

2017

**Bruce Harper, Appellant/Petitioner, Vs. Utah Labor Commission,
Energy Enterprises, Inc., and Drive Line, LLC., Appellees/
Respondents, : Reply Brief**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Bruce Harper,

Appellant/Petitioner,

Vs.

Utah Labor Commission,
Energy Enterprises, Inc., and
Drive Line, LLC.,

Appellees/Respondents,

APPELLANT'S REPLY BRIEF

Appellate Case No.: 20170945

Utah Third District Court Case
No.: 160901238

Oral Arguments Requested

**On appeal from a final order of the Utah Third Judicial District Court,
The Honorable James Gardner, presiding.**

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UTAH APPELLATE COURTS

OCT 22 2018

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Pursuant to Utah R. App P. 24(c), Appellant Bruce Harper, submits this brief in reply to new issues and matters raised in the Appellee's Brief as follows:

Statement of Facts

1. Harper has not received any of Drive line's nor Energy Enterprises trip envelopes, nor are these documents in the record regarding his employment with Drive Line and Energy Enterprises. (R. p. 1- 1051)

a. Energy Enterprises and Drive Line's Counsel have incorrectly stated in the Appellee's brief that Harper has received "the trip envelopes" and "complete copies" are in the record, as follows:

"Interestingly, Mr. Harper's complaint centers on Drive Line's purported failure to give him copies of "the trip envelopes" in response to his discovery requests. However, Mr. Harper had complete copies of those items since the Wage Claim hearing as they were exhibits in the hearing. (R. at 1051, Resp. Ex. 5.)" (Brief of Respondents Energy Enterprises, Inc., and Drive Line, LLC, page 31)

Record 1051, Respondent's exhibit 5 is 16 pages: 13 pages are Harper's paycheck stubs, 2 pages are Harper's local work for working for Drive Line (hourly time), and one page sheet is Harper's hourly and total miles on 2 trips from Salt Lake City, Utah to Toledo, Ohio. The documents that Drive Line's Counsel has referred to are not at all Harper's trip Envelopes nor are they located anywhere in the record.

b. Harper's trip envelopes (literally big white envelopes, approximately 12in x 9in,

used in the trucking industry) are the legal documents that are certified by Harper (truck drivers time cards) that memorialize Harpers (written by Harper) work performed for Drive Line and Energy Enterprises, to keep track of miles, dates, receipts, hours, and time in each state as to pay taxes on those states from trips from Salt Lake City, Utah to Toledo, Ohio, as a state by state basis, as each state has different tax rates on miles driven by Harper for each and every trip to Toledo Ohio and back and as to account for proper pay for Harper from miles worked.

c. There is not one single trip envelope in the record.

d. There is only one document that Drive Line provided for the Court memorializing actual miles (one single trip) driven from Harpers trips to Salt Lake to Toledo, in one of his 13 trips to Toledo. (R. p. 1051 Resp. exhibit 5, addendum A)

e. The one document that does memorialize Harper's trip from Salt Lake to Toledo is the one Harper created; addendum A vs. addendum B, Drive Line's pay sheet.

These 2 documents; show that Drive Line has failed to pay Harper 89 miles from this one specific trip; $3431 \text{ miles} \div 2 = 1715 \text{ miles}$ (team driver's miles are divided by 2) Harper was paid for 1,626 of those miles, which leaves a deficit of 89 miles unpaid by Drive Line.

2. Harper does not get paid per trip for inspecting the truck, inspecting 22 tires, trailers, checking lights, checking oil, checking fluids, fueling, unhooking trailers, hooking up trailers to truck, hooking up double trailers, getting orders from dispatching, doing paper work, certifying log books, certifying trip envelopes, waiting in stopped traffic, waiting for loading paper work, and waiting for trailers to be loaded. (R. p. 513-515,

1051 Resp. ex. 5)

3. Drive Line refuses to pay Harper for all the miles that they required him to drive as prescribed and testified by Greg Ostler, as him and Harper agreed on a pay per mile basis, pursuant to the document Greg Ostler created for this wage claim. (R. p. 1051, Resp. exhibit. 5, addendum C) This document shows that Harper is to be paid for 1,677 Miles.

