

1987

Monroc, Inc., a Utah corporation v. M. Timmie Sidwell : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. **87-0262-CA** ~~IN THE COURT OF APPEALS FOR THE STATE OF UTAH~~

MONROC, INC., a Utah
corporation,

87-0262-CA

Plaintiff-Respondent,

vs.

No. 87-0164

M. TIMMIE SIDWELL,

Category 15

Defendant-Appellant.

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third Judicial District Court, Salt Lake County
Honorable Scott Daniels

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Court of Appeals

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BRIEF OF APPELLANT

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ISSUE PRESENTED FOR APPEAL

1. Did the lower court err in concluding that defendant Timmie Sidwell was not entitled to additional compensation while she worked as a security guard at the Monroc Cottonwood Plant?

PERTINENT STATUTES AND REGULATIONS

1. 29 U.S.C. §206 states the following:

(a) Every employer shall pay to each of his employees who in any work week . . . is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) . . . not less than \$3.35 an hour after December 31, 1980. . . .

2. 29 U.S.C. §207 states the following:

(a)(2) No employer shall employ any of his employees who in any work week (1) is employed in an enterprise engaged in commerce or in the production of goods for commerce . . . (c) for a work week longer than forty hours after the expiration of the fourth year from [the effective date of the Fair Labor Standards Amendments of 1961], unless such employee

receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

3. 29 U.S.C. §216(b) states the following:

Any employer who violates the provisions of §206 or §207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and an additional equal amount as liquidated damages . . . the court in such action shall, in addition to any judgment awarded to the plaintiff . . . , allow a reasonable attorneys fee to be paid by the defendant, and costs of the action. . . .

In addition to these specific statutes a number of federal regulations enacted by the U.S. Department of Labor are also relevant to this appeal:

29 C.F.R. §785.14 provides:

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait, or they may show that he waited to be engaged." Such questions "must be determined in accordance with common sense and the general concept of work or employment." (Citations omitted).

29 C.F.R. §785.20 states:

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

29 C.F.R. §785.21 provides:

An employee who is required to be on duty for less than twenty-four hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified

hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is work time.

29 C.F.R. §785.22 provides:

(a) General. Where an employee is required to be on duty for twenty-four hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an interrupted night's sleep. If sleeping period is of more than eight hours, only eight hours will be credited. Where no express or implied agreement to the contrary is present, the eight hours of sleeping time and lunch period constitutes hours worked.

29 C.F.R. §785.23 provides:

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under this circumstance and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted.

29 C.F.R. §516.1 through 516.10 provides:

Every employer shall maintain and preserve payroll or other records containing information and data showing, among other things, the regular hourly rate of pay; the hours worked each work day and the total hours worked each work week; the total daily or weekly straight time earnings or wages and any additions or deductions from wages paid during each pay period; and the total wages paid each pay period.

STATEMENT OF THE CASE

A. Nature of the Case

This action was originally commenced by Plaintiff Monroc,

Inc. as an unlawful detainer suit seeking to evict Defendant from the Monroc Cottonwood Plant premises. Defendant counterclaimed alleging a violation of the Federal Fair Labor Standards Act as to the wages she was paid during the approximate four years she worked for Monroc.

B. Proceedings Below

This case was tried to the Honorable Scott Daniels on March 2 and March 3, 1987. At the conclusion of the testimony Judge Daniels rendered his opinion in favor of plaintiff Monroc in the amount of \$300 for its unlawful detainer claim and in favor of Monroc, Inc. and against Defendant as to Defendant's Counterclaim of federal wage law violations.

Findings of Fact and Conclusions of Law and a Judgment were subsequently entered by the lower court on March 20, 1987. A copy of these Findings and Judgment is attached herein as part of the appendix to this Brief.

Defendant Sidwell appealed from the denial of any compensation for alleged violation of the federal wage laws. Plaintiff Monroc cross-appealed on the basis that the lower court should have trebled the damages awarded to it.

C. Statement of Facts

The general facts in this case are essentially undisputed. The main area of controversy concerns the scope of Defendant's work with Monroc, Inc. as well as the legal interpretation of the applicable statutes and regulations to this work.

It was stipulated by the parties that Monroc is an enterprise

engaged in interstate commerce and has been so engaged at least since 1982. It has a yearly gross sales of at least \$250,000 since 1982. It is, therefore, an enterprise subject to the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §201 (Tr. Vol. I, p. 23).

The Monroc Cottonwood Plant is located on 190 acres. Approximately 150 acres of this is fenced. (Tr. Vol I, p. 78). Buildings are centrally located around a large pit. Approximately 20 acres contain the majority of the buildings and is where the operation occurs. (Tr. Vol. I, p. 79). In 1982 Monroc was aware of its responsibility to comply with the Fair Labor Standards Act and to pay an hourly minimum wage of \$3.35 in applicable cases. (Tr. Vol. I, p. 113).

In 1976 two boys sneaked onto the Monroc property, fell through the ice, and drowned. From that time on Monroc elected to hire a security person for the Cottonwood facility. (Tr. Vol. I, p. 38).

In 1982 Dean Adams who had been the prior security guard indicated he wished to move to other endeavors. An ad was put in the newspaper which stated that Monroc wanted a part-time security guard who would live on the premises and who would provide their own mobile home. (Tr. Vol. I, p. 138). Defendant Sidwell applied for the job. She interviewed with Mr. Bruce Squires who at that time was the division manager of all the plants and with Mr. Darrell Williams who at that time was the foreman of the Cottonwood facility. Since a major portion of this appeal focuses

upon the agreement reached by the parties as to the scope of Defendant's work, the testimony of Squires, Williams, and the defendant relating to this initial employment agreement will now be examined.

Bruce Squires stated that when Mrs. Sidwell contacted him he told her to go talk to Darrell Williams who was the foreman of the Cottonwood Heights plant. (Tr. Vol. I, p. 138). She came back several hours later and said that Darrell had hired her. At that point he signed her up on the payroll. (Id. at 139).

Mr. Squires stated that Defendant was told that Monroc wanted her continual presence on the property. Monroc wanted someone coming and going so there would be tire tracks in the snow on the weekends and the kids would know that somebody was around. He stated he did not expect her to be there at all times on the weekend. He stated that he told Mrs. Sidwell that she was free to come and go as she pleased. He recalled telling her that if she was going to be gone for a couple of days they would like to know so they could call the sheriff's department and have them patrol the property while she was gone. (Tr. Vol. I, pp. 141-42). Mr. Squires stated that in his view of the agreement she had no responsibilities whenever anyone else was on the property. (Tr. Vol. I, p. 143).

It was his original understanding that she could live there and was entitled to leave at night whenever she wanted to. He did not want to hire somebody, however, who was always going to be away and her semi-retired life-style appealed to him because he

assumed she would be present most of the time. (Id. at 144).

Mrs. Sidwell was instructed to make "rounds" at various times to inspect the property. Squires admitted it was possible she would make those rounds even though other people were present. (Id. at 146). He was mostly concerned during her employment to have her presence on the property and to make sure she checked the gates to be sure they were locked at night. (Id. at 147).

Mr. Squires examined Exhibit D-1 which is entitled "Job Description--Security Guard". While he could not recall specifically going over it with Mrs. Sidwell he assumed he did since his handwriting appears on it. (Tr. Vol. I, pp. 149-150).

During the tenure of Mrs. Sidwell's employment Mr. Squires would occasionally come to the property at various times. He sometimes would come early in the mornings and other times in the afternoons. Most of the time she was there. During one period of time Mr. Squires stated that he specifically asked Timmie to turn off pumps at 2:00 and 4:00 in the morning and she said she would gladly do it and actually performed this task. (Id. at 153).

Darrell Williams was the plant foreman at that time. He interviewed Mrs. Sidwell and outlined the job description as well as the type of individual they were seeking. He states that Exhibit 1 is the job description that he gave to her. This was given to her shortly after she was hired in early 1982. (Id. at 156-57).

He told her that she was hired as a deterrent to vandalism. She was expected to show her presence and to make sure all the

gates were locked. (Id. at 158). Mr. Williams acknowledged that Mrs. Sidwell was supposed to be present on the property and was required to physically live there. (Id. at 167). He informed Mrs. Sidwell that her job was to insure that after operation hours had ceased she was to make sure the property was secure and that no kids were playing on it. She was also expected to make rounds on weekends and holidays. (Tr.Vol. II, pp. 21-23).

Mr. Williams never told Defendant that she had to remain awake during the night to be on guard. He stated that she was free to come and go other than the required rounds on the weekends. She was free to leave between 7:00 a.m. and 5:00 p.m. during the week and had no responsibilities during that period of time at all. After 5:00 p.m. she was responsible to see that small children did not come on the premises. He never instructed Mrs. Sidwell that her duties terminated when the sun went down. (Tr. Vol. I, pp. 27-32).

Defendant Sidwell testified that during her initial inquiry she visited with Darrell Williams to determine what the exact duties would be if she chose to live on the Monroc property. She stated she took detailed notes as he explained what would be expected. According to Sidwell, Williams told her that she would be expected to be present on the property every night but that she should not be afraid because there would be a night crew present. He told her that although the night crew would be working in the back pit she would be expected to be present after the plant closed at 5:00. (Tr.Vol. II, p. 39). She was told as to the

nighttime duty on the weekdays that she could pretty well live her own life but that she would have to make certain rounds late in the evening. This could include turning pumps on and off in the middle of the night after the night crew had gone. (Id. at 40).

Mr. Williams also explained that Monroc expected her to be on the property every weekend and every holiday while the plant was not in operation. He told her that weekends started at 11:45 on Saturday at which time she would be expected to close the top gate on the south. After the plant closed and the machinery had stopped running she was to close the bottom gate every Saturday at noon. This was to occur whether or not there was a maintenance crew on the site. (Id. at 41). Mr. Williams told her that on Sundays she was to make rounds three times a day (Id. at 43).

Williams told her that she was to be on the lookout for trespassers at all times even when she was not making her rounds. She was responsible for making sure all the buildings were locked during the periods that the plant was not in operation. (Id. at p. 44). Were she to see any trespassers she was not to confront them in a violent manner but was to ask them their business and to take any license plate numbers down when applicable and report them to the police. (Id.).

