 149, § 27C(b)(4), the Petitioners, D. Richard Castellano and Ready Jet, Inc. timely appealed the citations issued by OAG for violations of the Commonwealth’s Wage and Hour Laws. *See generally* G.L. c. 149, §§ 1 *et seq*., G.L. c. 151, §§ 1 *et seq*. An evidentiary hearing was scheduled for February 2 and 3, 2016 at the Division of Administrative Law Appeals (DALA), One Congress Street, Boston, Massachusetts. I admitted Exhibits 1-13 into evidence. The Petitioners submitted 4 chalks, enlargements of the printouts of Exhibit 3 offered into evidence. I admit them as part of Exhibit 3. I admitted the Petitioners’ appeal to DALA as Exhibit 14.

Exhibit 3 is a compact disc with the service logs for Terminals A and C. Exhibits 12 and 13 are compact discs with more than 2 years of the Petitioners’ complete payroll records. I informed the Petitioners that DALA had neither the time nor resources to sift through those records, and they agreed to submit hard copies of the relevant employees’ service logs, payroll records and other relevant information to DALA.

The Petitioners presented 6 witnesses: Dominic Patti, Director of Operations; Nelson Reyes, Operations Manager for Terminal C; Charlotte Morales, Assistant Manager, Terminal A; Jensy Diaz, Night Supervisor, Terminal A; Giovanni Martinez, Night Manager, Terminal A; and Sarah Colon, Office Manager, Terminal C.

The Respondent presented 19 witnesses: Ready Jet current and former employees Bethania Rodriguez, Edwin Morales, Grisselle Torres Ramos, Felix Calderon Santana, Miguel Alberto, Luis Colon, Pedro De Jesus, Michael Ventura, Jackson Calderon, Yasandri Castro, Angel Rivera, Steven Rosario, Angel Adames, Starling Perez, Francisco Valdez, Jesus Batista, Carlos Mariano and Ana Maria Verganza and Inspector Christina Lopez of the OAG, Fair Labor and Business Practice Division.

Sarah Nolan Aguilar provided interpretation services. The hearing was digitally recorded.

The parties submitted their post hearing briefs to DALA on March 25, 2016. The Petitioners’ brief included an analysis of selected dates for service logs in Terminals A and C. The administrative record then closed.

**FINDINGS OF FACT**

Based upon the testimony and documents presented at the hearing, I hereby render the following findings of fact:

1. The Petitioner, D. Richard Castellano is the president of Ready Jet, Inc., a foreign corporation incorporated in the state of Delaware on September 27, 2007. (Exhibit 5.)
2. Ready Jet provides aircraft cleaning services at Logan International Airport (Logan) for Delta Airlines in Terminal A and JetBlue Airlines in Terminal C. Ready Jet also performs cleaning services for Alaska Airlines. (Exhibit 1.)
3. Ready Jet classified the aircraft cleanings as TURNs or RONs. TURNs were airplanes that arrived at Logan in the early morning hours, were cleaned and departed shortly with new passengers. RONs were airplanes that remained at Logan overnight and were given a thorough cleaning by Ready Jet’s overnight cleaning crew. (Testimony of Patti.)
4. Ready Jet work was divided among three groups: crew lead, crew supervisor, and the general manager. The crew lead ran the crew, took the crew onto the aircraft and maintained quality standards. The crew supervisor was responsible for assigning crew leads, performing service audits and following the airlines’ schedules. At least one crew supervisor worked during the day, and two or three crew supervisors worked the overnight shift. (Testimony of Patti.)
5. The overnight crew comprised three teams of eight or nine employees headed by a crew lead. Each overnight crew included a two-man water/lavatory team: one person responsible for adding water to the plane, the other responsible for lavatory waste and disinfection. To minimize the risk of cross-contamination, the lavatory team was not allowed to interact with other crew members. The lavatory team had to remain near the lavatory truck at all times to facilitate a quick response when planes arrived. (Testimony of Patti; Testimony of Perez.)
6. Ready Jet recorded when employees punched in and out for work, but the punch-in time clock did not record when employees took breaks or lunch breaks. Although they were not documented on the weekly schedules, lunch breaks were automatically deducted from employees’ pay after 8 hours. Ready Jet installed a punch-in clock that recorded breaks and lunches in May 2014. (*See* Findings of Fact 6, 7, 11 and 12; Testimony of Patti, Testimony of Rosario.)
7. Lunch breaks took place after the RON shift, from 3:30 a.m. until 4:30 a.m., before the red eye flights arrived at Terminal C. It was the responsibility of the crew supervisor to assign lunch breaks depending on the number of planes parked overnight and the number of planes arriving in the morning. (Testimony of Patti.)
8. The Ready Jet lunchrooms were a 10-minute walk from the nearest Logan restaurant. Because the restaurants and the food court did not open until 5:00 a.m., most employees brown-bagged their lunches. (Exhibit 1; Testimony of Reyes.)
9. Due to the layout of Logan, sometimes it took 20 minutes to get from the planes to the lunchroom. Sometimes when employees arrived during a lunch break, there was barely enough time to eat before it was time to return to clean the next plane. The microwave in the lunchroom was frequently broken. (Exhibit 2; Testimony of F. Calderon; Testimony of G. Torres.)
10. Ready Jet employees are members of Service Employees International Union 32 (SEIU-32). According to Ready Jet’s New Employee Orientation Checklist, all employees are entitled to a 30 minute break for a shift 8 hours or longer, and to a 15 minute break if a shift is between 5 and 8 hours long.[[1]](#footnote-1) (Exhibit 2; Testimony of Lopez.)
11. According to Ready Jet’s Employee Handbook, as amended on January 1, 2009:

All part time employees were allowed 15 minute breaks after working 5 hours. Breaks may be taken at any time that does not interfere with Flight Operations or customer activities.

If waiting on a delayed aircraft, breaks must be taken within this time if the employee has been on the job more than 4 hours.

Full time employees are allowed a half-hour (30 min) meal break, and two 10 minute breaks for each *8 hour shift*. Breaks may be taken at any time that does not interfere with Flight Operations or customer activities.

If waiting on a delayed aircraft, breaks must be taken within this time if the employee has been on the job more than 4 hours.

(Exhibit 4.) (Emphasis added.)

1. According to Ready Jet’s Employee Handbook, as amended on October 6, 2011:

All part time employees are allowed 15 minute breaks after working 5 hours. Breaks may be taken at any time that does not interfere with Flight Operations or customer activities.

If waiting on a delayed aircraft, breaks must be taken within this time if the employee has been on the job more than 4 hours.

Full time employees are allowed a half-hour (30 min) meal break, and two 10 minute breaks for each *8 hour shift*. Breaks may be taken at any time that does not interfere with Flight Operations or customer activities.

(Exhibit 4.) (Emphasis added.)