Greg Ostler remembered the document he created and testified to Harper being paid for 1,677 miles as follows: Q.: "does that help you remember what they were paid for?"

Greg Ostler: "Yes."

Q.: "How many miles were they paid for"?

Greg Oster: "They were paid for the 1,677". (R. p. 631)

4. Harper was a paid for as a paid by the hour employee, on two separates hourly rates on two occasions: June 16, 2014 for 6.25 at a rate of \$18.00 hour (R. p. 1051 Resp. Ex. 5. Appellant's addendum 1: 2 pages) and on July 14, 2018 at a rate of \$17.00 an hour. (R. p. 1051 Resp. Ex. 5, Appellant's addendum 2: 2 pages)

- a. Harper was also a paid by the mile (cents per mile) employee.
- b. Harper was not a paid by the "task" nor "fixed" nor contracted out employee.

5. Drive Line has failed to pay Harper his appropriate time and miles on the only piece of evidence that drive Line provided Harper from his many trips, on actual miles and hourly time from Harper on his drive from Salt Lake City, Utah to Toledo, Ohio, this

is also outlined in argument 2. (R. p. 1051 Resp. ex. 5, Appellant's addendum 3: 2 pages)

6. Drive line has failed to submit to the Utah Labor Commissions order to produce copies of any documents memorializing the Respondents' agreements, policies or criteria used in calculating compensation paid to the Claimant. (Appellant's brief, addendum B)

7. The Utah Labor Commission, the District Court, and Drive Line have refused Harper, his requests for his Trip envelopes (Harpers time cards) from Drive Line and Energy Enterprises.

8. Drive Line does not argue or dispute that Harper was required to work for several hours per trip, for Drive Line for free.

9. Drive Line has failed to inform Harper of the change in wages from \$18 an hour to \$17 an hour and also from \$.40 a mile to \$.36 a mile: pursuant to Utah Code 34-24-4. (R. 1051 Resp. Ex. 5)

10. Harper has the right to file this appeal pursuant to Utah Code 63G-4-401, Utah Code §78A-4-103(2)(a)(ii), and Utah Const. Art VIII § 5.

12. Harper was unaware that Drive Line was not going to pay him for all the actual miles driven and required to work for drive line for free: "No, I was never aware that they were going to pay me, that they were going to route me 1,726 versus 1,626 miles." (R. p. 570)

13. Harper did request from Drive Line to be paid for all the miles he worked and was required to work for Drive Line, while he was still employed with drive Line as follows: "I need to be paid on actual traveled miles. 1716 a trip." (R. p. 1051 Resp. ex. 4 and Drive Line's brief, appendix A. p. 6)

a. This is in fact contradictory to the District Court's Findings of Facts: 11. "Mr. Harper never made a claim that he was owed any money during the time that he was employed by Drive Line." (R. p. 366 and Drive Line's appendix A page 4) and 12. "During the time that Drive Line employed Mr. Harper, neither Ms. Martino nor Mr. Ostler received any demand for additional payment from Mr. Harper." (R. p. 366 and Drive Line's appendix A p. 4)

14. Ms. Martino was not involved with the hiring process nor the discussions of Harper's income nor rate of pay for Harper: Ms. Martino: "I was not actively involved in your hiring." "I wasn't there. I wouldn't know." (R. p. 650)

Arguments to Appellee's Statement of Issue 1 (jurisdiction):

Drive Line makes the argument in a new issue they raise whether the Utah Court of Appeals, has jurisdiction to hear this appeal. As Drive Line has added the Utah Court of Appeals order to transfer Harpers appeal to the District Court, pursuant to Utah Code Ann. § 78A-5-102(7)(a)(2010), in their brief in exhibit. Drive Line has failed to raise this issue at the District Court level. The District Court has allowed Drive Line to include Attorney's fees requested on their pleadings that were not originally on the wage claim and review.