During these conversations she told Williams that she would have to have time during the weekend to go to the grocery store and sometimes to church. She also told him that she might want to go to the symphony or to the theater. She stated that Mr. Williams said this would be perfectly fine as long as she would

let them know. In that event she was to make sure the gates were locked before she left and to lock the gate behind her when she left and to make another round when she returned. (Id. at 45). She was also told that on very windy nights she was to get up and to go over to the cement plant and make sure that the pilot light of the boiler was still functioning. (Id. at 47).

After beginning her employment she was given the "Job Description--Security Guard" Exhibit 1 (contained herein in the Appendix) by Mr. Williams. He told her that this was her formal job description and added that she was also required to check the boilers during windy days which was not contained in the exhibit. He again told her that during the daylight hours from 7:00 in the morning until 5:00 at night she was not responsible for anything occurring at the plant and that she could obtain a daytime job if she so desired. (Id. at 58).

It was defendant Sidwell's contention that under the terms of the agreement she was required to be present in her mobile home or on the property generally each weeknight after 5:00 p.m. when the plant had ceased operation. In addition, she was required to be on the premises from 12:00 p.m. Saturday until 7:00 a.m. Monday of each weekend as well as to be on the premises during any holiday. (Tr. Vol. I, pp. 181-83).

Between 1982 and 1986 she worked under several different foremans. These included Darrell Williams, Ken Bartel and Jan Vasey. Mrs. Sidwell maintained that as the years progressed she was given more and more responsibilities from the original

agreement. These included controlling the level of the back lake, making more active "rounds", and working at additional times. (Defendant's Exhibit 6).

After several incidents of vandalism had occurred Mrs. Sidwell was asked to submit her recommendations as to how to improve the security at the Monroc plant. On January 21, 1986 she submitted three documents to the management of Monroc concerning her proposals for additional security including additional compensation for her services. One document was a history of her experiences at the Monroc plant including the various duties she had been assigned throughout the years as well as an explanation as to certain events that had occurred. (Defendant's Exhibit 6). A second document submitted on this date was entitled "Some Informal Thoughts About Revised Security Guard Schedule". This document essentially made various proposals and suggestions as to how the security could be improved at the site. In addition, Mrs. Sidwell called various security companies to obtain rates for protection of these facilities. (Plaintiff's Exhibit 11).

The final document submitted on January 24, 1986 was entitled "Analysis: Estimated Dollar Value of My Present Total Work Hours." This document analyzed various levels of security from the level being provided at the time to suggested increased levels. In this document Mrs. Sidwell makes various proposals for increased wages for increased service. (Plaintiff's Exhibit 12). All three of these documents are contained as part of the Appendix herein.

Subsequently, a letter was sent to defendant Sidwell dated

January 28, 1986 which terminated her services in the security function at the Cottonwood Heights plant. (Exhibit P-14). A copy of which is contained in the Appendix herein.

On April 25, 1986 a complaint for unlawful detainer was filed against Defendant alleging that her employment terminated on March 31, 1986 but that she refused to move from the premises. (R. 4-5). On May 5, 1986 an Answer and Counterclaim was filed alleging that Monroc had breached its contract by terminating her services wrongfully since she should have been allowed to continue employment until the gravel pit had been closed. (R. 8-10).

On August 27, 1986, after a new attorney had been retained, an Amended Counterclaim was filed on behalf of Defendant. In this Counterclaim Defendant for the first time asserted her claim of inadequate wages under the Federal Fair Labor Standard Act. (R. 48-54).

As previously noted, Judgment was rendered on behalf of plaintiff Monroc and against Defendant as to both the Complaint and Counterclaim.

SUMMARY OF ARGUMENT

The lower court erred in denying any benefits to Defendant under the Fair Labor Standards Act. First, the court erred in concluding that Defendant was not required as a condition of her employment to essentially be present on the property during certain periods of time during the week. This finding is without adequate evidentiary support and is clearly erroneous.

Second, the lower court incorrectly applied the principles of

federal employment law to the facts of this case. The court concluded that because Defendant had opportunity to engage in personal activities during her presence on Plaintiff's property that she automatically was not entitled to any claim of benefits. Under federal law, an analysis must be made of each case and there is no automatic exclusion merely because of personal activities.

ARGUMENT

Since this case was tried to the lower court, sitting without a jury, certain elementary principles of appellate review apply. First, the Findings of Fact must provide a basis for determining whether there is a rational basis for the court's decision. Proper Findings are essential to enable an appellate court to perform its function of assuring that the Findings support the Judgment and that the evidence supports the Findings. Romrell v. Zions Bank, 611 P.2d 392 (Utah 1980).

Next, an appellate court does not accord any deference to the Conclusions of Law of the trial court sitting without a jury in reviewing such Conclusions of Law for correctness. An appellate court is as capable of determining a question of law as is the trial court and therefore is not bound by its conclusions. Wessel v. Erickson Landscaping Co., 711 P.2d 250 (Utah 1985).

Findings of Fact that are conclusions of law are treated as such on appeal and will stand only if there are other Findings of Fact sufficient to support them. Town Concrete Pipe of Washington, Inc. v. Redford, 717 P.2d 1384 (Wash. App. 1986).

An appellate court must give great weight to the findings

made and the inference drawn by the trial judge but it must reject his findings if it considers them to be clearly erroneous. A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. State v. Walker, 743 P.2d 191 (Utah 1987); Adair v. Bracken, 70 Utah Adv. Rpt. 39 (Ct. App. 11-24-87).

Applying these principles to the following case requires reversal.

THE LOWER COURT ERRED IN CONCLUDING THAT
DEFENDANT WAS NOT ENTITLED TO ANY ADDITIONAL
COMPENSATION FOR HER EMPLOYMENT WITH THE
PLAINTIFF.

The lower court in its Findings of Fact and Conclusions of Law made several erroneous findings. The erroneous Findings of Fact are as follows:

Finding No. 7: Plaintiff and Defendant agreed that Defendant would reside on the premises, although it was not a condition of her employment that she be present on the premises on a full-time basis or during any certain times (except to perform some of her specific duties, the timing of some of which assignments was freely altered by Defendant from time to time).

Finding No. 10: Defendant was free to come and go as she wished, and was free to pursue her own individual interests during the time she was employed by Plaintiff and to use her time effectively for her own purposes to do such things as eat, sleep, go shopping, do personal errands, study, write, occasionally attend church and the symphony, accept full-time employment during the day, and with the prior permission of the plaintiff (which was freely given and never denied) take evening classes at the University of Utah and on one occasion for two or three months accept full-time employment which extended until approximately 9:00 p.m. on weekdays, and engage in other normal private pursuits.

Finding No. 11: Defendant's actual duties under the agreement with Plaintiff approximated no more than eight to ten hours per week for which she was paid by Plaintiff at rates in excess of the minimum wage required under the FLSA; and the other times when Defendant was living on the premises did not constitute hours which were controlled by the plaintiff or its business.

Findings of Fact, Record, p. 195-196. (Emphasis added).

Defendant would dispute the following Conclusions of Law entered by the court:

Conclusion 4: Under 29 C.F.R. §785.23, because Defendant in this case was not working all the time she was on the plaintiff's premises, and because Defendant was free to engage in normal private pursuits and had time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when she was free to come and go for purposes of her own, Defendant's actual hours at work did not exceed the number which, when her compensation was taken into account, would have constituted a violation of the minimum wage or overtime provision of the FLSA.

Conclusion 5: Plaintiff did not violate the terms of the FLSA with respect to the minimum wage and overtime requirements of said Act.

Conclusion 6: Defendant is not entitled under the FLSA to be paid for those times which she was able to use effectively for her own purposes and during which she was free to come and go as she pleased and was free to pursue her own personal interests.

Conclusion 7: Defendant is not entitled to any further compensation from Plaintiff either under the minimum wage provision or the overtime provisions of the FLSA.

Conclusions of Law, R. 197-198. (Emphasis added).

These Findings and Conclusions are erroneous for the following two reasons. First, the clear weight of the evidence shows that Defendant Sidwell was in fact required to be physically present at the property during certain specified hours during the

week. Second, while during those hours she was free to engage in personal activity at the jobsite her mere presence on the property was a benefit to Monroc and, in addition, she performed services as needed throughout the night and weekend. Federal law permits compensation under these circumstances.

A. Defendant Sidwell was Required to be on Plaintiff's Property During Certain Specified Hours of Each Week.

It is undisputed that Plaintiff Monroc is subject to the Fair Labor Standards Act because it is engaged in interstate commerce and because it has a yearly gross sales of at least \$250,000. It is also uncontested that regardless the type of agreement entered into between Plaintiff and Defendant in February of 1982, such agreement cannot change the requirements of the Federal Labor law. (Tr. Vol. I, p. 29). An agreement between an employer and an employee which is in violation of the federal wage laws is of no force and effect and cannot constitute a waiver. Mitchell v. Turner, 286 F.2d 104 (5th Cir. 1960); 29 C.F.R. §785.8.

In determining whether hours are compensable it is the duty of a court to look to the employment agreement to determine what the parties intended, and where that is impossible to look to the circumstances to determine what was intended. See, Skidmore v. Swift & Co., 232 U.S. 134 (1944); Rural Fire Protection Co. v. Hepp, 366 F.2d 355 (9th Cir. 1966). "The law does not impose an arrangement upon the parties. It imposes upon the courts the task of finding what the arrangement was." Skidmore v. Swift & Co., 326 U.S. at 137.

The United States Supreme Court in Skidmore made other pertinent observations. The court noted, for example, that often parties to an employment arrangement do not anticipate the problems which arise from lack of clear definition of employment duties. Nevertheless, the Supreme Court stated:

We do not minimize the difficulty of such an inquiry where the arrangements of the parties have not contemplated the problem posed by the statute. But it does not differ in nature or in the standards to guide judgment from that which frequently confronts courts where they must find retrospectively the effect of contracts as to matters which the parties failed to anticipate or explicitly to provide for. Id. at 137.

With these principles in mind it now remains to examine the facts of this case.