1. Because of the May 14, 2015 OAG citations, Ready Jet amended the Employee Handbook on November 24, 2015 with the following:

Rest Breaks:

Ready Jet, Inc. provides all employees with two – 15 minute paid rest breaks after four consecutive hours worked. Breaks are to be taken during times that do not interfere with flight service operations or customer related requirements. Additionally, if employees are waiting on delayed aircraft, his/her 15-minute rest break is to be taken within that time frame.

Meal Breaks:

Employees who work a shift for more than *6 hours* are required to take at least a 30-minute unpaid meal break. During this time, employees will be relieved of all work duties. Employees must punch in and out for their unpaid meal break using the Ready Jet Employee Management System (REMS).

Managers and Supervisors will provide meal break schedules along with shift schedules to employees based on workload ensuring proper coverage for customer services.

If an employee fails to punch in and out for their lunch break, they must immediately notify his/her supervisor in order to ensure that the meal break is input into the system properly.

If for any unforeseen circumstances an employee is unable to take a meal break within the first 6 hours worked, the employee must immediately contact his/her supervisor who will make arrangements for the employee to take their meal break.

(Exhibit 4.) (Emphasis added.)

*Petitioners’ Witnesses*

1. Domenic Patti is the corporate agent for Ready Jet in the Commonwealth of Massachusetts. Mr. Patti serves as the Director of Operations and is responsible for the employees’ payroll, the book keeping and other business matters. Mr. Patti began his career at Ready Jet as an overnight cleaner in 2010. (Testimony of Mr. Patti; Exhibit 5.)
2. Typically 29 employees cleaned 21 planes overnight. A narrow body plane took 40 minutes to clean, a regional jet could be cleaned in 6-12 minutes and a deep cleaning of an aircraft took 2-3 1/2 hours. Mr. Patti attended Terminal C overnight shifts once every other week to preserve quality control. The absence of one employee would cause the entire operation to be short-staffed. (Testimony of Patti.)
3. Nelson Reyes began his career as a cleaner at Ready Jet in 2010, and was promoted to Operations Manager for Terminal C in 2012. He attends the overnight shift two to three nights per week to maintain quality control, sometimes staying the entire shift. Because he is salaried, he receives no additional compensation for night duty. (Testimony of Reyes.)
4. Mr. Reyes spends a lot of time training new hires due to the high attrition rate. Many employees stayed on the job for only 6 months. (Testimony of Reyes.)