Utah Court of Appeals does have jurisdiction pursuant to Utah Code §78A-4-103(2)(a)(ii):

Drive Line has not provided authority to show that the Utah Court of Appeals is limited despite being expressly granted jurisdiction to review a districts Court's review of informal adjudications. There is a reasonable issue whether the Court can authorize an award of fees for work performed in the administrative proceeding, pursuant to section

78B-5-825. The District Court has awarded attorney's fees pursuant to Utah Code § 78B-5-825(i), and determined that Harper filed his wage claim in bad faith Harper has at the very least the right to appeal those decisions and argue those errors. Drive Line, Energy Enterprises, nor Utah Labor Commission never requested attorneys fees in their response to Harpers administrative Action, review, and appeal (trial de nova) and wage claim, the District Court has allowed the Respondents to request attorneys fees from Harpers original filing of his administrative review and appeal of Harpers administrative action and wage claim. The District Court has allowed and granted Drive Line and Energy Enterprises two motions in the District Court, that was not included in Harpers review of the administrative action: Motion for Attorneys fees and Motion for Vexatious litigant. Harper has a right to appeal the Courts Orders and rulings on the Parties case, regarding errors and abuse of discretion. On May 16, 2017, this Court specifically found that Energy Enterprises was the prevailing party in this litigation and that Mr. Harper filed papers and motions in bad faith, that the litigation was without merit, and that Mr. Harper filed this litigation in bad faith. Harper has appellant rights to appeal the issues and motions filed by the Appellee's. The District Court has granted Drive Line, on their motion for vexatious litigant against Harper, The District Court has also stated on the vexatious litigant specific motion and Harpers Motion for new trial (grouped together on the same order) the following: "This requirement does not prevent Mr. Harper from responding to any motions filed by Respondents or from pursuing his appellate rights." (R. p. 934) The District Court has in fact allowed Harper to pursue his appellate rights from the Court of Appeals.

Harper's rebuttal to Drive Line's argument 2 (Contract and pay):

Drive Line has stated in the heading of their argument the following:

"The Trial Court did not Err when it found that Mr. Harper Agreed to be paid based upon a fixed amount of mileage rather than actual distance he made on an Estes contract."(Drive Lines brief, page 19)

This is incorrect, as Drive Line claims that Harper is a party to Estes contract: "he made on an Estes contract." There is no evidence that Harper was nor is a party to Estes contract nor is he bound by this contract or its limits to miles and conditions as an employee for Drive Line and Energy Enterprises. Drive Line has failed to show any ties between Harper and Estes contract. The District Court has erroneously bound and held Harper liable for a contract that he was not in fact a party to. There is no evidence that legitimately supports or could support their position on holding Harper responsible and liable for Estes contract. Drive Line has stated and pointed out in their brief that Ms. Martino has stated: "We were on an at-will dispatch. We could take the loads or another carrier could take the load. It was entirely up to us. We did not have a contract." (Drive Line's brief, page 25)

Ms. Martino's statement does not tie Harper to Estes and Drive Line's contract. Drive Line never Consulted with Harper regarding loads that Drive Line decided to take and have Harper drive as an employee for Drive Line. The statement "It was entirely up to us." Ms. Martino was referring to Drive Line and Energy Enterprises. There is no evidence that Harper was included in, as the "us" term, as Harper was unaware nor consulted of any at will contract or even any contract with Estes and Drive Line and Energy Enterprises. Drive Line has even stated in their brief regarding Harper as follows: "whether Drive Line made a profit on the Estes loads or how Estes compensated Drive

Line is entirely irrelevant to whether Mr. Harper was not paid his wages pursuant to his employment agreement with Drive line." (Drive Line's brief, p. 25) and also Drive Line asserts the following from their brief: "Accordingly, Mr.[sic] Martino clearly testified that Drive Line had an agreement with Estes to haul loads for Estes to Toledo at a fixed mileage rate." (Drive Line's brief page 25)

This In fact shows Harper was not included nor a Party to Drive Line's, Energy Enterprises, and Estes Contract and in fact Harper was an employee, as even in Drive Line's brief fails to bring forth any evidence that ties and captures Harper, and make him a Party to Estes contract with Drive Line, as stated: "Drive Line had an agreement with Estes" It also shows Harper, in fact was not compensated per Drive Line and Estes contract nor bound by their limited route miles of 1,626 miles pay.