At the time the employment arrangement was entered into by the parties, neither contemplated a claim under the Federal Labor Standard Act. Mrs. Sidwell was content with her compensation of \$350 a month and Monroc was content with its explanation of services to be rendered. Had the parties contemplated this type of an action undoubtedly additional steps would have been taken by one, the other, or both to clarify the actual working arrangement. This failure to clarify, however, has absolutely no effect upon the application of the federal statute to the circumstances of this case.

It is undisputed that at the time the arrangement was entered into Mrs. Sidwell would have certain responsibilities. First, she was required to live at the Monroc Cement Plant site. Second, she was required to perform certain specified functions such as

checking and locking gates and making "rounds" during certain periods of time to insure the safety of the property. Third, Mrs. Sidwell was paid a monthly wage of \$355 with no attempt made by Monroc to maintain any computation of hours actually worked.

It is also essentially undisputed that the "active" time spent by Mrs. Sidwell in her patrolling, locking of gates, and writing reports encompassed approximately eight hours a week. (Exhibit 12). Thus, were the only question in this case whether Monroc had compensated Mrs. Sidwell for her active work under the Federal guidelines there would be no question but that it had.

The dispute in this litigation, therefore, focuses upon the claim of Mrs. Sidwell that not only did she have certain "active" duties to perform each day but that she was also "passively" required to be present at the site during specified periods of time. Defendant asserted that she was required by Monroc to be physically present at the property during the weekday nights after the operation of the plant had ceased. In addition, she was required to be physically present at the site on Saturday from 12:00 until 7:00 Monday morning. (Tr. Vol. I, pp. 181-83). She claimed that while she was permitted to leave the premises for certain short periods of time with prior permission of Monroc that she was not free to leave the premises for any activities she desired.

Monroc, on the other hand, asserted that there was no set requirement that she be present at the property during any certain number of hours and that she essentially was free to come and go

as she wanted at any time. The lower court accepted this version of the facts and found, as previously noted, that there was no set requirement of her presence.

Appellant submits that the conclusion of the lower court is erroneous when the entire record is examined in detail. A review of the record is as follows.

First, Mrs. Sidwell testified that when she met with Darrell Williams during the initial job interview he told her that she would be expected to be present on the property every night. (Tr. Vol. II, p. 39). He also informed her that she would be expected to be on the property during the weekends and during holidays. (Id. at 41).

At that time she informed him that she may have to go to the grocery store, to church, and to the symphony and that she could not guarantee she would always be present during every hour of these periods of time. She stated that Mr. Williams said this was perfectly fine as long as she contacted Monroc officials and informed them that she would be absent for a short period. (Id. at 45). This account was directly denied by Mr. Williams, a present Monroc employee, who stated he never told her she was restricted from leaving the premises at any time. (Tr. Vol. I, p. 243).

All things being equal, therefore, the lower court could choose to believe Mr. Williams' testimony and discard the testimony of Mrs. Sidwell. Under Williams' version she was free to do whatever she wanted whenever she wanted as long as she

performed certain minimal duties such as locking the gates and making a round of the premises. However, if that was the case then why was it necessary for her to periodically discuss with him her absence to go to church, run errands, attend the symphony, and the theater.

Mr. Stanton Wilson who is the vice president of Monroc testified that it was his understanding from the original agreement that Mrs. Sidwell would be allowed to attend church on Sunday morning, that she could go to the symphony occasionally if she so desired, and that she would have further leeway for theater activities. (Tr. Vol. I, pp. 52-54). This testimony emphasizes the patent inconsistency to approve specific activities of Mrs. Sidwell if in fact she was always free to do anything she chose.

Next, is the job description which was given to Mrs. Sidwell. Mr. Squires who was then the district manager stated that at some time immediately after hiring her he reviewed the job description of a security guard with her and even wrote additional comments on it. (Tr. Vol. I, pp. 156-57; Exhibit 1). Darrell Williams, the foreman at the jobsite, also acknowledged that he went over the job description with her at the time she was hired. Finally, Mrs. Sidwell stated that she was given the job description contained in Exhibit 1 and told that this was her responsibility. (Tr. Vol. II, pp. 55-57).

Exhibit 1 states that the responsibility of a security guard is:

Security and prevention of vandalism to buildings, plants, equipment, supplies and property. He is

directly responsible after operating hours of each division, weekends and holidays (except designated days off). (Exhibit 1).

While an attempt was made by Monroc during the trial to imply that "operating hours" are when the last person of the maintenance crew left for the night the clear substance of the evidence showed that operating hours were when the plant closed for its normal operation regardless of whether a maintenance crew was still on the premises. Mr. Williams, for example, stated that the plant was in operation from 7:00 in the morning until 5:00 or 6:00 at night. (Tr. Vol. I, p. 159). He stated that the plant could only operate during these hours since people who lived around the area would otherwise complain about the noise. (Tr. Vol. II, p. 14).

Likewise, Jan Vasey who was the third foreman who supervised Defendant, testified that the plant normally shut down at 5:00 p.m. and would open at 7:00 a.m. On Saturday, it would shut down around noon. (Tr. Vol. I, p. 258).

Mr. Williams, also supported Defendant's contention that she was required to be present on the property after 5:00 p.m. He stated that Mrs. Sidwell was free to leave the premises and to do whatever she wanted between 7:00 a.m. and 5:00 p.m. and had no responsibilities during that period of time. However, after 5:00 p.m. she was responsible to see that small children did not come on the premises. (Tr. Vol. I, p. 30).

Additional evidence supports Defendant's version of the requirement of the job. Mrs. Sidwell testified that Doug Clark, one of the top management officials of Monroc, drove out to see

her in the summer of 1984. At that time she stated Mr. Clark stressed the fact that her responsibility was to definitely be present at nights and on weekends. (Tr. Vol. II, p. 64). Mr. Clark was not called as a witness by Monroc to refute this statement.

The two most compelling reasons for rejecting Plaintiff's claim that Defendant was free to come and go at her leisure are (1) the testimony of Jan Vasey stating that she frequently called him for permission to leave; and (2) her own report to the company in January of 1986 prior to any time she was asserting a claim for additional wages.

If, as stated by Plaintiff Mrs. Sidwell was free to come and go as she wanted and only had certain specified duties which could be performed virtually at any time why was it necessary for her to contact the foremen and inform them of her absence. Mr. Vasey answered the following questions posed to him by Defendant's attorney:

Q. Did Mrs. Sidwell occasionally call you to ask to be absent from the premises of Monroc?

A. Yes, she did.

Q. Did you keep any records of those?

A. No, I did not.

Q. Can you tell me how often she called you to be off the premises?

A. Not very often.

Q. Okay. Do you remember the type of time off she would ask for?

A. Usually a couple of hours here, a couple of hours

there.

Q. Was that generally approved?

A. Yes.

Q. Did she ask for permission to attend school?

A. Yes, she did.

Q. Did you give her that permission?

A. Yes I did.

(Tr. Vol. I, p. 260).

The court was obviously concerned about his inconsistency and therefore asked several questions of Mr. Vasey. The dialogue between the court and Mr. Vasey is as follows:

THE COURT: I have a question, Mr. Vasey. You say that occassionally she would call you and ask if she could take time off, like to go to school and so forth?

THE WITNESS: Yes.

THE COURT: Well, didn't that seem odd to you if she didn't have to, if she could be there any time anyway, she wasn't required to be there any particular time?

THE WITNESS: I don't understand what you are trying to say.

THE COURT: Well, did you expect her to be there any certain hours?

THE WITNESS: No, I did not.

THE COURT: Well, why did she call to ask if she could go to school?

THE WITNESS: I guess she figured she needed the permission to go.

THE COURT: And--* * *

THE COURT: Well, didn't you say anything to her, like, why are you calling me? What difference does it make? You can do whatever you want.

THE WITNESS: No, I did not.

THE COURT: Like what did you say when she would ask you these things?

THE WITNESS: I would just tell her she was free to go.

(Tr. Vol. I, pp. 264-65).

It seems inconceivable that a foreman such as Mr. Vasey would merely humor the defendant by giving her permission to go away from the premises if such permission was not in fact required. This conduct, if for no other reason, would certainly give rise to Defendant's claim that she sincerely believed she was required to stay on the premises after operating hours unless she expressly obtained permission to leave for specific reasons.

It is elementary that the conduct of the parties to a contract is substantial evidence as to the meaning of that contract. Skidmore v. Swift & Co., 232 U.S. 134 (1944). This admission by Plaintiff's employee that he "gave permission" for Defendant to leave, together with the prior statements of Mr. Stanton Wilson that the parties contemplated she could leave for certain specified reasons such as school, the symphony, and church completely negates the conclusion that she was always free to go wherever she wanted at any time.

On January 24 Mrs. Sidwell submitted three documents to the management of Monroc at a time when tensions had been created over her claim that she was not receiving sufficient compensation for the work she was doing and Monroc's claim that she was not properly performing her duties. At this time Mrs. Sidwell was clearly not aware of any federal wage guidelines and was not

attempting to document this litigation since she had not even been terminated by Monroc. Rather, her attempt was to work out an arrangement where she would receive what she believed to be fair compensation for her efforts and to increase the security arrangements of the plant.

Exhibit 6 succinctly describes the agreement she entered into in February of 1982. She stated:

Because of a recent case of vandalism, I want to put before you a history of my functions at Monroc since February 8, 1982. I was hired by Darrell Williams to perform the following functions:

(1) To be here nights and weekends, and holidays (Christmas, Labor Day, etc.) with weekends specified by Darrell as Saturday afternoons only, and all day Sunday.

(2) To lock gates.

(3) To keep a lookout for trespassers and to make the following rounds at weekends: MORNINGS, possible NOONS, and EVENINGS, on Sundays, holidays and only when night crews or Monroc personnel were not on location.

In Exhibit 12, her "analysis of estimated dollar value of her present total work hours," she again described her present job description. She broke each function of her job into categories as follows:

Category (A): To be present on location each night of the week.

Category (B): To be present on location (1) Saturday afternoons (or whenever men are not working, and no one is there); (2) all day Sunday; (3) on specified holidays.

