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Wage & Hour

Pac 9 to Pay \$6.9 Million to Misclassified Truckers



By Chris Opfer

Dec. 23 — The California Labor Commissioner's Office has ordered Pacific 9 Transportation Inc. to pay drivers nearly \$7 million in back wages, marking the latest chapter in an ongoing dispute over how truckers and other workers at two of the state's ports are classified (*Camacho v. Pac. 9 Transp., Inc.*, Cal. Labor Comm'r, No. 05-59478 KR, 12/14/15).

A group of 38 short-haul drivers were wrongly classified as independent contractors, rather than employees, according to a Dec. 3 labor commissioner ruling that was made public by an International Brotherhood of Teamsters representative Dec. 22. The truckers will split \$6.9 million in compensation for unpaid minimum wages, expenses improperly deducted from their paychecks, out-of-pocket costs and missed meal and rest breaks.

The decision comes as Pac 9 truckers, who are seeking Teamsters representation, continue to strike in opposition to what they say is widespread misclassification (206 DLR A-11, 10/26/15). Drivers and warehouse workers for a number of other companies operating at the ports of Los Angeles and Long Beach, Calif., stopped picketing over similar complaints in October (211 DLR A-12, 11/2/15).

"This decision shows that companies like Pac 9 cannot continue to get away with violating the law with impunity," Julie Gutman Dickinson, a Bush Gottlieb attorney and local counsel for the Teamsters port division, told Bloomberg BNA Dec. 23. "Drivers at the ports of L.A. and Long Beach are rising up to fight against their misclassification as independent contractors when they are in fact employees."

Hearing officer Laily Maleki found Pac 9 created a traditional employment relationship with the drivers under California law by controlling the "manner and means" of their daily work. The company also controlled its freight delivery operation as a whole, Maleki said, and the drivers' work was an integral part of that operation.

Control Created Employment Relationship

Although Pac 9 didn't directly supervise the drivers, who were paid on a "piece-rate" system based on the number of shipments they transported, Maleki said the company retained significant control of the truckers' work. The company provided drivers with trucks, obtained the necessary registrations and permits for operating at the ports, issued policies and instructions to drivers via a contractor handbook and various memos and regularly tracked the status of shipments as they happened.

"A business entity may not avoid its statutory obligations by carving up its production process, then asserting it lacks control over the exact means by which one such step is performed by the responsible worker," Maleki wrote.

She also found that the drivers' work was part of Pac 9's core business of transporting freight. Maleki said the relationship between the company and drivers' was cemented by the fact that the drivers worked exclusively for Pac 9, using trucks that they leased from the company.

"A certain amount of trust, loyalty, and permanence is woven into a working relationship in which the lease

BNA Snapshot

***Camacho v. Pac. 9 Transp., Inc.*, Cal. Labor Comm'r, No. 05-59478 KR, 12/14/15**

Holding: California port truck drivers were wrongly classified as independent contractors, denied minimum wages and had expenses improperly deducted from their paychecks.

Takeaway: The decision comes as Pacific 9 Transportation drivers continue to strike over misclassification and other issues and are seeking to unionize.

of a vehicle valued at upwards of \$110,000 is involved," Maleki wrote. "This was not a temporary operation or temporary job for either party."

As employees, rather than independent contractors, Maleki said the drivers were entitled to minimum wages for all hours on the job, as well as meal and rest breaks. The company was also barred from deducting truck lease payments, insurance, registration, parking and other fees from the drivers' paychecks and was required to reimburse drivers for fuel and other out-of-pocket expenses.

The drivers' individual awards vary up to about \$380,000. The average individual award is more than \$180,000.

A representative for Pac 9 didn't respond to Bloomberg BNA's Dec. 23 request for comment.

To contact the reporter on this story: Chris Opfer in Washington at copfer@bna.com

To contact the editor responsible for this story: Susan J. McGolrick at smcgolrick@bna.com

For More Information

Text of the ruling is available at <http://src.bna.com/bli>.

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