The fact that Drive Line claims that Harper agreed to be paid based upon a "fixed" amount of mileage and a "task" is unequivocally incorrect. Harper never agreed to a fixed amount of miles, he did agree to be paid per mile, but never a "fixed", "set", nor "task" amount. Harper did understand this to be a route from Salt Lake City, Utah to Toledo, Ohio. It is unreasonable and unjustifiable to have an employee agree to working 200- 300 miles a week and 4 to 7 hours for free. What employee would reasonably and justifiably agree to that? It is unreasonable that an experienced driver would agree to a fixed amount of miles, as a driver would be aware there would be detours, tolls, construction, storm diversions, road closures, dispatching issues and different loads assigned from different locations that route a driver to new locations and states. Drive Line has essentially created three different arguments regarding fixed miles and fixed route and task:

1. Drive Line argues that Harper agreed to a “fixed” amount of miles of 1,626 miles. This by their argument Harper agreed to $1,626 \times .36 = \$ 585.36$ “fixed” amount. This by an hourly amount is equal to \$9.75 an hour; 60 hours times \$ 9.75 = \$ 585.

2. Drive Line argues that Harper agreed to a fixed route, from Salt Lake City, Utah to Toledo Ohio. Harper was in fact aware that the route was from these 2 locations, but as the evidence shows he was not aware of the “fixed miles” that Drive Line was limiting his income from the miles that he would work for Drive Line nor was he aware that he would be working for free on certain miles worked and driven for Drive Line and Energy Enterprises.

3. Drive Line now asserts, that Harper “is paid by the task, not the hour.” (Respondent’s brief, page 26-27) Drive Line has failed to show evidence to this claim, as Drive Line has argued that Harper was to be paid \$.36 per mile, this is not by nor measured by a task basis nor a fixed basis. It is understood that Harper was in fact driving from Salt Lake City, Utah to Toledo Ohio. Drive Line has failed to show that Harper is only to be paid \$585.36 for this “task”. What would be the point of arguing the miles or even the pay rate for those miles for Harper, if this was in fact a “task” or a “fixed” work project? This is not a “task” nor a “fixed” work project, as there are clearly miles per pay that Harper was working for and there is unequivocal evidence that Harper was not paid for his miles per pay work, either by miles nor hours driving from Salt Lake City, to Toledo. The District Court has not labeled Harpers income to be based on a “task” basis as follows: “fixed amount of mileage no matter the actual miles driven. This compensation was pursuant to a contract that Drive Line had with another company named Estes. The fixed mileage for the route from Salt Lake City, Utah, to Toledo, Ohio

was 1,626 trip miles." (Drive Lines brief ex. A page 2)

This is in fact incorrect as previously argued. Pursuant to Harper's addendum 3 (R. p. 1051 Resp. Ex. 5): shows that Harper traveled between 7/29/14 to 8/3/14 Harper traveled 6,790 miles, this divided by and split by 2 (2 drivers) is 3,395, during this period, Drive line only paid harper for 3,252. This leaves a difference of unpaid miles, of 143 miles on this specific trip that Drive Line required Harper to work for free. Pursuant to Greg Ostlers testimony and document he created, Drive Line has in fact failed to pay Harper on this specific trip of at least 102 miles as evidence unequivocally shows that Drive Line has failed and refused to pay.

Drive Line asserts that Harper has raised a new theory that was never raised in Court.

The Court considered all of the Parties evidence in the record and was properly before the Court on this issue. This is not a new theory, as Drive Line does not argue nor dispute that Harper was not paid for all the miles he worked for the them. Drive Line claims that because this was disclosed and "agreed" on that it is legal that they do not have to pay Harper for his work and drive time. Therefore, this is not a new theory that because an employer discloses that he will only be paid for a "fixed" amount of miles and as Drive Line is well aware that Harper will work above and beyond the "fixed" amount of miles that this is lawful, as their argument. The District Court has in fact reviewed Drive Lines claims that this was a "new theory" on their opposition to new trial. (R. 705-716, 857-865, 857-865) As stated many times on the record it is not disputed nor argued that Harper was required to work for several hours a week for free as required by Drive Line. Drive Line states because of a contract that they were paid by

and that Harper "he made on an Estes contract" that Harper is only to be paid for 1,626 miles regardless if he does 100 miles over this amount. The Court was aware of this, and has abused, and erred by denying Harper his appropriate pay as agreed, understood, testified, documented, meeting of the minds, and what was to be lawful.