Category (C): To lock the gates each night, first checking that everyone has left the plant.

Category (D): To make rounds three times per day,

maximum, on days designated in (B) above. To evict trespassers and to make reports on the activity to the plant foreman after any incidents.

Category (E): Presumption: that the guard lives on premises.

Defendant then concluded that during each week she was passively located on the property for 104-1/2 hours. (Exhibit 12, p. 2). The active work requiring to lock the gates, make the rounds, and make reports she calculated at 7 hours and 50 minutes.

She then stated the following which now supports her contention she was required to be physically on the premises.

This type of analysis is useless unless the alternatives are kept well in mind: in my case, the alternative presented is that, as an autonomous human being, I maintain the choice to be away from home some nights, sometimes overnight and some weekends; to go to the mountains some Sundays.

When I took on the job of security guard, I was aware that this would be curtailed, and I made the choices accordingly. However, for this very reason, it is presumed that my presence on location has some financial value, even at times when I am not physically working, or making rounds.

(Exhibit 12, pp. 2-3).

The finding by the lower court that Defendant was not required to be present on the site during the evenings and weekends but was free to come and go as she pleased is clearly erroneous. Although there is evidence to support it (the assertions of the Monroc employees during trial) a review of the entire record together with the actions of the parties shows with a definite and firm conviction that a mistake has been committed. This Court, therefore, based upon the record should find that as

part of Defendant's job responsibilities she was required to remain on the premises after operating hours unless she obtained prior approval of Monroc to leave.

B. The Lower Court Incorrectly Applied Federal Wage Law to the Facts of this Case.

The court concluded that because the defendant was "not working all the time that she was on the plaintiff's premises" and "because she was free to engage in normal private pursuits" and was "free to come and go for purposes of her own" she was not subject to the FSLA requirement of minimum wages.

Defendant readily admits that the application of federal wage law to situations such as this is difficult at best. Where an employee goes to an employer's job site and works in actual physical labor for a specified period of time and then leaves the job site for the day, there is no difficulty in applying the wage laws to benefits that employee is entitled to receive. When, on the other hand, an employee lives on the working site or does not physically perform work during an entire period of time that he is present, the situation becomes much more complex.

29 C.F.R. §785.7 relates to judicial construction of these type of cases. Essentially this regulation relates that the United States Supreme Court originally held that employees subject to the Act must be paid for all time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer or his business." Tennessee Coal, Iron and Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590 (1944).

The regulation notes, however, that later the Court ruled that there need be no exertion at all and that all hours are hours worked which the employee is required to give his employer, that "an employee, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer." [Armour & Co. v. Wantock, 323 U.S. 126 (1944); Skidmore v. Swift, 323 U.S. 134 (1944)].

Whether waiting time is time worked depends upon the particular circumstances of each case. This determination involves "scrutiny and construction of the agreement between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time and all of the circumstances. Facts may show that the employee was engaged to wait, or they may show that he waited to be engaged." Skidmore v. Swift, 323 U.S. 134 at 137.

29 C.F.R. §785.16 again attempts to give guidelines in determining whether waiting time is or is not compensable. It states:

Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved

from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all the facts and circumstances of the case.

29 C.F.R. §785.17 concerns employees who are "on call". It states:

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. [Armour & Co. v. Wantock, 323 U.S. 126 (1944); Handler v. Thrasher, 191 F.2d 120 (C.A. 10, 1951); Walling v. Bank of Waynesboro, Georgia, 61 F. Supp. 384 (S.D. Ga. 1945)].

The preceding discussions concern the concept of "waiting time". Appellant asserted that Mrs. Sidwell was required to stay on the property in order that vandalism may be deterred and, in addition, to perform certain functions when required such as turning on pumps or operating other types of machinery. It is unnecessary at this point in the proceedings to detail the evidence to support her claim that she frequently was asked by telephone to perform functions at the plant during the non-operating hours. Since the lower court did not address the concept of waiting time and made no findings to that effect a remand is required to determine whether Defendant's mere presence at the jobsite or her ability to perform operational functions at the plant could be considered compensable time under the Act.

The court addressed its decision solely upon 29 C.F.R.

§785.23 which is entitled "Employees Residing on Employer's Premises or Working at Home." This regulation acknowledges that an employee who resides on the premises cannot make a claim for all time there and that those times in which the person engages in normal activities in which there is "complete freedom from all duties when he may leave the premises for purposes of his own" are not compensable. The regulation continues by noting that it is difficult to determine these hours and that any "reasonable agreement of the parties which takes into consideration all the pertinent facts will be accepted."

Defendant Sidwell maintained that she was free to do whatever she wanted from 7:00 in the morning until 5:00 p.m. each weeknight and from 7:00 a.m. until 12:00 noon on Saturday. She made no claim for these periods. After this period, however, she asserted that she was required to be physically present at the site unless she had been excused for a specific activity.

The lower court rejected this contention and, as previously noted, found that she could leave at any time during each 24-hour period. Based upon this finding it concluded that none of the time in which she resided on the premises was compensable since she had "complete freedom from all duties" and could "leave the premises for purposes of her own."

Since the lower court based its conclusion on an erroneous factual finding it did not properly analyze the question. Section 785.23 must be considered with §785.21 and §785.22 which concern duty of less than 24 hours and duty of 24 hours or more. Under

these regulations, it is quite clear that sleep time can be work time. For periods of less than 24 hours the rule is that sleep time is work time. For 24 hour periods, there must be an agreement and the employer must furnish sleeping facilities. No more than eight hours can be excluded. If there is no agreement the eight hours must be included as hours worked.

In situations where an employee resides on the employer's property the courts have gone in both directions as to granting or denying compensation. For example, in Witt v. Skelly Oil Co., 379 P.2d 61 (N.M. 1963) a utility man occupied a residence on his employer's premises and his duties required him to remain available on the premises during weekends. The court held he was entitled to be compensated for all hours which he spent in a stand-by status except for those hours devoted to eating and sleeping and performing personal work.

In Crago v. Rockwell Mfg. Co., 301 F. Supp. 743 (D. Tenn. 1969) the plaintiff was employed as a caretaker of a test station facility and was hired to remain on the premises. The court in that case apportioned a segment of the hours as working time and rejected the rest. The court stated:

Although plaintiff was a captive on defendant's premises for sixteen unpaid hours of the day, we think that it would be unreasonable to hold that all, or most, of that time was time worked for purposes of the Act. Eight of those hours were spent by plaintiff sleeping and two were spent eating. Also, plaintiff had a wife and children who lived with him on the premises.

In our opinion, three of the remaining six hours of the day were spent by plaintiff in pursuit of purely personal matters as distinguished from the performance

of his duty to act as caretaker of defendant's test station.

Although plaintiff spent only a brief period in overtime each day in actual physical labor, such as turning lights on and off, this fact is not controlling as to the determination of the hours worked by plaintiff for purposes of the Fair Labor Standard Act.

We find that, in the circumstances of this case, plaintiff was hired to serve and to be ready to serve and that he did so serve for eleven hours a day. Since he was paid for only eight of those hours he must be compensated for the other three under the terms of the Act. Id. at 747.

In Whitsitt v. Enid Ice & Fuel Co., 6 CCH Lab Cas para. 61226 (D. Okla. 1942) the court held that in as much as a night watchman was employed to remain at the plant, all the hours between the plant shutdown time and 6:00 a.m. were working hours, even though he had the privilege of and was furnished facilities for sleeping.

Respondent will undoubtedly be able to cite other cases to the contrary which hold that such time is not compensable. See, e.g. Adkins v. Campbell, Brown & Co., 189 F. Supp. 553 (D. Va. 1960); Shupe v. Day, 113 F. Supp. 949 (D. Va. 1953). Each of these cases turns upon the peculiar facts and circumstances of employment. No sweeping generalizations can be made.

In the instant case, the activities of Defendant during her nighttime and weekend hours in which she was not actively performing a duty was never examined. Monroc maintained no records whatsoever concerning Sidwell's employment. As such, a court must determine what wages are owing by reasonable inference

from the facts presented. In Marshall v. Nauta-Crete, Ltd., 82 Labor Law Rpts. para. 33-589 (D. Va. 1977) two night watchmen made a claim for overtime pay. The court found that they were on duty each weekend from Friday afternoon until Monday morning and that their duties required them to lock the doors, check for unusual noises, and to call the police if they heard anyone trying to break in. They were allowed to sleep and a cot was provided for them in the building.

Since there were no records of actual time consumed, the court concluded that eight hours of the time was used in personal pursuits such as eating and sleeping and that the remainder of the time was attributable to the employer even though the watchmen were essentially performing no physical activity.

There is no evidence in the record at this time as to what Defendant did during these passive hours. It may well be, for example, that since she had the entire morning and afternoon with no responsibilities whatsoever she may well have slept during those days and stayed up at night working on her own projects as well as being alert for trespassers or other occurrences at the plant. It cannot be assumed, therefore, that each night Mrs. Sidwell would have consumed nine hours of sleep.

It is unnecessary to discuss further the problems involved in this trial. Since the lower court determined as a factual finding that Mrs. Sidwell was not required to be passively present at the job site during the hours she claimed, the decision is fatally flawed. In a remand hearing the court can determine what benefit,

if any, Monroc received from her presence at the site and can also fairly determine the personal gain she received during these periods of time which did not go to the advantage of Monroc. Other questions, such as the good faith of Monroc in failing to pay her the minimum wage can also be examined. The award of attorneys' fees and liquidated damages would then be determined based upon these findings.

CONCLUSION

Defendant Sidwell worked at the Monroc plant for over four years. During this time she clearly performed valuable services in the prevention of vandalism and in performing certain tasks which were required for the operation such as lighting boilers and turning on pumps. It is unfortunate that a clear agreement was not entered into between the parties at the time but, on the other hand, this is not fatal. The conduct of the parties including their actions and their perceptions of the agreement must be utilized in construing the terms of the agreement.

The evidence is overwhelming that Mrs. Sidwell was in fact required to be present at the site during non-operating hours unless she had been specifically given permission to leave for certain activities. The mere fact that the employer required her to be there can give rise to a claim for compensation even if she performed no duties whatsoever. The loss of freedom and ability to do one's own activities is compensable under certain circumstances.