*Respondent’s Witnesses*

1. Bethania Rodriguez began working for Ready Jet on December 15, 2012. She worked as an overnight cleaner from 10:00 p.m. to 6:00 p.m. She did not get a meal break for each shift in excess of 6 hours; sometimes she got a meal break twice a week. Ms. Rodriguez complained to Mr. Martinez and Geraldo Almonte that she had breaks of only 10-15 minutes long, which she grabbed when she could. During the breaks, the supervisors cut them short by entering the lunch room and clapping to return the employees back to work. Ms. Rodriguez testified that her requests for a daily half-hour lunch were denied because there was a lot of work, and management rushed the employees so that there would be no delay in having the work done. Hungry during their shifts, Ms. Rodriguez and some employees would take and consume one refreshment and one cookie from the airplanes as they worked. (Exhibit 9; Testimony of Rodriguez; Testimony of L. Colon.)
2. Edwin Morales began work as a lavatory and water man on February 1, 2013. He was terminated for allegedly failing a “TSA challenge.” Mr. Morales cleaned 32-35 planes per night, the larger planes having at least 4 bathrooms, spending 15 minutes on each plane. Because he was working the sanitation position, he had to remain in the truck to prevent cross-contamination. Throughout his employment, he never received a lunch break greater than 20 minutes. Although he handled gas fill-up and trash and excrement removal, Mr. Morales ate in his van because he did not receive lunch breaks. He could not leave the truck because there was no one to replace him. Although his long term girlfriend and fellow employee, G. Torres, usually brought him lunch, but he was unable to eat it until the end of his shift. (Exhibit 9; Testimony of E. Morales; Testimony of Patti.)
3. Griselle Torres Ramos (Grisselle Torres) worked as an overnight cleaner for Ready Jet in Terminal A from May 14, 2013 until March 17, 2014, when she was injured in an accident on an airplane. Her brother Jean C. Torres, also worked for Ready Jet. (Exhibit 9; Testimony of G. Torres.)
4. Ms. Torres brought her lunch to work, usually Puerto Rican yellow rice. Ms. Torres did not receive regular meal breaks for shifts worked in excess of six hours. She often complained to Mr. Martinez and Mr. Almonte. Mr. Almonte would get upset. Mr. Martinez would say, why do you always bother me with the same thing? The last time she complained to Mr. Martinez, he responded with a “bad expression” in Puerto Rican Spanish. Although she and the rest of the crew were hungry, Mr. Martinez prohibited them from taking food from the planes. Ms. Torres frequently took her lunch home, or gave it to the supervisors. (Testimony of G. Torres.)
5. Felix Calderon Santana (Felix Calderon) began work as a cleaner for Ready Jet on December 1, 2013. For the first few months after he was hired, Mr. F. Calderon received lunch breaks of 25 or 30 minutes once or twice a week. After that, he never had a lunch break greater than 20 minutes for every shift greater than 6 hours. Because of the distance from the lunchroom to the planes, when he returned from lunch, the managers would complain. When Mr. F. Calderon would bring up the issue of lunch breaks during meetings, Mr. Patti would say that there was no time, that the employees had to finish up the planes. One on occasion, management also promised to hire more people. At one point, Mr. Patti said that if F. Calderon didn’t like it, he could turn in his badge and leave. Mr. F. Calderon believed that he was terminated due to his union activity, and he filed a complaint with the National Labor Relations Board (NLRB). (Exhibit 9; Testimony of F. Calderon.)
6. From December 15, 2012, Miguel Alberto worked as a carpet cleaner for Ready Jet, performing deep cleaning and vacuuming on the planes. He testified that he had no bona fide lunch breaks, that it was always busy with at least 10-12 planes to clean, and that new employees were not doing their work well enough. Mr. Alberto took great pride in his work, and boasted that he vacuumed better than the other employees. Mr. Alberto sought to please, calling in on his days off to ask for extra shifts and not complaining about working through his breaks. He never brought lunch to work, and never sat with other employees in the lunchroom. (Exhibit 9; Testimony of Alberto.)
7. Mr. Alberto was implicated in the incident of the missing iPad, which a passenger had left on one of the planes. The Massachusetts State Police tracked the iPad to Mr. Alberto’s home. (Testimony of Alberto; Testimony of S. Colon.)
8. Luis Colon was hired as a team leader on May 19, 2012 and was promoted to supervisor one year later. When Mr. L. Colon was hired, Ms. S. Colon (no relation) was already a team leader. When either team completed the cleaning of its assigned planes, it would assist the other team to get its work done. (Exhibit 9; Testimony of L. Colon.)
9. Throughout his employment with Ready Jet, Mr. L. Colon never had a bona fide lunch break because the company was always short-staffed. When he was able to grab a sandwich or snack, those breaks never lasted more than 10-15 minutes. When Mr. L. Colon tried to take breaks after the TURNs were completed, he would have to leave if a red eye arrived. Sometimes Mr. L. Colon would be in a line purchasing food at a restaurant, and would have to leave because another plane had arrived. (Testimony of L. Colon.)
10. The employees under Mr. L. Colon’s supervision complained about the lack of the 30 minute lunch break. Although the issue of lunch breaks was brought up in meetings with more senior management, no action was ever taken. (Testimony of L. Colon; Testimony of Rodriguez.)
11. Mr. L. Colon admitted that he sometimes caught a quick nap during the time that passengers deplaned. Mr. Colon was terminated for sleeping during shifts and not showing up for work. (Testimony of L. Colon.)
12. Ana Maria Verganza has been working for Ready Jet since 2007, and currently works as a cleaner. At one point, she had greater seniority than Mr. Patti. Ms. Verganza had attendance issues, and was suspended and later terminated after she was caught throwing trash down a toilet. She reapplied for her job within 35-40 days, and was rehired at a lower rate of pay and with the loss of all seniority. (Testimony of Verganza; Testimony of Patti.)
13. Throughout her employment with Ready Jet, Ms. Verganza never received a regular 30 minute lunch break before January 2015. When she informed Mr. Reyes and Ms. Colon that she wanted to take a lunch break before January 2015, they stated that she could go on a break if there were no planes to be cleaned. When there was down time, Ms. Verganza would grab a snack or a sandwich. (Testimony of Verganza.)
14. Ms. Verganza admitted that since Ready Jet installed the new punch-in time clock in late 2014, lunch breaks are announced by the dispatcher. (Testimony of Verganza.)
15. Pedro De Jesus was hired on July 13, 2013. He worked as an overnight team leader for water/lavatory, and drove the lavatory truck to get from one plane to another. Mr. De Jesus performed the lavatory work, while his coworker refilled the water. The water/lavatory team spent 15-20 minutes, including travel time, per plane. During his shift, Mr. De Jesus had to refuel and would leave the lavatory truck on occasion to get supplies for the cleaning crews. (Exhibit 9; Testimony of De Jesus.)