There is no argument that Drive Line has not paid Harper for all the miles worked, Therefore the Court is aware of the fact, that Harper was to work several hours a week for free. Harper has testified to this also in the Parties Court trial as follows:

Harper: "I had no idea. If he stated, you know, you're going to work two extra hours going to Toledo, and I'm not going to pay you, I wouldn't have agreed to that." (R. p.

569) Therefore this is not a new theory as Drive Line Claims, also, Harper has argued this again in his motion for a new trial. The District Court has also stated:

"Having carefully reviewed the record and considered the arguments of Mr. Harper and counsel for respondents, the Court now issues the following order:" (R. p. 932)

The Court was well aware that Drive Line was not paying Harper for work performed by him and was aware of all the facts and issues before the Court and has erred by overlooking the evidence in the Parties case and abused discretion by allowing Drive Line to refuse to pay Harper his appropriate income, as worked.

Drive Line has asserted the entire Language of the Courts finding of facts 5 (a). (Drive Line's brief p. 22) Harper has only raised the issue of the Courts Language of: 5,a: as follows: "Drive Line and Mr. Harper agreed that Mr. Harper would be paid \$.36 per mile." (Appellant's brief p. 5)

The evidence shows that this in fact was not the agreed amount of pay per mile. Drive Line asserts that the payroll records demonstrated that Harper knew he was paid \$.36 per mile. Harper was aware of the payroll records that were \$.36 per mile and that he was only being paid 1,626 miles per trip. This does not prove that there was an agreement, but exactly the opposite, pursuant to Harper's texts to Greg Ostler; his termination, testimony, Brian Jenkins testimony, and filing with the Utah Labor Commission the wage dispute, shows in fact, there was no meeting of the minds nor an agreed upon amount of \$.36 per mile as Drive Line argues. Harper's text to Greg Ostler: "U stated that income would be .40 a mile." (R. p. 5051 Resp. ex 4)

Brian Jenkins testimony contradicts what Greg Ostler has testified that every starting employee starts at \$.36 regardless of experience (R. p. 608, 617) and when Brian was recently hired just after Harper has testified to being told he would be paid \$.42 to \$.44 cents per mile. (R. p. 492) The evidence in the record does in fact contradict the Claim of Drive Line's claim that Harper agreed and knew at the time of being hired he was to be paid \$.36 per mile nor knew on the fixed mileage of 1,626. As Drive Line shows evidence that Harper knew he was being paid. There is no dispute Harper knows what he was paid from Drive Line. Drive Line is attempting to show the difference from the time he was working for Drive Line from the time of the Court trial, as the same time and knowledge of the facts. The facts show that Harper unequivocally was unaware of the miles per pay and the fact that Drive Line was not going to pay him for all the miles he worked for Drive Line.

Drive Line has stated in their brief that there is "mountain of evidence supporting the route mileage disclosure" (Drive Line's brief, p.23-24)

Drive line's claim is clearly erroneous, and the Trial Court's findings are clearly erroneous on this claim and argument as the evidence shows the exact opposite and the evidence does in fact support Harpers wage claim. Drive Line's claim and evidence shows only part of testimonies and not the full and stated facts of testimonies in the Trial Courts hearing nor the correct line of questioning as Drive Line cites from the record 4 separate questions that are all related and are 4 pages in time length at trial, at different times, and also quote all of Harper's brief and arguments as follows:

Q.: "You knew, at the time that you were hired, that you would be paid on route mileage to Toledo. That's what they told you, right?"

Harper: "Correct"

This line of questioning and evidence does not support the Trial Courts findings of facts and is in fact contradictory to the Trial Courts findings. Harper was told he was going to be driving from Salt Lake City, Utah to Toledo, Ohio, this is not an argument. Drive Line again sites Harper's argument from his brief and evidence cited as follows: Q.: "And they told you those miles were 1,626 to Toledo, right?"

Harper: "Yes."