The lower court made no analysis of the waiting time, or

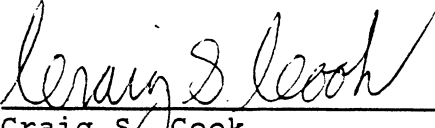
on-call concepts of employment arrangements. The court focused entirely upon the section dealing with "residing employees". The court failed to make inquiries as to the activities Mrs. Sidwell performed, to the benefit which her presence at the site created, and to the detriment of Mrs. Sidwell in being unable to have the freedom of movement.

An analogy is helpful here. A person going on a two-week vacation may choose to hire a "house sitter" to live in their house during their absence. The house sitter normally goes about their own business and even gains benefits from being able to use the facilities of the house. Even so, the house sitter charges a fee for this service since he is conferring a benefit on the owner to protect the house. Even if the house sitter attends a two-hour play at night the benefit still exists because of the presence of activity in the house.

She is entitled to a proper inquiry so that all of the facts and circumstances giving rise to her employment may be properly examined in light of the applicable standards of federal employment law.

For this reason, therefore, the decision of the lower court should be reversed and the case remanded.

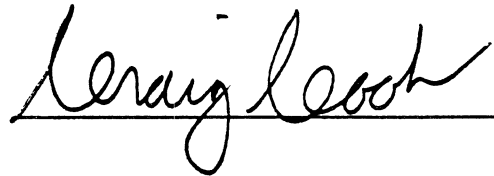
Dated this 25th day of January, 1988.



Craig S. Cook
Attorney for Appellant

CERTIFICATE OF HAND DELIVERY

I hereby certify that I personally delivered four copies of the foregoing Brief of Appellant to John Paul Kennedy, Attorney for Respondent, 1385 Yale Avenue, Salt Lake City, Utah 84105 this 25th day of January, 1988.



APPENDIX

CERTIFICATE OF MAILING

On this 17th day of April, 1987, I deposited in the United States Mail, postage prepaid a true and correct copy of the foregoing Notice of Appeal to:

John Paul Kennedy
1385 Yale Avenue
Salt Lake City, UT 84105

A handwritten signature in dark ink, appearing to read "W. M. Chandler", is written over a horizontal line.

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

MONROC, INC.,)	FINDINGS OF FACT
Plaintiff,)	AND CONCLUSIONS OF
)	LAW
vs.)	
)	
TIMMIE M. SIDWELL,)	CIVIL NO. C 86 4757
Defendant.)	JUDGE DANIELS

This matter came on for trial on March 2 and 3, 1987, with the plaintiff represented by John Paul Kennedy and the defendant represented by John R. Merkling and W. Matthew Warnock. The Court having heard the evidence submitted by the parties and having considered the written and oral arguments of counsel, and the Court having carefully considered the evidence and the law applicable thereto, the Court now enters the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. Plaintiff brought this action pursuant to the Utah Forcible Entry and Unlawful Detainer Act, §§78-36-1 to 12.6, Utah Code Annotated. Defendant answered and asserted by way of counterclaim causes of action under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (hereinafter, the "FLSA").

2. At the time of the commencement of the action herein, plaintiff was a Delaware corporation doing business in Utah and Idaho, with places of business in Salt Lake County, Utah, among other places.

3. Since at least January, 1982, plaintiff's yearly gross sales has exceeded \$250,000.

4. Defendant, M. Timmie Sidwell, is an individual who was employed by plaintiff as a security person at the plaintiff's Cottonwood Heights sand and gravel location in Salt Lake County from February 8, 1982, through March 31, 1986.

5. When defendant was hired, the plaintiff and defendant agreed that she would be paid \$355 per month and would live in a mobile home located on the premises in a space provided by the plaintiff with utilities (gas, electricity, water, and septic tank) furnished by the employer as further consideration for her services; it was understood that defendant would either rent or buy the mobile home in which she lived.

6. In addition to residing on the premises, the purpose of which was to provide a presence to discourage and deter trespassers, defendant was also assigned certain specific duties which included ensuring that the gates to the property were locked, making one limited round each week-day and an additional two rounds on weekends and holidays, preparing periodic reports, and occasionally performing other minor miscellaneous functions (including turning a pump switch on, and checking a pilot light on windy days) if she were available to do so; defendant had no other specific duties after daylight hours or when other Monroc personnel were on the premises; other than her rounds, defendant was not expected to keep any regular watch or surveillance over the property but was merely asked to report any trespassing or

vandalism which should happen to come to her attention.

7. Plaintiff and defendant agreed that defendant would reside on the premises, although it was not a condition of her employment that she be present on the premises on a full-time basis or during any certain times (except to perform some of her specific duties, the timing of some of which assignments was freely altered by defendant from time to time).

8. On one occasion when defendant was absent from the premises for several days, she arranged at her own expense to have another person live in the mobile home while she was away, but there was no showing that the duties of the other person were any different from those of defendant during said period.

9. On the occasion referred to in Finding 8, defendant's regular salary was paid without reduction.

10. Defendant was free to come and go as she wished, and was free to pursue her own individual interests during the time she was employed by plaintiff and to use her time effectively for her own purposes to do such things as eat, sleep, go shopping, do personal errands, study, write, occasionally attend church and the Symphony, accept full-time employment during the day, and, with the prior permission of the plaintiff (which was freely given and never denied), take evening classes at the University of Utah and on one occasion for two or three months accept full-time employment which extended until approximately 9:00 p.m. on week days, and engage in other normal private pursuits.

11. Defendant's actual duties under the agreement with

plaintiff approximated no more than eight to ten hours per week for which she was paid by plaintiff at rates in excess of the minimum wage required under the FLSA; and the other times when defendant was living on the premises did not constitute hours which were controlled by the plaintiff or its business.

12. Under all of the circumstances of this case, the plaintiff paid the defendant for her hours of work at a rate which at all times exceeded the minimum rate required by the FLSA.

13. Plaintiff and its representatives did not act in careless disregard of the minimum wage or overtime compensation provisions of the FLSA and did not intentionally, knowingly, or voluntarily take any action which violated the minimum wage or overtime compensation provisions of the FLSA.

14. Plaintiff's representatives acted in good faith without being cognizant of any possible violation of the minimum wage or overtime compensation provisions of the FLSA.

15. Defendant's employment was terminated by notice dated January 28, 1986, to be effective March 31, 1986, said notice requesting that she vacate the premises by the end of March, 1986.

16. When defendant failed to vacate by the stated date, plaintiff caused that a notice to quit be served upon her which was done on April 17, 1986.

17. The complaint in this action was filed on April 25,

1986, but defendant's mobile home was not removed from plaintiff's property until October 30, 1986.

18. The damages thus incurred by plaintiff total \$300.00, computed by multiplying the reasonable rental value of the mobile home space (which the Court finds, after considering all the evidence, to be \$50.00 per month) times six months.

19. Plaintiff offered evidence that in addition to the reasonable rental value of the mobile home space, the average monthly value of utilities provided for defendant were gas: \$30; electricity: \$25; water \$8; and sewer: \$10.

CONCLUSIONS OF LAW

1. Plaintiff is an enterprise doing business in interstate commerce and subject to the minimum wage and overtime provisions of the FLSA.

2. The plaintiff lawfully terminated the employment of the defendant.

3. The credible evidence offered at trial fails to prove any cause of action against plaintiff regarding defendant's FLSA claims and other claims as asserted in her amended counterclaim.

4. Under 29 C.F.R. §785.23, because defendant in this case was not working all the time she was on the plaintiff's premises, and because defendant was free to engage in normal private pursuits and had time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when she was free to come and go for purposes of her own, defendant's actual

hours of work did not exceed the number which, when her compensation was taken into account, would have constituted a violation of the minimum wage or overtime provisions of the FLSA.

5. Plaintiff did not violate the terms of the FLSA with respect to the minimum wage and overtime requirements of said act.

6. Defendant is not entitled under the FLSA to be paid for those times which she was able to use effectively for her own purposes and during which she was free to come and go as she pleased and was free to pursue her own personal interests.

7. Defendant is not entitled to any further compensation from plaintiff either under the minimum wage provisions or the overtime provisions of the FLSA.

8. Plaintiff is entitled to a judgment dismissing all counts of the amended counterclaim.

9. The plaintiff is not entitled under the Utah Forcible Entry and Unlawful Detainer Act to have its damages trebled.

10. The defendant is liable to plaintiff for the damage incurred by plaintiff as a result of defendant's failure to remove her mobile home after the notice to quit was served.

11. Plaintiff is entitled to a judgment against the defendant in the amount of \$300.00 plus interest from September 30, 1986, plus costs of suit.

Dated: _____

Scott Daniels, District Judge

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

MONROC, INC.,)	
Plaintiff,)	
)	
vs.)	JUDGMENT
)	
TIMMIE M. SIDWELL,)	CIVIL NO. C 86 4757
Defendant.)	JUDGE DANIELS

The Court having entered FINDINGS OF FACT AND CONCLUSIONS OF LAW in this action, and based upon those FINDINGS and CONCLUSIONS now enters the following JUDGMENT:

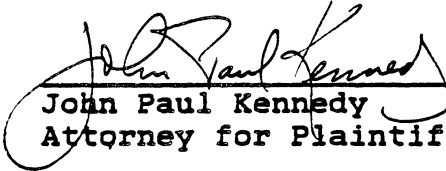
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Judgment is entered in favor of plaintiff and against defendant in the amount of \$300.00.
2. Judgment is entered in favor of plaintiff and against defendant on each count of the defendant's counterclaim, and said counterclaim is hereby dismissed with prejudice with no cause of action.
3. Plaintiff is entitled to interest on the amount of this Judgment at the prejudgment rate from September 30, 1986, to the date hereof, and at the post-judgment rate hereafter.
4. Plaintiff is entitled to recover from defendant all costs of suit expended by plaintiff in this action.