16. Mr. De Jesus received a 30 minute lunch break twice a week. On other occasions, he ate a snack for a period of 10-15 minutes. Mr. De Jesus also alleged that Ready Jet never reimbursed him for his identity card and uniform. He purchased a work uniform of a vest and polo shirt from Ready Jet, but wore a jacket with the logo from a previous employer over them. (Testimony of De Jesus.)
17. Michael Ventura worked as a carpet cleaner for Ready Jet from September 27, 2013 until February 7, 2014. After performing deep cleans on 3 planes per night from 11:00 p.m. to 5:00 a.m., Mr. Ventura cleaned and put away the machine before performing regular cleanings on the red eyes until 9:00 a.m. (Exhibit 9; Testimony of Ventura.)
18. Throughout his employment, Mr. Ventura never received a 30 minute lunch break, and ate when he could grab a sandwich for five to ten minutes. Mr. Ventura never complained about his lack of lunch breaks, but complained to management that his paychecks did not accurately reflect the hours worked. (Testimony of Ventura.)
19. Jackson Calderon worked as a cleaner for Ready Jet from May 18, 2013 until he was terminated for attendance issues. While he was an employee, he never received a 30 minute lunch break because there were always too many planes to clean. When he ate, it was to grab a sandwich for five to six minutes. When Mr. J. Calderon spoke to his supervisor, Darlene Ortega, she said that he was rebellious and that she would issue him a warning. (Testimony of J. Calderon.)
20. Mr. J. Calderon sometimes catnapped for three to five minutes while on the job. He testified that current Ready Jet employees Johana Velez and Juana Castillo Maylar were afraid to testify at DALA because they still worked at Ready Jet. Mr. J. Calderon also testified that Mr. Reyes promised at his termination to hire him back. (Testimony of Calderon.)
21. Yasandri Castro began cleaning airplanes for Ready Jet in Terminal A on June 11, 2013. Ms. Castro’s total work hours were between 50 and 55 hours per week. Her starting rate of pay was $8.50. Over time, her rate of pay increased to $9.00, then to $9.25. (Exhibits 9 and 13; Testimony of Lopez.)
22. Although Ms. Castro’s regular schedule was the 10:00 p.m. to 6:30 a.m. shift, she did not punch out until 8:00 a.m., resulting in a 10 hour work day. She received overtime pay approximately half the time until October 2013, when Ready Jet ceased paying her overtime at all. On two occasions, Ms. Castro was not paid her overtime wages when Ready Jet called her in to work four hour shifts on her days off. (Exhibit 13; Testimony of Castro.)
23. Due to the busy airplane cleaning schedule, Ms. Castro never received a lunch break in excess of 20 minutes. When Ms. Castro suffered stomach aches due to hunger, she complained to Ms. Diaz, the Night Supervisor for Terminal C, that there were too many planes to clean and that there was no time for a lunch break. When Ms. Castro became hungry, she would excuse herself to go to the bathroom, but go to her locker and have a few quick bites to eat. Ms. Castro later developed “stomach problems.” (Exhibit 13; Testimony of Castro.)
24. Angel O. Rivera cleaned airplanes for Ready Jet in Terminal C from August 24, 2013 until he was terminated for the iPad incident.[[2]](#footnote-2) Mr. Rivera was engaged in union activity. Throughout his employment with Ready Jet, he did not have lunch breaks in excess of 20 minutes. Mr. Rivera could not recall Ready Jet supervisors ever announcing lunch breaks. Sometimes he would be in the lunch room with other employees when supervisors would summon him back to work. On those occasions, Mr. Rivera would leave his food and go back to work. (Exhibit 9; Testimony of Rivera, Testimony of Reyes.)
25. Ready Jet asked Mr. Rivera and other employees to work double shifts during a 2015 snowstorm, offering to put them up in hotel rooms. After Mr. Rivera and the other employees agreed, Ready Jet reneged and gave them cots to sleep on instead. (Testimony of Rivera.)
26. Steven Rosario began cleaning airplanes for Ready Jet in Terminal A on June 1, 2013. Mr. Rosario never had a lunch break greater than 10-15 minutes. Mr. Rosario could not recall Ready Jet supervisors ever announcing lunch breaks. He did recall that Ready Jet installed a new punch clock in May 2014. (Testimony of Rosario.)
27. Angel Adames began working as a lead cleaner for Ready Jet on February 23, 2013. Mr. Adames never had a lunch break greater than 5-10 minutes when he was just a cleaner. He could not recall Ready Jet supervisors ever announcing lunch breaks. Sometimes as the lead cleaner, he was able to take a bona fide meal break. Mr. Adames’s testimony was halting due to a brain injury. (Exhibit 9; Testimony of Adames.)
28. Beginning on April 20, 2013, Starling Perez performed lavatory cleaning services in addition to cleaning the airplanes for Ready Jet. Employees on lavatory duty performed no other cleaning duties on that shift, and operated a cleaning van. When the airplanes were late, Mr. Perez had to remain on duty even if his shift had ended. He had to remain in the cleaning vehicle outside. (Testimony of Perez.)
29. Mr. Perez had a bona fide lunch break three times per week. On other occasions, he was able to grab a sandwich for 15-20 minutes. Mr. Perez’s testimony was credible. (Testimony of Perez.)
30. Francisco Valdez began cleaning planes for Ready Jet in Terminal A on September 7, 2012. He had a bona fide lunch break on his first day of work. After that, he never had a lunch break greater than 10-15 minutes. When he asked Ms. Ortega, for a break, she said that her supervisors did not allow her to give employees break until they were done cleaning the airplanes. Sometimes Mr. Valdez had 8-10 minutes to grab a snack. Sometimes one person in the group would go and get dinner for the entire group, and they would eat while waiting for the next plane to arrive. Mr. Valdez’s testimony was credible. (Exhibit 9; Testimony of Valdez.)
31. Jesus Batista cleaned airplanes for Ready Jet in Terminal C on the overnight shift, and was an active member of the union. His brother, Sebastian Batista, also worked at Ready Jet. When Mr. J. Batista arrived at work, the planes to be cleaned were already in the terminal, and did not depart before 5:00 a.m. New arrivals did not arrive for cleaning before 5:00 a.m. (Testimony of J. Batista.)
32. Throughout his employment, Mr. J. Batista never had a lunch break greater than 20 minutes. He was upset with Ready Jet because of this, and sometimes could only manage a 5 minute break. (Testimony of J. Batista.)
33. From September 13, 2013 until February 4, 2014, Carlos Mariano cleaned airplanes for Ready Jet in Terminal C on the overnight shift. Throughout his employment, Mr. Mariano never had a lunch break greater than 20 minutes. Sometimes he and his coworkers would discuss why they did not receive lunch breaks. Mr. Mariano recalled that a half-hour lunch break was discussed during employment orientation. He was allegedly fired for attendance issues. (Exhibit 9; Testimony of Mariano.)
34. Christina Lopez is an Inspector for the Fair Labor and Business Division of the OAG. She received complaints from SEIU-32 that its Ready Jet members were not receiving their half hour break per shift, but the break was still deducted from their paychecks. (Exhibit 6; Testimony of Lopez.)
35. On March 19, 2014, the OAG received a Non-payment of Wages complaint form from Ms. Castro. In the complaint, Ms. Castro alleged that she was not paid overtime, that she had not had lunch breaks and that Ready Jet had made unspecified deductions taken from her wages. (Exhibits 10 and 13; Testimony of Castro.)
36. On March 5, 2014, the OAG sent a payroll demand to the Petitioners seeking:

… true and accurate copies of the following documents relating to work performed by every individual performing any service in Massachusetts at Ready Jet, Inc. from May 1, 2012 through present:

* Payroll ledgers, pay stub records, and time-keeping records which reflect the individual’s identity, address, occupation, rate of pay;
* Number of hours of work performed each day and each week;
* Wages paid, with all deductions taken each pay period;
* All documentation relating to the deductions from employees’ pay;
* Job descriptions for each and every category and/or title for employees;
* A copy of any all overtime policies and/or practices in effect or relied upon from May 1, 2012 to present;
* A copy of any and all vacation policies and/or practices in effect or relied upon from May 1, 2012 to present with respect to Massachusetts employees’ entitlement to vacation time and/or vacation pay; and
* With respect to those Massachusetts employees who separated from employment for any reason from May 1, 2012 to present, a copy or printout of the pay stubs from their last two pay periods of employment as well as any and all documents concerning or reflecting vacation time that had been accrued, accumulated and/or earned up to and including the last day of employment.

(Exhibit 6.)

1. Citing G.L. c. 151, §§ 3 and 15 as authority for the request, Ms. Lopez requested that the documents be provided no later than May 19, 2014, and advised that failure to do so could result in a civil citation and a $100 penalty for each business day thereafter until compliance with the request. (Testimony of Lopez; Exhibit 6.)
2. On or about May 28, 2014, Ready Jet submitted documents to the OAG. From the Ready Jet documents, Ms. Lopez was able to compile a list of all the employees for her investigation. As part of the investigation, she attempted to contact each employee. One had moved out of state, some of them still worked for Ready Jet and feared retaliation, some could not afford to take the day off in order to testify. For each employee consenting to an interview, she spoke to him in his preferred language, English or Spanish. (Exhibits 7 and 8; Testimony of Lopez.)
3. Ms. Lopez audited the documents and reviewed the payroll records of Angel Adames, Miguel Alberto, Zureika Alvarado, Jesus Batista, Sebastian Batista, Felix Calderon, Jackson Calderon, Juana Castillo Meylar, Yasandri Castro, Luis Colon, Pedro De Jesus, Mark Garcia, Anny Gonzalez, Maria Kallage, Mildred Malave, Carlos Mariano, Edwin Morales, Brauly Paulino, Starling Perez, Angel O. Rivera, Bethania Rodriguez, Steven Rosario, Grisselle Torres, Jean C. Torres, Francisco Valdez, Johana Velez, Michael Ventura and Ana Maria Verganza. (Exhibits 7, 8 and 10; Testimony of Lopez.)
4. From May 1, 2012 to May 2014, Ms. Lopez’s audit of Ready Jet’s punch in and punch out timesheets revealed that Miguel Alberto, Zureika Alvarado, Jesus Batista, Sebastian Batista, Felix Calderon, Jackson Calderon, Yasandri Castro, Luis Colon, Mark Garcia, Maria Kallage, Mildred Malave, Carlos Mariano, Edwin Morales, Angel O. Rivera, Grisselle Torres, Francisco Valdez, Johana Velez and Michael Ventura never received a meal break of more than 20 minutes. Ms. Gonzalez and Mr. Valdez were allowed a lunch break greater than 20 minutes only on their first day of work. Angel Adames and Jean C. Torres sometimes took meal breaks. Juana Castillo Meylar never had a meal break prior to January 2014. Anna Maria Verganza never had a meal break prior to January 2015. Pedro De Jesus, Brauly Paulino and Steven Rosario had full lunch breaks twice a week. Starling Perez had full lunch breaks three times a week. When they were able to take a break, Pedro De Jesus and Anny Gonzalez never had longer than 15 minutes. (Exhibits 9, 10 and 12; Testimony of Lopez.)
5. The OAG investigation concluded that the Petitioners had violated G.L. c. 151, § 1A by failing to pay Ms. Castro and 28 similarly situated employees time and a half for all hours worked over 40 in a work week from January 31, 2010 until January 31, 2012. (Exhibits 9 and 10; Testimony of Lopez.)
6. The OAG calculated that Ms. Castro was owed $2,918.07: $313.07 for 35 hours of unpaid training;[[3]](#footnote-3) $82.00 for unspecified deductions in 2013 and 2014;[[4]](#footnote-4) $102.00 for overtime wages for reporting to work on her days off; $1,647.00 for November 2013 – March 2014 overtime wages and $774.00 for June – October 2013 overtime wages. (Exhibits 9-12; Testimony of Lopez.)
7. The OAG calculated that Mr. Adames was owed wages in the amount of $340.00 for straight time, and was owed wages in the amount of $267.00 for overtime pay from March 15, 2013 to April 25, 2014 for a total of $607.00. (Exhibit 9.)
8. The OAG calculated that Mr. Alberto was owed wages in the amount of $985.38 for straight time, and was owed wages in the amount of $575.88 for overtime pay from December 21, 2012 to May 2, 2014 for a total of $1,561.25. (Exhibit 9.)
9. The OAG calculated that Ms. Alvarado was owed wages in the amount of $27.00 for straight time, and was owed wages in the amount of $20.25 for overtime pay from March 15, 2013 to April 25, 2014 for a total of $47.25. (Exhibit 9.)
10. The OAG calculated that Mr. J. Batista was owed wages in the amount of $9.00 for straight time, and was owed wages in the amount of $128.25 for overtime pay from April 11, 2014 to May 9, 2014 for a total of $137.25. (Exhibit 9.)
11. The OAG calculated that Mr. S. Batista was owed wages in the amount of $13.50 for straight time, and was owed wages in the amount of $114.75 for overtime pay from April 11, 2014 to May 9, 2014 for a total of $128.25. (Exhibit 9.)
12. The OAG calculated that Mr. F. Calderon was owed wages in the amount of $324.00 for straight time from December 20, 2013 to May 9, 2014for a total of $324.00. (Exhibit 9.)
13. The OAG calculated that Mr. J. Calderon was owed wages in the amount of $512.10 for straight time, and was owed wages in the amount of $259.65 for overtime pay from March 15, 2013 to April 25, 2014 for a total of $771.75. (Exhibit 9.)
14. The OAG calculated that Ms. Castillo Meylar was owed wages in the amount of $80.75 for straight time, and was owed wages in the amount of $93.38 for overtime pay from August 16, 2013 to May 9, 2014 for a total of $174.13. (Exhibit 9.)
15. The OAG calculated that Mr. L. Colon was owed wages in the amount of $1,700.38 for straight time, and was owed wages in the amount of $319.23 for overtime pay from May 19, 2012 to May 9, 2014 for a total of $2,019.50. (Exhibit 9.)
16. The OAG calculated that Mr. De Jesus was owed wages in the amount of $384.75 for overtime pay from August 2, 2013 to May 9, 2014 for a total of $384.75. (Exhibit 9.)
17. The OAG calculated that Mr. Garcia was owed wages in the amount $49.50 for straight time, and was owed wages in the amount of $6.75 for overtime pay from January 31, 2014 to April 11, 2014 for a total of $56.25. (Exhibit 9.)
18. The OAG calculated that Ms. Gonzalez was owed wages in the amount $500.38 for straight time, and was owed wages in the amount of $71.00 for overtime pay from September 13, 2013 to April 25, 2014 for a total of $571.38. (Exhibit 9.)
19. The OAG calculated that Ms. Kallage was owed wages in the amount $197.63 for straight time, and was owed wages in the amount of $215.81 for overtime pay from October 25, 2013 to April 25, 2014 for a total of $413.44. (Exhibit 9.)
20. The OAG calculated that Ms. Maliave was owed wages in the amount $19.00 for straight time, and was owed wages in the amount of $4.75 for overtime pay from August 30, 2013 to May 9, 2014 for a total of $23.75. (Exhibit 9.)
21. The OAG calculated that Mr. Mariano was owed wages in the amount $36.00 for straight time, and was owed wages in the amount of $40.50 for overtime pay from September 13, 2013 to February 14, 2014 for a total of $76.50. (Exhibit 9.)
22. The OAG calculated that Mr. Morales was owed wages in the amount $911.00 for straight time, and was owed wages in the amount of $784.00 for overtime pay from February 1, 2013 to May 9, 2014 for a total of $1,695.00. (Exhibit 9.)
23. The OAG calculated that Mr. Paulino was owed wages in the amount $191.88 for straight time, and was owed wages in the amount of $88.88 for overtime pay from October 25, 2013 to May 9, 2014 for a total of $280.75. (Exhibit 9.)
24. The OAG calculated that Mr. Perez was owed wages in the amount $138.00 for straight time, and was owed wages in the amount of $352.25 for overtime pay from May 24, 2013 to May 9, 2014 for a total of $490.25. (Exhibit 9.)
25. The OAG calculated that Mr. Rivera was owed wages in the amount $238.25 for straight time, and was owed wages in the amount of $344.44 for overtime pay from September 27, 2013 to April 25, 2014 for a total of $582.69. (Exhibit 9.)
26. The OAG calculated that Ms. Rodriguez was owed wages in the amount $206.63 for straight time, and was owed wages in the amount of $181.13 for overtime pay from January 4, 2013 to May 9, 2014 for a total of $387.25. (Exhibit 9.)
27. The OAG calculated that Mr. Rosario was owed wages in the amount $270.00 for straight time, and was owed wages in the amount of $162.19 for overtime pay from June 21, 2013 to May 9, 2014 for a total of $432.19. (Exhibit 9.)
28. The OAG calculated that Ms. G. Torres was owed wages in the amount $540.63 for straight time, and was owed wages in the amount of $386.25 for overtime pay from May 24, 2013 to March 28, 2014 for a total of $926.88. (Exhibit 9.)
29. The OAG calculated that Mr. J. Torres was owed wages in the amount $193.50 for straight time, and was owed wages in the amount of $440.25 for overtime pay from June 7, 2013 to May 9, 2014 for a total of $633.75. (Exhibit 9.)
30. The OAG calculated that Mr. Valdez was owed wages in the amount $79.31 for straight time, and was owed wages in the amount of $142.88 for overtime pay from March 15, 2013 to April 25, 2014 for a total of $222.19. (Exhibit 9.)
31. The OAG calculated that Ms. Velez was owed wages in the amount $627.38 for straight time, and was owed wages in the amount of $31.88 for overtime pay from June 7, 2013 to May 9, 2014 for a total of $659.25. (Exhibit 9.)
32. The OAG calculated that Mr. Ventura was owed wages in the amount $144.90 for straight time, and was owed wages in the amount of $234.90 for overtime pay from September 27, 2013 to May 9, 2014 for a total of $379.80. (Exhibit 9.)
33. The OAG calculated that Ms. Verganza was owed wages in the amount $715.00 for straight time, and was owed wages in the amount of $206.25 for overtime pay from August 10, 2012 to May 9, 2014 for a total of $921.25. (Exhibit 9.)
34. The OAG Fair Labor Division uses form letters to issue citations under G.L. c. 151, § 19(3). They contain standard language, with checkboxes used to mark and describe alleged infractions as appropriate in each individual case. (Exhibit 11; Testimony of Lopez.)
35. Before issuing the instant citations, Ms. Lopez considered previous violations, the Petitioners’ intent not to pay the former employees their wages more than six days after they had completed the work, the number of employees affected, the monetary extent of the violation and the total monetary amount of the payroll involved. (Exhibit 11; Testimony of Lopez.)
36. On May 14, 2015, the OAG, through Ms. Lopez issued Citation #14-05-29542-002 pursuant to G.L. c. 149, §148, imposing a restitution order of $9,497.26 and a civil penalty of $1,900 for non-willful failure to make timely payment of wages to the 29 former Ready Jet employees from May 19, 2012 until May 2, 2014, in violation of G.L. c. 149, § 148. The citation documented that the Petitioners owed the former employees restitution in the amount of $9,497.26. (Exhibits 6 and 11.)
37. On May 14, 2015, the OAG, through Ms. Lopez issued Citation #14-05-29542-003 pursuant to G.L. c. 149 and c. 151, imposing a restitution order of $6,557.50 and a civil penalty of $1,300 for failure to pay proper overtime rate to the 29 former employees for hours worked in excess of forty in violation of G.L. c. 151, § 1B. (Exhibit 11.)
38. On May 14, 2015, the OAG, through Ms. Lopez issued Citation #14-05-29542-004 pursuant to G.L. c. 151, § 19(3), imposing a civil penalty of $7,500 for failure to submit true and accurate payroll records from May 18, 2012 to May 2, 2014, in violation of G.L. c. 149, § 27B. (Exhibit 11.)
39. The Petitioners filed a timely appeal with DALA on May 19, 2015. (Exhibit 12.)