As Harper has already stated in his brief that this was the miles from Salt Lake City, Utah to Toledo, Ohio as straight miles. Harper has also stated that the term "they" as to specifically, state who stated this amount nor what time did they state the miles of 1,626 nor that Harper would be driving at least 100 miles above this amount without being paid, because Drive Line required Harper to go out of the direct routing from the two cities. Drive Line has failed to give the entire question out of their brief as the

question has other issues in Drive Line's line of questioning, the entire question is as follows: Q.: "Okay. So now let's go back to the next page, when you said, "I need to be paid on actual traveled miles." In that text, the one that has the 40 cents in there. You knew, at the time that you were hired, that you would be paid on route mileage to Toledo. That's what they told you, right?"

Harper: "Yes."

This in fact shows 2 things, that Harper was to be paid \$.40 cents per mile and that Harper was to be paid to drive to Toledo. The Question does not state any mileage nor that route mileage to Drive Line meant Harper would work 100 miles and several hours for free for Drive Line and Harper and Drive Line proves this fact with Drive Lines next line of question in their brief as follows: Q.: "They never told you "were going to pay you for your actual miles... traveled on those routes, right?"

Harper: "No, they never stated that I was going to doing 100 extra miles."

Drive Line is attempting to show that Harper was aware of all the miles he was to be paid for is 1,626, as in "actual miles". Drive Line has failed to show that Harper was not going to get paid for nor knew he was to work for free for several hours. Truck drivers do not ever get paid on "fixed" or "task" miles as an employee. If truck drivers were to be paid on "task" jobs, pursuant to contracts with other companies, that would most likely guarantee that drivers would work several hours for free as the Trial Court was aware of this fact as in Harper's and Drive Lines case, that Harper was working for several hours a trip for free for Drive Line.

Drive Line cites as follows: Q.: "what I asked you is, you knew you going to be paid on a

fixed route, correct?"

Harper: "Correct." (Drive Lines brief, p. 24)

Drive Line has failed to show all the lines of questioning and even in this question Drive Line has eliminated the majority of this question, Drive Line has selectively eliminated around this self serving question and fails to accurately show what Harper was really answering to, this particular question is involved with approximately 11 questions and answers that Drive Line has selectively left out of their brief as the true and correct answers are as follows: Q.: "Right. So because you were dissatisfied with your pay, you said I want to renegotiate what I'm being paid, right?"

Harper: "Well, I wanted them to do it correctly, as I had the contract with them."

Q.: "Okay."

Harper: "As I was aware that they were not paying me, not only for the miles I was driving, properly, but for additional miles they totally excluded."

Q.: "Right, but you knew they were excluding those miles at the time they hired you?"

Harper: "No."

Q.: "You knew there was a route, that you were paid on a route, right? At 1,626 miles."

Harper: "I didn't know the actual miles."

Q.: "So your complaint is only that you didn't know it was going to be 100 miles extra?"

Harper: "I had no idea. If he stated, you know, you're going to work two extra hours going to Toledo, and I'm not going to pay you, I wouldn't have agreed to that."

Q.: "Well, he paid you according to the route, correct? And you knew that."

Harper: "Yeah, I had figured that they would pay me from Salt Lake to Toledo. It's a pretty straight run."

Q.: "Okay, and that's what they promised to. We will pay you according to the route miles, not the actual miles. You knew that."

Harper: "Say that again."

Q.: "They'll pay you according to the route miles not the actual miles."

Harper: "No, I was never aware that they were going to pay me, that they were going to route me 1,726 versus 1,626 miles."

Q.: "Okay, that's a different—"

Harper: "They never informed me."

Q.: "You must have misunderstood my question again, because that's not what I asked you. What I asked you is, you knew you were going to be paid on a fixed route, Correct?"

Harper: "Correct." (R. p. 569-570, Appellants brief, 23-24 and Appellee's Brief 24)

This in fact shows Harper was not in agreement to do the 1626 "route miles" nor was aware that Drive Line was not going to pay him for the miles he would work. Drive Line's Counsel shows here that Harper misunderstood his question and rephrased it to a simple question of "you knew you were going to paid on a fixed route". As Harper has already outlined in his brief and testimony, that he knew the route was between Salt Lake and Toledo. As far as Harper knowing that Drive Line would require him to not do the shortest and quickest route to Toledo, of 1,626 miles, Harper was not in fact aware of this nor aware that he was not to be paid for several hours of work for Drive Line. Based on all the evidence; there is no reasonable fact finder that the District Court was correct on it's finding of facts, that bound Harper to Estes contract. There was no contract between Harper and Estes nor was he bound by Drive Line's contract with

Estes. Harper was in fact a paid by the mile employee. Evidence in fact shows Harper was not paid for 1,677 miles, as Greg Ostler testified that Harper was paid nor Harper's proper pay per mile cents of \$.42c.