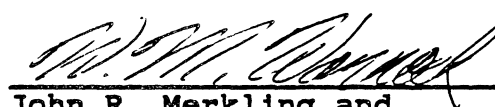
Dated: _____

Scott Daniels, District Judge

Findings of Fact, Conclusions
of Law, and Judgment
Approved as to form:

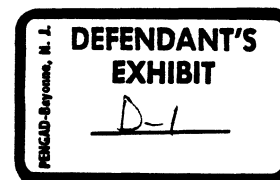
 3-20-87

John Paul Kennedy
Attorney for Plaintiff

 3-20-87

John R. Merkling and
W. Matthew Warnock,
Attorneys for Defendant

JOB DESCRIPTION - SECURITY GUARDS



I. BASIC FUNCTION

Monroc's Security Guards are responsible for security of Monroc's designated properties.

II. AUTHORITY

Security Guards derive their authority from and are responsible to sand and gravel division manager or his designated subordinates.

III. RESPONSIBILITY

1. Security and prevention of vandalism to buildings, plants, equipment, supplies and property. He is directly responsible after operating hours of each division, weekends and holidays (except designated days off).
2. He will challenge anyone entering properties during the above mentioned hours. He will report any attempted vandalism or theft of property to designated persons listed at end of job description.
3. No one is to be allowed on properties unless by satisfactory identification or authority or by previous arrangement from Monroc's management or supervisors.
4. He will record on guard log book those persons without proper or questionable authority desiring entrance to properties. Log should show following:
 - a. Name of individual
 - b. Reason for entrance
 - c. Car license number
 - d. Time in and time out
5. Under no condition will he physically try to remove any person from said properties. He will call for assistance from Sheriff's Department.
6. He will not carry any arms, knives, etc., when challenging anyone. His sole responsibility will be to contact Police and Sheriff's Department when conditions arise that require their assistance.
7. He will be responsible for reporting fires, electrical explosions, etc., to County fire departments and designated Monroc persons. He will take necessary efforts to prevent spreading of fire or further damage until arrival of Fire Department

8. Children will not be allowed on property, or playing on equipment, sand and gravel banks or wading, swimming in any water areas.
9. When additional time off is required (emergencies, etc.) he will request same from designated subordinates. All additional time off should be approved before leaving property.
10. No equipment, tools, tires, etc., will be allowed to be removed from property without prior written clearance from Monroc's supervisors.
11. Sufficient inspections should be made during the previous mentioned hours and days to observe and check security of buildings, equipment and properties.
12. All personal grievances or complaints should be reported to sand and gravel division manager.

Douglas G. Clark - Sand and Gravel Manager - 277-0489

Area supervisors and subordinates: -

Leon VanDyke - Cottonwood Heights Plant - 266-7264

~~John Yakovich - Kearns~~

DICK LARSON
Ready Mix

*Parrell E. Williams 11 4 65-8523
off 945-7654
3636-(home)*

Boiler - Kearns - Russ Collins - 272-2056

Boiler - Cottonwood Heights - Tage Lanng - 484-1265

Any other problems ready mix related call: -

Ken Baird - 277-5478

Keith Rudy - 363-4077

Robert Gudmundsen - 277-4491

*BOILER 20 Bon Hales
Tage Lanng*

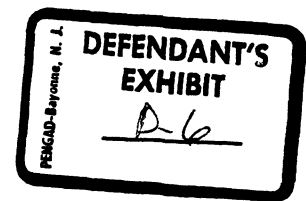
*266-6405
266-1265*

IMPORTANT PHONE NUMBERS: -

FIRE DEPARTMENT 266-1066

SHERIFF'S OFFICE 328-7441

JOHN DEVIN



January 24, 1986,
first drafted and
submitted January
21, 1986, for Mr.
Stan Wilson and Mr.
Jann Vasey.

TO: Stan Wilson,
Jann Vasey

FROM: M. Sidwell, Security Guard.
Monroc, Cottonwood.

Because of a recent case of vandalism, I want to put before you a history of my functions at Monroc since February 8, 1982.

- 1 -

I was hired by Darrell Willams to perform the following functions:

- (i) To be here, nights and week-ends, and holidays (Xmas, Labor Day etc with WEEK-ENDS specified by Darrell as Saturday afternoons only, and all day Sunday.
- (ii) To lock gates
- (iii) To keep a look-out for trespassers and to make the following rounds at week-ends: MORNINGS, possible NOONS, and EVENINGS, on Sundays, holidays and only when men, night-crews or Monroc personnel were not on location.

I came to work for Monroc under the above conditions.

- 2 -

When Darrell moved elsewhere, and I was under Ken Bartel, my duties increased as follows:

- (1) Ken would have me turn off pump at back lake, and this was any time between 12 midnight and 3:00 a.m.
- (2) Most of the time Ken did not communicate with me, and screamed abuses at me when I had not consistently turned off the pumps even though it was understood I would not do so unless instructed.
- (3) Ken subjected me to the most extreme abuse, which was very disturbing and about which, I complained to Mr. Robert Parry. inc

For no given reason, just about this time, I was made responsible for watching the level of the back lake!!! Once again this was not part of my job description. The assignment was given to me by Bruce Squires and I attempted to watch, and report on the level of the lake.

It is to be noted that I am not an engineer, nor do I know what is an appropriate level for the lake.

The additional duties were performed without complaint, and without asking for more remuneration.

When Jann Vasey came on board, I was so delighted to have a wonderful new boss, that I performed the extra and additional duties with willingness: They were as follows:

- (i) To be present, and make rounds, even though the maintenance crew was on location.
- (ii) Saturday mornings were added to my duties, which was something I had not bargained for, when I agreed to work for Darrell.

When the rash of increased vandalism came to Monroc, partly because of the decreased man-hours worked by the men, my duties were increased as follows:

- (i) Rounds every two hours (compare the original contract with Darrell)
- (ii) Rounds even though the maintenance crew is here (compare the original contract with Darrell.)

I performed these extra duties, out of deference for Jann, who is a good man to work for. Other reasons are that I am happy here, that I like the privacy, the quiet, that I am not scared of being alone on the plant and that I have great concern for Monroc and its activities

A further rash of bad vandalism and destruction on plant property in the Fall, 1985, resulted in a discussion between Jann Vasey and I, during which I was asked (and I agreed, rather unwillingly)-- to make rounds every hour. I did this right until the fog and the bad weather came. When the good weather returned, (second week in Jan. 1986) I resum my rounds EVERY TWO HOURS.

IT IS NOW FOUR YEARS since I was hired as security guard, and I wish to make a comparison between the original arrangement and what I am in the habit of doing, each week-end, to prevent vandalism

With regard to the statement that this is ON FOOT, I am in the habit of jogging each morning, and I jog around the plant, and to the back of the back pit, and make this my "first round".

(2) 11:00 a.m. Saturdays, and 11:00 a.m. Sundays:

Inspection using the truck. I get out of the truck, where I find it necessary, to inspect the locks.

NOTE: AFTER MY FIRST ROUND IN THE MORNINGS, COMMON SENSE WOULD TELL US THAT my chief concern would be the presence of people and the presence of damage or vandalism occurring since the previous round.

(3) 1:00 p.m. Sundays, and Saturdays:

SIMILAR ROUNDS, -- including inspection of back pit and all machinery therein.

(4) Mid-afternoons Saturdays, and Sundays:

Same as (3)

(5) DUSK (I go by my calendar which gives the precise time for the sun to set and I gauge my round for DUSK).
SIMILAR ROUNDS.

(6) EVENINGS: Saturdays, Sundays. FINAL ROUNDS.

During the week-end of the bad vandalism, breakage of the candy machines, etc. I was prepared, because of the good weather and thaw, for renewed attempts at vandalism.

I maintain having followed the plan outlined on bottom of page (2) and continued above, and I maintain having looked in at the back of the office, where the time-clock is.

It is evident there is a discrepancy between my assumed activities and the time discovered at which the time-clock stopped. It is my habit to park the truck over the scales, and to head for the front door of the front office, and to look inside.

Although I am remiss in not having reported the vandalism of the night before until the following day, there is a possibility the time clock could have been tampered with and altered by someone who knew how to do this.

I repeat, my CHIEF CONCERN, after checking locks, is to look out for people, and to prevent vandals from entering. To be accused of making a false report and of lying is something absolutely unacceptable to me and I request to be cleared immediately.

To balk at a delayed report is to miss the entire purpose of my presence as Security Guard.

I reported that I had made rounds at 5:30 p.m. prior to discovering the damage at 7:00 p.m. I maintain the fact that I did look in on the back of the office, and this was presumably Saturday, but not Sunday, == since you claim that the time-clock reads

PaGE (4) MEMO

If I am to work on this problem with Monroc, and resolve the threat of constant vandalism, I wish to regain immediate good faith and be cleared immediately of the accusation of having lied to you, concerning the time of the damage.

This document is presented to Monroc, with the statement that I know I have performed my duties as security guard according to my work agreement with Jann, and that such agreements were over and above the duties for which I was hired by Darrell Williams.

I do not accept the blame for the damage that was done last week-end and would have you consider a former problem of semantics.

In the DRAFT of this report, written and submitted to Jann and Stan Wilson on Tuesday morning, I stated "I take no responsibility for the acts of vandalism which have occurred."

IT IS MOST EVIDENT the above statement has made Jann see red and my mention of the word semantic to Mr. Tidwell did not seem to make sense. At a later conversation with Jann, I altered my statement until it translated into: "I cannot accept the blame" and at that moment, Jann understood what I was trying to say, and I presume Mr. Tidwell would, also.

As far as "blame" is concerned, there can be none placed on me when I perform my duties according to the way they were designated. But as regards "responsibility" I feel so terribly responsible for the maintenance of safety at Monroc that I have lived through several days, -- and several sleepless nights since the incident, feeling as if it was I who actually and physically performed this terrible, and crazy damage.

My own home was burglarized in Fall, 1984 during daylight hours. Although several men saw a red bronco parked by my door they made no attempt to find out who it was..... (I make the statement and I do not blame anyone for this.)

Since that time, I have taken personal measures to secure my home. (ftnt
(

On my drafted report, I strongly suggested that Monroc should take similar measures and install a burglar alarm. I cannot be present at the office for 24 hours.