**CONCLUSION AND ORDER**

*Statutory framework*

Both federal and state law distinguish between “rest periods” which are considered compensable time, and “bona fide meal breaks” which may be considered non-compensable time. Under the Massachusetts Minimum Wage Regulations, the distinction is drawn in the definition of “working time.” Working time excludes “meal times during which an employee is relieved of all work-related duties,” and working time includes “rest periods of short duration, usually 20 minutes or less.” 454 C.M.R. § 27.02. Employees must be paid for all working time.

Similarly, the Fair Labor Standards Act, 29 C.F.R. § 785.18, provides:

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on­call time.

Section 785.19 further provides, in pertinent part:

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.

While federal law does not require a specific time period for a meal break, Massachusetts law includes this requirement, and further specifies what constitutes a bona fide meal break. The Massachusetts Meal Break Law, G.L. c. 100, provides that “[n]o person shall be required to work for *more than six hours* during a calendar day without an interval of *at least* thirty minutes for a meal.” (Emphasis added). Therefore, arguably any meal break less than thirty minutes results in a compensable rest period, and certainly any break of twenty minutes or less must be counted as hours worked.[[5]](#footnote-5)

The cleaners testified credibly that they were not allowed to have a bona fide meal break per each shift of six hours or more. The management testified at length that they saw the cleaners eating, sleeping or sharing food with each other. However, any break that the employees had that did not exceed twenty minutes was not a meal break.

*The Fine and Restitution for Non-willful Failure to Make Timely Payment of Wages Due and Owing*

 Under the Commonwealth’s Wage and Hour Laws, employers must keep true and accurate records of each employee’s name, address, occupational classification, hours worked, wages paid, and “such other information . . . deem[ed] material and necessary” by the Attorney General or the Department of Labor Standards.[[6]](#footnote-6) G.L. c. 151, § 15. *See also* G.L. c. 149, § 27B. Employers must keep these records for all employees who perform work within Massachusetts, even if the employer is a foreign corporation. *See, e.g.*, *Bona v. Office of the Atty. Gen*., LB-08-278 (DALA 2009). *Cf.* *Hadfield v. A.W. Chesterton Co.*, No. 20084382, 2009 WL 3085921 at \*2 (Mass. Super. Ct., Sept. 15, 2009) (Wage and Hour Laws held inapplicable to Massachusetts employer with respect to an employee who worked in Africa).

Upon request, the Attorney General is entitled to inspect those records, as well as any other “documents that bear on a question of wages.” *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 704 (2005). *See* G.L. c. 149, §§ 2, 27B; G.L. c. 151, §§ 3, 15. The Attorney General need not explain or justify any such request to employers. *Metro Equip. Corp. v. Commonwealth*, 74 Mass. App. Ct. 63, 67 (2009). To ensure compliance, the Attorney General may issue civil citati4ons to any employer who

… fails to keep the true and accurate records required under this chapter or to furnish a record to the attorney general, the commissioner, or an authorized representative of the attorney general or commissioner upon request, or who falsifies a record, or who fails to allow an employee to inspect a record under section 15, or who fails to comply with a requirement of the commissioner under the last sentence of section 16, or who hinders or delays the attorney general, commissioner or representative in the performance of his duties, or who refuses to admit, or locks out, the attorney general, commissioner, or representative from a place of employment, other than a place of employment of a person engaged in domestic service in the home of the employer, which he is authorized to inspect … .

G.L. c. 151, § 19(3). This liability extends to the corporate employer as a whole, as well as to individual “officers or agents having the management of such corporation.” G.L. c. 149, § 148. *See Wiedmann*, 444 Mass. at 710-11.

 Each day that an employer fails to keep or furnish records constitutes a separate offense. G.L. c. 151, § 19(3). All of the enumerated infractions carry strict liability, because “[n]one of the statutory criteria speaks of the employer’s intent.” *Somers v. Converged Access, Inc.*, 454 Mass. 582, 590-91 (2009). However, in determining the amount of the corresponding fine for each infraction, the Attorney General must consider the employer’s intent to commit the infraction. *See* G.L. c. 149, § 27C(b).

A person aggrieved by a citation from the Attorney General may appeal to DALA, but must do so within ten days of receiving the citation. *Id*. at § 27C(b)(4). If the petitioner “demonstrates by a preponderance of evidence that the citation . . . was erroneously issued,” DALA may vacate or modify the citation as appropriate. *Id*. Otherwise, DALA must affirm the citation as issued. *Id.* If the citation is not vacated, the petitioner must comply with DALA’s decision within 30 days. *Id.* at § 27C(b)(6).

Prior to issuing the appealed citations on May 14, 2014 the Attorney General requested records under G.L. c. 151, § 15—namely, all applicable paystubs and time records from May 18, 2012, 2012 until the present.

The Massachusetts Wage Act provides, in pertinent part:

Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week . . . .

G.L. c. 149, § 148.

The first civil penalty appealed here is $1,900 for “[f]ailure to make timely payment of wages due and owing from 05/19/2012 to 05/02/2014,” from Citation #14-05-29542-002, issued on May 14, 2015. *See* G.L. c. 151, § 19(3); G.L. c. 149, § 148. The OAG contends that this was a “non-willful” infraction. *See* G.L. c. 149, § 27B. The $9,497.26 restitution order appealed here covers wages for 29 employees.