Based on the foregoing, this Court should remand the case to a new trial, from the District Court's errored findings of ¶ 5(a), 5(b), 6, 35, and 38(a).

Harper has addressed every fact that Drive Line claims there is part of the "mountain of evidence" supporting Drive Lines claims. Harper has shown that on every issue the District Courts findings is erroneous and in fact contradictory to it's findings. Harper and this Court should not be expected to determine what else is in their "mountain of evidence".

Harper's rebuttal to Drive Line's argument 3 (bad faith argument):

Drive Line asserts that Harper acted in bad faith, Drive Line states that Harper's argument exclusively deals with the District Court's finding that Harper called Ms. Martino and asked "what she was willing to pay". Drive Line's claim that Harper's only argument to this is the creditability of Harper vs. Ms. Martino's testimonies, is in fact incorrect. Harper has also argued that even if the District Court's finding that Harper made this call and statement, this still does not prove that Harper took unconscionable advantage of Drive Line (Harpers brief p. 36-38)

The Courts finding is clearly erroneous in finding Harper took unconscionable advantage of Drive line as follows:

Drive Line has provided in their brief the Courts findings as follows: 39c; "demanding a payment from Kim Martino to make the wage claim "go away" (Drive Line's brief appendix A p. 13, addendum D) The District Court has abused its discretion and erroneously placed this in the Findings of fact, conclusion of law and order by changing Ms. Martino's statement of "willing" to "demanding". The District Court has inappropriately changed a passive word and statement, to a compelling and exigent statement. Even as the claim of Ms. Martino's statement of willing to pay statement does not show Harper took unconscionable advantage of Drive Line nor Ms. Martino. As the District Court has found and stated as follows: 11.: "Mr. Harper never made a claim that he was owed any money during the time that he was employed by Drive Line." 12.: "During the time that Drive Line employed Mr. Harper, neither Ms. Martino nor Mr. Ostler received any demand for additional payment from Mr. Harper." 13.: "Mr. Harper presented no evidence that he ever made a demand to anyone at Drive Line for wages owed but not paid during his employment tenure". (Drive Line's brief appendix A. p. 4)

The District Court has clearly erred and abused its discretion by showing that Harper must "demand" wages owed and do it so during his time of employment. The Law does not require Harper to "demand" payment during the time he is employed. Does the Law prevent Harper from seeking unpaid wages after he is no longer employed by his employer? If the District Court would find it acceptable to "demand" payment during employment, then why would the District Court find Harper's "demand" for payment after his employment to find it would take unconscionable advantage of Drive Line?

The Court is also clearly erroneous by the claim that Harper never “demanded” payment while employed, when in fact Harper did inform Drive Line of incorrect payment while employed as his texts show evidence of this fact as follows: “I need to be paid on actual traveled miles. 1716 a trip.” (R. p. 1051 Resp. ex. 4 and Drive Line’s brief, appendix A. p. 6) This evidence is in fact contradictory to the Trial Courts findings.

Drive Line has placed in their brief page 10.: “The Wage Claim included the following false statements”: 1. Mr. Harper’s employer was Energy Enterprises.

2. Mr. Harper started employment of April 5, 2014.
3. The “First Date of Owed Wages” was May 14, 2014.
4. Mr. Harper did not quit.
5. Mr. Harper was Paid \$22.75 per hour.
6. Mr. Harper had not been paid for 35 hours of work.