As the damage of last week-end was done after 9:30 p.m. I want to point out that I was not requested to make late-night rounds. It is now evident that my presence and my vigilance needs to be extended into the night, and I am presenting a very informal proposal to Jann Vasey and Stan Wilson, to try to resolve the problems.

I have a strong desire to remain with your Company, even after Cottonwood closes. I feel I have served you well, and over and above the original requirements.

(4) Besides one burglary, my car had the tires slashed on Monroc prop

TO: Monroc

ATTENTION: Jann, with a copy to Mr. Stan Wilson

FROM: Mrs. M. Timmie Sidwell,
Guard, Cottonwood Plant, Monroc.

DATE: Submitted Friday, January 24, 1986

SUBJECT: Some informal thoughts about revised security guard
schedule.

INTRODUCTION

This document is the result of extensive research and investigation. All conversations have been held in confidence and the security problems of Monroc have not been divulged.

I request a reciprocal professionalism from Monroc personnel in the handling of this document and shall be willing to negotiate with Jann Vasey, Stanton Wilson only. I am open to converse with Mr. Parry, Doug Clark -- or with Frank Metcalfe to discuss statistical facts in my feasibility study.

Circulation of this document should be restricted to the above-mentioned persons. Please do not make extra copies without my permission.

We are attempting to resolve a serious problem, and it can best be done by applying mutual respect for the dignity (... and the feelings ...) of all concerned.

I am keeping the reputation of Monroc well in mind and I expect reciprocal consideration from all with whom I deal.

* * *

I suggest this document be weighed against the other documents I am submitting to you, namely: (i) a feasibility study examining the financial worth of the present security guard services, and (ii) A revised edition of the draft memorandum presented to Jann Vasey and Mr. Stan Wilson, on Tuesday 1/21/86.

The suggestions made in this document describe what I feel I can offer over and above my present work schedule. They are not a commitment on my part, at this time.

Page (2) security guard schedule.

WORK TO BE CONTRACTED ON A FULL-TIME BASIS

The work is to be considered full time on the following days:

- (1) Saturdays
- (2) Sundays
- (3) Legal holidays
- (4) Any other times about which guard would be notified in advance.

ALL WORK TO BE RECORDED

No part of this work would remain unrecorded. Guard would require a time-card with check-ins, check-outs. The hourly pay would be evaluated separate, distinct and above Mrs. Sidwell's present monthly salary. It would, in fact, differ from week to week but follow the general pattern of an 8-hour, 12-hour or 14-hour working day.

MONROC'S MODE OF PAYMENT

Your mode of payment would be according to your decision, but there would be two parts (2) to Mrs. Sidwell's remuneration, as follows:

- (1) Continuance of her present remuneration.
- (2) Additional hourly rate agreed upon.

EXTENT OF RESPONSIBILITY OF SECURITY GUARD

To remain the same as the contractual agreement made in February, 1982 with Darrell Williams.

ADDITIONAL DUTIES TO BE DETERMINED

These additional responsibilities will bear their separate responsibility category, aside from the February, 1982, agreement.

* * *

THE NEEDS OF MONROC

Monroc, Cottonwood, needs active, patrolled coverage for all daylight hours (1) 8 to 12 hours in winter and (2) 12 to 14 hours in summer.

COORDINATION OF THIS NEED

Coordination of this need must be made with the availability of the present security personnel, namely Mrs. Sidwell. However, past damage and vandalism demonstrates the necessity for constant patrolling.

SUGGESTED JOB DESCRIPTION

- (1) Rounds made in the Monroc truck every 2 (two) hours.

NOTE: As each round takes approximately 30 minutes, with stops at each point specified (there are 8 to 12 of these), hourly rounds would imply constant running of the truck.

Please consider this factor, and come up with your decisions.

- (1) -- A: ALTERNATIVE:

Rounds made every 90 minutes could be considered.

Page (3) security guard schedule.

SUGGESTED JOB DESCRIPTION, (continued)

(2) SATURDAYS

The requirements of Monroc are 9:00 a.m. to 6:00 p.m. fall and winter, with original guard duties on top of this in the evenings. These duties would remain as set in 1982.

The requirements would increase when summer comes.

(3) SUNDAYS

Same as (2)

(4) HOLIDAYS

Same as (2)

(5) --- DUTIES OF SECURITY GUARD
(to fall as part of "job
description")

(5) The duties of the Guard would be as follows:
Rounds and surveillance at specied designated points:

- (i) Office, two doors
- (ii) Cement plant (Tey's office, upstairs at back)
- (iii) Chemical lab (upstairs) -- the doors facing west
- (iv) Tool shed
- (v) Large grease shop
- (vi) Extreme back gravel pit. -- to inspect machinery and prevent vandalism
- (vii) Metal shed (grease shop) close to warming hut.

* * * *

THE SALT LAKE CITY "SECURITY MARKET"

AVAILABLE SERVICES

I have called four security companies, without identifying Monroc or giving my name, to request rates and conditions.

INFORMATION SHARED

I provided the following information:

- (1) 40 to 50 acres of property with obstructed visibility to outlying parts.
- (2) Machinery at outlying parts of the property
- (3) Fenced in, with locked gates, but easy for people to enter.
- (4) Number of surveillance points, buildings etc. 8 to 12 buildings, or more, with locks at specific points.

SUMMARY OF CONVERSATIONS (1)

page (4) security guard schedule.

SUMMARY OF CONVERSATIONS (continued from page (3))

- (1) Three, out of the four managers of security companies said it was not possible for one person to (a) properly patrol 40 to 50 acres and 7 to 10 buildings, and (b) expect to deter the vandalism problems.

(NOTE: I think this will clarify what I have been saying to Monroc for one year, now, that "I cannot be held responsible....." if damage occurs with the part-time security guard arrangements during daylight hours, when no men are at the plant.)

- (2) The minimum hours offered by any one of these four security companies is 4 hours, (one company); at a rate of \$6.50 or more per hour.

The others have a minimum of 8 hours at either \$6.50 minimum, \$6.00 or/(and) \$5.95.

None of them offered cheaper rates for 12-14 hours.

- (3) The understood conditions were that Guard has responsibility of company vehicle. Guard is unarmed. Whether he patrols, or stays put, the rate runs at a minimum of \$5.95 up to minimum \$6.50 and he receives a wage of at least \$4.50 per hour.

* * * * *

PROPOSAL

The following services offered by Mrs Sidwell to Monroc on a full-time basis for certain days are:

- (1) Subject to change
(2) Must adhere to all conditions on page (1) and all other stipulations which precede this proposal.

HOURS

Due to Monroc's needs, which change according to daylight, season, weather and operation of plant -- these hours are subject to change:

MRS SIDWELL's PROPOSAL

HOURS: Saturdays: 9:30 to 5:30 full time, followed by resumption of original duties as per original 1982 agreement.
JOB DESCRIPTION: As stated on pages: (2) and (3) of this document.

Sundays: Noon to 12:30 until 8:00 to 8:30 p.m. full time, followed by resumption of original duties, as per February, 1982 contract.

Holidays: The work shall be full time, eight (8) hours, with no exceptions.

HOURS: Your choice of hours, either start 9:30 continue to 5: 30 or start 10:30, continue to 6: 30.... or other.

DUTIES FOR ALL THREE CATEGORIES, Saturdays, Sundays, Holidays:
As previously suggested and described on pp. 2 and 3, with

Notes on guard's extraterritorial activities:

BEFORE EXAMINING THE SUBJECT OF REMUNERATION, WE NEED TO CONSIDER THE GUARD AS A HUMAN BEING AND BE INFORMED OF THE FOLLOWING:

- (1) I attend the Episcopal Church on Sunday mornings occasionally. I request the autonomy of continuing with this habit. A full-time day is eight hours. I have therefore proposed my services to you from noon to eight, on Sundays.
- (1) -- (A) I would suggest you hire security for Sunday mornings to remain on the property until about noon. I may be home, and I may be gone. I commit myself to fulfill my original duties, being that of:
- "one round Sunday mornings,
one round Sunday noon."
- (1) -- (B) I would suggest any security personnel you hire be based at the front office, and make his/her rounds in the truck, as I do.
My personal problem with finding a substitute is that I do not care for a stranger to come into my home.
- (2) Saturdays. Evenings:
I am a member of the Utah Symphony Association and volunteer my services to this organization. I attend the Symphony occasionally on Saturdays at 8.
- I commit myself to fulfill my original duties, for Saturdays, being that I make a round last thing at night, if I go out.
- (3) The initial agreement made in 1982 gave leeway for theater and symphony concerts. At that time, the night crew was working every night.

PLEASE CONSIDER THESE POSSIBLE ABSENCES VERY CAREFULLY. ANY COMMITMENT I SHALL MAKE TO MONROC AT THIS TIME, WOULD BE MADE WITH THE CERTAINTY THAT I WOULD BE ABLE TO ADHERE TO THE COMMITMENT WITHOUT CONSTANT CHANGES AND RENEGOCIATIONS.

Proposed resolution of possible problem

I think, when I absent myself in the evenings, at week-ends or on week-nights when the night maintenance crew is not here, that I should report to Jann with a phone call to his home, informing him of my absence before it occurs.

REMUNERATION

After extensive study, conversations with specialists, executives and others, it has become evident to me that my commitment as to hours of full-time work will eventually have to be shared with another party, if Monroc is to receive adequate coverage. This will become evident in summer. Although I am responsible for my duties as resident guard, summer-time will bring about a grey area -- margin between daylight and night hours, -- a margin extending into 12 to 14-hour days, when I cannot commit myself to full-time commitments.

EXCHANGEABLE DUTIES

My remuneration for full-time work must be sufficient for me to be able to call in a substitute, full-time guard, (presumably for hours extended beyond eight (8)).

REMUNERATION

Any agreed-upon remuneration will be negotiable, and be decided after considering all the information provided, from all my sources and reasearch.

It is evident that the remuneration of a substitute guard should match mine.

Alternative: To request one of the men to sit in the office to perform extended surveillance after any period of 8 hours.