Mr. Patti testified that the Ready Jet dispatcher would send cleaners to the various aircraft and announce all breaks, including lunch breaks, from 10:30 p.m. until 1:00 a.m. Mr. Patti admitted that “irregular operations,” situations in which employees could not take lunch breaks, occurred only a “handful of times” in the last six years. He could not recall any employee being reimbursed for the automatically deducted lunch breaks during those “irregular operations.”

All of the manager witnesses for the Petitioners testified they always had a regular lunch break when they were cleaners:

* Mr. Patti testified that he regularly observed employees having a full 30-minute break in the lunch room. He testified that he frequently sat down to eat lunch with cleaners, and that he still eats lunch with Ms. Verganza “to this day.”
* Sarah Colon, the daytime Terminal C office manager, testified that from 10:00 p.m. to 6:30-7:00 a.m., there were no red eyes arriving at Terminal A. She testified that there was down time from 4:00 a.m. to 4:45 – 5:00 a.m. when the red eyes started to arrive at Terminal C. Ms. S. Colon recalled that she always had a lunch break when she was a cleaner; eating rice, beans and other Latino food that she brought from home. According to Ms. S. Colon, before and after she became management she regularly observed employees having a full 30-minute break in the lunch room; including Mr. Adames, Mr. Alberto, Mr. L. Colon, Mr. De Jesus, Mr. Malave, Mr. Morales, Ms. B. Torres, Ms. G. Torres and Ms. Verganza. She testified that all took lunch breaks. She testified that Mr. Alberto had large lunches of rice, beans and meat. She further testified that Mr. L. Colon had long lunch breaks due to the red eyes, enjoying food brought by another Ready Jet worker who also worked in a restaurant. Ms. Colon reported that Mr. De Jesus would ask the supervisors what they wanted the crew to do after eating lunch. She testified that Ms. Maliave took more than one break. Ms. Colon reported that Mr. Morales was transferred to the day shift upon his request, and would wait for his wife, G. Torres, to bring him his lunch as she arrived for the overnight shift. On one occasion, Ms. G. Torres brought a large pan of Spanish rice to share with all the employees, including Jensy Diaz, a supervisor on the night shift in Terminal A, testified that when she was a cleaner, she took her lunch breaks for half an hour during the time period of 3:00 a.m. to 4:00 a.m. She brown-bagged her lunch, usually plantains and yucca.
* Giovannie Martinez, an overnight manager in Terminal A, testified that he worked with Angel Adames, Felix Calderon Santana, Yasandri Castro, Anny Gonzalez, Pedro De Jesus, Brauly Paulino, Bethania Rodriguez, Grisselle Torres and Francisco Valdez – but never heard a complaint about the lack of lunch break time.
* Nelson Reyes could not recall not having a lunch break when he was a cleaner. He advised the cleaners to bring food to work to eat during down time because the food court did not open until 5:00 a.m.

The witnesses for the Respondent testified credibly that the Petitioners deducted lunch breaks from their wages, although they had worked through such breaks on their shifts. The dispatcher did not announce any breaks, and the supervisors were knowledgeable about the lack of lunch breaks. Some of the management’s knowledge could be attributed to simple math and geography. Management was aware that the cleaning crews were short-staffed due to the high attrition rate, but the number of planes presented for cleaning did not decrease. The lunchrooms in Terminals A and C were located a considerable distance from the planes where the employees performed their work, a 10 minute walk. Without access to a lunch break, cleaners had no real chance to eat. The lack of a lunch break and the 5:00 a.m. opening of the food court created situations where the employees stole food from the airlines, eating airlines snacks while working. The water/lavatory team also had the unhygienic option of eating in the lavatory truck.

The managers had first-hand knowledge of the lack of lunch breaks because they had all (including Mr. Patti) worked their way up from the position of cleaner; they worked with the cleaning crews during extreme short-staffed situations ; and appeared on the overnight shifts for quality control purposes. In late 2014, the Petitioners installed a new punch-in time clock and the dispatcher began to announce lunch breaks.

The management witnesses also sought to discredit their former colleagues’ testimony by referencing personnel issues. However, personnel issues do not justify violation of the Massachusetts Meal Break Law.

Ms. S. Colon testified that Mr. Adames, Mr. Alberto and Mr. Rivera were implicated in the alleged theft of an iPad after the Massachusetts State Police tracked the iPad to Mr. Alberto’s home in 2015; that F. Calderon was terminated for abandoning his job in the middle of his shift; that Mr. L. Colon had performance issues and was caught sleeping in the company van during work hours; that Ms. Gonzalez was terminated after failing to appear for a week; that Mr. Morales was terminated for failing an undercover TSA challenge; Mr. Paulino was terminated for attendance issues; and Ms. Rodriguez was terminated for insubordination after swearing about her work schedule.

Nelson Reyes testified that he saw cleaners sleeping during downtime or their short breaks. Some of the Respondent witnesses admitted napping on the job during a short break or downtime. Mr. Rivera testified to sleeping on the cots provided by Ready Jet, while stuck in the airport during the February 2013 blizzard.

Based on this evidence, and in the absence of true and accurate recordkeeping from the Petitioners, I accept the OAG’s calculations.

Because the available undisputed evidence tends to prove that the Petitioners’ failure to pay the employees was non-willful, I must therefore conclude that Petitioners’ failure to make timely payment of wages due and owing was non-willful. *See* G.L. c. 149, § 27C(b)(4).

For these reasons, the May 14, 2015 penalty for failure to make timely payment of wages due and owing was not erroneously issued, and must therefore be affirmed. *See* *id.* at § 27C(b)(2).

*The Fine and Restitution for Non-willful Failure to Pay Proper Overtime Rate for Hours Worked in Excess of Forty Hours*

G.L. c. 151, §1B provides:

Any employer … who pays … any employee less than the overtime rate of compensation … shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and each week in which such employee is paid less than such overtime rate of compensation and each employee so paid less, shall constitute a separate offense. … An agreement between the person and the employer to work for less than the overtime rate of compensation shall not be a defense to such action. An employee so aggrieved who prevails in such an action shall be awarded treble damages …

The second civil penalty is $1,300 for “[f]ailure to pay proper overtime rate for hours worked in excess of forty hours from 05/18/2013 to 05/02/14” from Citation # 14-05-29542-003, issued on May 14, 2015. The OAG contends that this was a “non-willful” infraction. *See* G.L. c. 149, § 27B. The $6,557.50 restitution order appealed here covers overtime wages for 29 employees.

The parties dispute whether any of Petitioners’ conduct constitutes a non-willful failure to pay employees time and a half for hours worked in excess of forty hours a week. I find that it does.

The employees testified credibly that that their paychecks did not reflect the lack of lunch breaks, the hours worked, or their overtime hours. Because the Petitioners’ records included deductions for lunch breaks that the employees were denied from May 18, 2012 to May 2, 2014, this must be rectified. Because the employees had already worked forty hours for the week, the adding of the improperly deducted 30 minute break resulted in overtime. Based on this evidence, and in the absence of true and accurate recordkeeping from the Petitioners, I accept the OAG’s calculations of overtime wages due to them.