GUARD'S ACCESS TO TELEPHONE

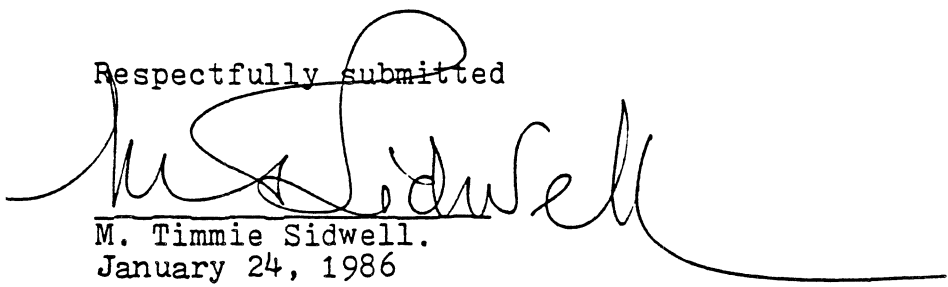
I must have immediate access for the purpose of notifying Police. Please provide me with a key to the office.

Alternative

I would prefer to have a 25¢ piece (quarter) hidden somewhere so as to have access to the pay phone at back of office.

Returning to my mobile home to use the telephone would be the same as letting any present vandals slip away.

Respectfully submitted


M. Timmie Sidwell.
January 24, 1986

: Monroc
OM: Mrs. M. Timmie Sidwell
Security Guard,
Cottonwood plant.
TE 24 January 1986

SUBJECT: Analysis:

Estimated dollar value of my
present total work-hours.

ESUMPTION:

is understood by all concerned that any hours during which Security Guard
expected to be on location should be given some financial value.

STRUCTURE OF THIS ANALYSIS

) First a summary of the job description

This job description is in five categories: (A), (B), (C), (D) and (E)

) Second, each category is evaluated in man hours.

These man hours are stated on a weekly and on a monthly basis

) Third, the dollar value of each category is presented, first by the
hour, then by the week, and finally by the month.

ECIAL NOTE:

e resulting figures are for the purpose of comparison with my present
nthly salary; not for the purpose of argument or complaint concerning
id present salary.

- 1 -

OB DESCRIPTION, MONROC SECURITY GUARD, COTTONWOOD PLANT

ATEGORY (A) To be present on location each night of the week.

ATEGORY (B) To be present on location *(i) Saturday afternoons
(or whenever men are not working,
and no-one is there)
(ii) All day Sunday

ATEGORY (C) To lock the gates each night, first checking that everyone
has left the plant.
(iii) On specified holidays

ATEGORY (D) To make rounds three times per day, maximum, on days designa-
ted in (B) (above). To evict trespassers and to make reports
on the activity to the plant foreman after any incidents.

ATEGORY (E) Presumption: That the guard live on premises.

lysis of man hours -

EGORY (E) -- continued:

It is to be noted that this final condition implies the presence of my possessions and my valuables on location; it implies a vulnerability similar to that experienced by Monroc, with its assets on the plant.

It is to be noted that my property is subject to similar wear and tear, corrosion by the immediate elements and the dust such as is present in a supra-ordinary circumstance; a gravel plant.

- 2 -

EGORY (A)	The hourly evaluation for this category is	WEEKLY HOURS
	7 days of twelve hours, a normal night-time	
	when I am expected to be on location.	84 hours
EGORY (B)	The hourly evaluation of this category is	
	Saturdays, 6 hours, Sundays 12, hours, and	
	the average weekly hours for 10 holidays	
	per year, being 2 1/2 hours per week	20 1/2
	TOTAL FOR CATEGORIES (A) and (B)	<u>104 1/2 hrs</u>
EGORY (C)	To lock gates each night (weekly):...	1 3/4 hrs.
EGORY (D)	To make rounds 3 times per day at week-ends,	
	and once at night during the week . . . (weekly).....	5 1/2 hrs.
	To make reports and submit them. . . . (weekly).....	20 minutes
	TOTAL FOR CATEGORIES (C) and (D)	<u>7 hours 50 mins</u>

TEGORY (E)

tangible defrayments such as the interest on my mobile home, the exposure to st and the exposure of my person to the noise of machinery 5 days per week rely has some financial equivalent. As it cannot be evaluated, it could set off against the expense incurred by Monroc for lights and heat.

- 3 -

n proceeding to place a dollar value for each category of man-hours stated in ove, I have taken, first minimum wage.

he minimum wage is the legal rate of remuneration.

second, I have taken \$2.00 per hour because this is the rate paid to a babysitter who sleeps with the children when the parents are away. The rationale for this is that, about twice during a 12-month period would ere be a need for the babysitter to encounter and deal with an emergency. milarly, the security guard at Monroc is there (as per the request of onroc) for the purpose of emergencies.

ird, I have taken the extreme minimum dollar value you could place upon / mandatory presence on location -- namely, \$1:00 per hour.

FURTHER NOTES ON - 3 -

his type of analysis is useless unless the alternatives are kept well in mind: n my case, the alternative presented is that, as an autonomous human being, I

ysis of man hours

tain the choice to be away from home some nights, sometimes overnight some week-ends; to go to the mountains some Sundays.

I took on the job of security guard, I was aware that this would be ailed, and I made the choices accordingly. However, for this very on, it is presumed that my presence on location has some financial value, at times when I am not physically working, or making rounds.

RTANT: Once again, nothing in the above paragraph is intended as a complaint, but rather as a further analysis of the value of man-hours.

w proceed to apply a minimum wage upon the total 104 1/2 hours, to apply a value of \$2.00 per hour upon the total 104 1/2 hours then finally, a value of \$1.00 per hour upon this total 104 1/2 hours. follows:

	TOTAL WEEKLY	TOTAL MONTHLY	FOR CATEGORIES (A) and (B)
3.35	\$350.07	\$1,400.28	
2.00	209.00	836.00	
1.00	104.50	418.00	(see footnote (1))

Remuneration for categories (C) and (D)

You will refer back to page (1), Section - 1 - you will see that the categories involve physical work, surveillance, rounds, etc. etc.

placing a total worth upon these hours of \$5.75 per hour.

then give a choice between subtracting from said \$5.75

the minimum wage included into the total wage for 104½ hours

Subtracting the \$2.00 which was estimated as an alternative

(c) The \$1.00 per hour.

(SEE PAGE (4)).....

NOTE (from above):

The figure of \$418.00 per month is the closest to what I am now earning and covers remuneration for my presence only at \$1.00 per hour. It constitute no remuneration whatsoever for active guard duties.

Analysis of man hours
(4)

BASE VALUE FOR ACTIVE GUARD DUTY: \$5.75:

	TOTAL WEEKLY	TOTAL MONTHLY
5.75 less 3.35 for 7 hours 50 minutes	\$18.80	\$72.50
5.75 less \$2.00 for 7 hours 50 minutes	29.37	117.48
5.75 less 1.00 per hour for 7 hours 50 minutes.	37.21	148.84

(Your choice for totals above, depends upon
your financial evaluation of my basic
hours on location).

TOTALS

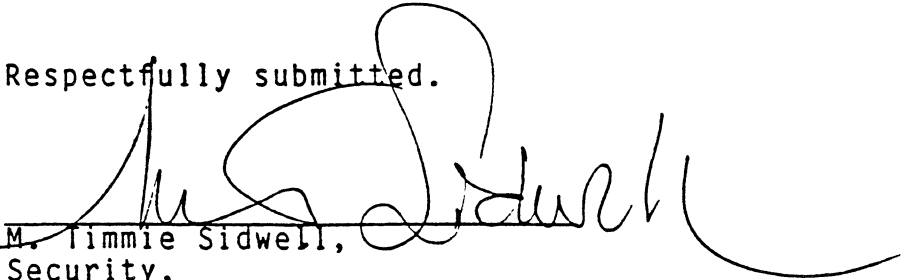
Add categories A, B, C, and D as per your one
choice out of the three choices given to
assess hours on location, my total financial
worth to Monroc under the present job description
totals to \$566.84 per month using the minimum of
\$1.00 per hour for my total number of hours on
location. (see footnote (2)) Other figures below.

DETAILED CALCULATIONS
ARE SUBMITTED ON THE
ATTACHED "SCRATCH"
SHEET.

SUMMARY

Without considering the intangible advantages and disadvantages
stated in Section (E) which, according to our previous conversations
are supposed to balance out your contribution to lights and heat, the mean
figure (going exactly between maximum figures) is a monthly \$1021.16
(... and note, I do NOT use the word "salary" for fear you will interpret
this analysis as a complaint).

Respectfully submitted.


M. Jimmie Sidwell,
Security,
Cottonwood plant.

(2) Weekly total using minimum wage is \$368.87 per week
and, using \$2.00 base, \$238.37.

(3) I am attaching a scratch-sheet of figures to this page.

WEEKLY

MONTHLY

$$\begin{array}{r} 350.07 \\ 18.80 \\ \hline 368.87 \end{array}$$

1475.48

$$\begin{array}{r} 209.00 \\ + 29.37 \\ \hline \hline \end{array}$$

mean:
\$1021.16.

$$\begin{array}{r} 104.50 \\ 37.21 \\ \hline 141.71 \\ \text{week.} \end{array}$$

\$566.84
per month

908.64

454.32.



MONROC, INC.
1730 BECK STREET / P.O. BOX 537
SALT LAKE CITY, UTAH 84110
(801) 359-3701

January 28, 1986

Ms. Timmie Sidwell
P. O. Box 521094
Salt Lake City, Utah 84152

Dear Ms. Sidwell:

Monroc, Inc. has decided to discontinue the use of your services in the security function at the Cottonwood Heights Plant.

As per our agreement, Monroc is to give you a 30 day notice of its wishes to discontinue the agreement. However, because of the present inclement weather and in fairness to you, Monroc will extend this period for you to remove your trailer and personal possessions until March 31, 1986. If for any reason you wish to leave before that time, please feel free to do so.

This decision is final and we appreciate your services in the past years.

Sincerely,

MONROC, INC.

Jan Vasey
Plant Manager

Jan Vasey
Stanton E. Wilson
Stanton E. Wilson
Vice-President

SEW:ba
cc: Robert A. Parry