For these reasons, the May 14, 2015 penalty for non-willful failure to pay proper overtime wages was not erroneously issued, and must therefore be affirmed. *See* *id.* at § 27C(b)(2).

*The Fine for Non-willful Failure to Keep True and Accurate Payroll Records from 4/13/12 to 7/11/14*

The final civil penalty is $7,500 for “[f]ailure to submit true and accurate certified payroll records for work performed from 05/18/2012 to 05/02/14” from Citation # 14-05-29542-004, issued on May 14, 2015. *See* G.L. c. 151, § 19(3). The OAG contends that this was a “non-willful” infraction. *See* G.L. c. 149, § 27B. The parties dispute whether any of Petitioners’ conduct constitutes a failure to furnish true and accurate records. I find that it does.

It is the Petitioners’ responsibility to maintain and keep payroll records, and present them to the Attorney General upon request. G.L. c. 149, § 27B. Where an employer has failed to maintain the proper payroll records, the “employer rather than the employee shall bear the consequences of failure.” *Wayne F. Brusco, Jr. & WKA Investments, LLC v. Office of the Attorney General, Fair Labor Division*, LB-10-658 (DALA 2011) citing *Brown v. Family Dollar Stores of IN, LP*, 534 F.3d 593, 595 (7th Cir. 2008) (for employee to bear the burden of proving damages with specificity would defeat the purpose of the law where the employer’s own actions in failing to keep accurate records made the best evidence of damages unavailable).

In their post hearing brief, the Petitioners submitted an analysis of selected service logs from Exhibit 3. The first part of the analysis examined shifts in Terminal A (from March 6, 2013 until May 1, 2013) in which employees had 30 minutes deducted from their pay, and purports that there were time periods in which employees could have had a lunch break. The second part of the analysis examined shifts in Terminal C (from May 20, 2012 until May 1, 2014) in which there was a time period after the end of the RONS and before the red eyes arrived. It is undisputed that 30 minutes was deducted from the employees’ pay whether they had a lunch break or not, and this analysis placed the onus on the employees to schedule their own lunch breaks.

Because the Petitioners failed to maintain true and accurate payroll records, they are unable to prove that they paid the former employers in full for every week from February 10, 2012 to March 3, 2014. Again, the former employees testified credibly about their work schedules. Based on this evidence, and in the absence of true and accurate recordkeeping from the Petitioners, I accept the OAG’s calculations of wages and overtime wages due to them.

For these reasons, the May 14, 2015 penalty for willful failure to furnish records was not erroneously issued, and must therefore be affirmed. *See* *id.* at § 27C(b)(2).

The Petitioners bear the burden of proving that the citations were erroneously issued, per G.L. c. 149, § 27C(b)(4), but they did not articulate a claim or present evidence disputing the propriety of these particular amounts. The Petitioners testified that they thought the penalties were onerous, but presented no material factual dispute to adjudicate regarding the penalty amounts or how they were calculated.

In determining the amount of a civil penalty, the Respondent must consider the prior violations of G.L. c. 149 or c. 151 by the employer, the employer’s intent to commit the violation, the number of employees affected by the violation(s), the monetary extent of the alleged violation(s), and the total amount of the public contract or payroll involved. G.L. c. 149, § 27C(b)(2). Inspector Lopez testified that she considered these factors when she prepared the citations.

For an employer with no previous history of infractions, the maximum penalty for a non-willful infraction is $7,500, and the maximum penalty for a willful infraction is $15,000. G.L. c. 149, § 27C(b)(2). Other than that restriction, the exact amount of each penalty is left to the Attorney General’s discretion.[[7]](#footnote-7) *Id.*; *see also Levy v. Bd. of Registration & Discipline in Med*., 378 Mass. 519, 529 (1979) *and cases cited*. In these three citations, the penalties imposed were substantially lower than the statutory maximum. *See* G.L. c. 149, § 27C(b)(2).

The Petitioners bear the burden of proving that the three citations were erroneously issued, per G.L. c. 149, § 27C(b)(4), but they did not articulate a claim or present evidence disputing the propriety of these particular amounts.

In addition, the Petitioners did not present credible witnesses on the issues underlying the issuance of the citations. Instead, the Ready Jet cleaners offered testimony with a ring of truth. Their descriptions of underpayment were very similar.

I find that the Petitioners have failed to prove by a preponderance of the evidence that Citations #14-05-29542-002, #14-05-29542-003 and #14-05-29542-004 were issued erroneously. Accordingly, the penalties for (1) “[f]ailure to make timely payment of wages due and owing”; (2) “[f]ailure to pay proper overtime rate for hours worked in excess of forty” worked; and (3) “[f]ailure to submit true and accurate certified payroll records for work performed” are affirmed as issued, and the orders to “rectify all infractions immediately” are also affirmed as issued. Within 30 days of this ruling, Petitioners shall pay the outstanding $10,700.00 in penalties and $16,054.76 in restitution.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers

Administrative Magistrate

DATED: November 18, 2016

1. According to G.L. c. 100, the Massachusetts Meal Break Law, “[n]o person shall be required to work for more than six hours during a calendar day without an interval of at least thirty minutes for a meal.” [↑](#footnote-ref-1)
2. According to Mr. Reyes, Mr. Rivera was the father-in-law of Zureika Alvarado, another Ready Jet employee owed wages under the OAG’s investigation. [↑](#footnote-ref-2)
3. June – August 2013, 10.6 hours of training at the rate of $8.50 per hour; September – December 2013, 10.6 hours of training at the rate of $9.00 per hour; and December 2013 – April 2014, 10.6 hours of training at the rate of $9.25 per hour; and 3 hours of ID training at the rate of $9.25 per hour resulting in $313.07 in wages for unpaid training. (Exhibit 13.) [↑](#footnote-ref-3)
4. Ready Jet made $50.00 in unspecified deductions from Ms. Castro’s pay in 2013, and made further unspecified deductions of $32.00 in 2014. (Exhibit 13.) [↑](#footnote-ref-4)
5. In *Vitali v. Reit Mgmt. & Research, LLC.*, 88 Mass. App. Ct. 99 (2015), the Appeals Court recently reversed summary judgment in a case where the employee’s meal break was frequently interrupted with work assignments. The Court held that genuine issues of fact existed as to whether the employer knew or should have known about the hours worked and the effect on the employee’s overtime. [↑](#footnote-ref-5)
6. G.L. c. 151, § 15 applies generally to all “employers” and “employees.” More specifically, G.L. c. 149, § 27B applies to every “contractor, subcontractor or public body” that employs “mechanics and apprentices, teamsters, chauffeurs and laborers” in specified public works projects. It is undisputed that both sections apply to Petitioners. [↑](#footnote-ref-6)
7. In deciding the amount of each fine, the Attorney General “shall take into consideration” certain other enumerated factors. G.L. c. 149, § 27C(b)(2). However, there is no explicit schedule of fines, other than the maximum amount. *See id.* [↑](#footnote-ref-7)