Harper signed this by electronic signature to this document from his wage claim as is true to the best of my knowledge. Drive Lines claims that the wage claim is false is not correct, for the following reasons: 1. Harper thought his employer at the time was in fact Energy Enterprises as the trucks he drove were labeled Energy Enterprises and his work sheets were also labeled Energy Enterprises. (R. p. 1051 Resp. exhibit 5)

1. At the time Harper filled the wage claim out he thought to the best of his knowledge that he started in April as Drive Line’s earnings sheet starts at “01/01/2014”. (R. p. 1051 Resp. exhibit 5)

3. Harper was stating the wages owed from the this, at the time from the best of knowledge of the time.

4. Harper never stated he quit to Greg Ostler nor Kim Martino nor Steve Archibald.

5. Utah labor Commissions wage claim online did not allow Harper to file as a per mile basis on its web page form, as Harper testified in Court. It is reasonable to know Harper was making \$22.75 an hour as Harper had to figure on Utah Labor Commissions web page an hourly basis, as the only method it would allow Harper. Even if you take Drive Line's claim that Harper is to only make \$.36 a mile, it is safe to figure that at rate Harper was in fact making \$22.75 or more an hour as follows: 63.3 miles an hour at Drive Line's claim Harper is only paid \$.36 per mile= \$22.78 an hour. As many of Energy Enterprises trucks traveled between 72 and 80 miles an hour and the many of the state laws allow trucks to travel 80 miles. It is reasonable that Harper was making \$22.75 an hour.

6. Drive Line does not argue or dispute that Harper was required to work for several hours a trip for free. It is in fact reasonable to figure that Harper was working 1,300 miles for free for Drive Line. Many of the free miles came from diverting off from interstates and onto rural roads, heavy congested, and construction areas in Illinois and Michigan as Harper testified to. It is reasonable to say that in that time and in those states that Harper accumulated 35 hours of non-paid hours by Drive Line, as Drive Line required and prescribed the routes, roads, and states to drive in and through. Court has determined that Harper's case is baseless, meritless, unconscionable, and defrauding of Drive line, this is unequivocally erroneous by the Court as the evidence shows on every issue that the Court has the incorrect facts and the evidence shows on every issue that the evidence is in fact contradictory to the District Courts findings

regarding Harper's wage claim and does in fact have merit and shows Drive Line does in fact owe Harper for unpaid wages.

A reasonable fact finder could and should have found in Harper's favor.

The District Court has erroneously cited Harper's case and claim has no merit. The District Court has overlooked Harper's argument, evidence, and testimonies that Drive Line has failed to pay Harper for work performed as outlined in his arguments and evidence. Harper is still owed income from Drive Line for his completed trips to Toledo, at least 51 miles each way on each trip as documents, Greg Ostler's testimony, and Harper's testimony shows.

The District Court has cited in the Parties case: "the party intended to take unconscionable advantage of others", the District Court supported this with one claim that Ms. Martino claimed Harper called her and asked what she was willing to pay to make this go away, Harper has testified and filed an affidavit, under penalty of perjury that he did not make this call nor stated the above claim. The District Court has no reasonable reason, to not believe Harpers testimony and documented evidence, the District Court was erroneous by making this claim. Had the District Court believed Harper's testimony, and affidavit, (under penalty of perjury) the District Court would not found Harper made this statement nor found that Harper took unconscionable advantage of Drive Line by making this statement. It is reasonable to find that even if Harper did make the statement of "willing to go away" that this statement does not in fact show Harper took unconscionable advantage.

The District Court has cited in the Parties case: “the party intended to or acted with knowledge that the activities in question would hinder, delay, or defraud others”. Again the evidence and testimonies are opposite of the District Courts findings on this claim. The District Court has cited: “Mr. Harper’s claim had no basis in law. The District Court is erroneous in this finding, as Harper’s claim was a wage claim: that Drive Line refused to pay Harper for several hours of work performed for the benefit of Drive Line. This is in fact supported by law and does in fact have merit. There is no argument nor dispute that Drive line has refused to pay Harper for all the hours that Drive Line required him to work. This is in fact a violation of Utah Administrative Code R610-1-2(B). (34-40-102) The Trial Courts interpretation of Laws regarding “task”, and “fixed” regarding Harper’s method of pay and laws that protect Harper from inappropriate behavior are clearly erroneous.

Harper’s rebuttal to Drive Line’s argument 4 (discovery):

Drive Line has inappropriately made the following claim regarding Harper’s requests for trip envelopes: “Mr. Harper had complete copies of those items since the Wage Claim hearing as they were exhibits in the hearing. (R. at 1051, Resp. Ex. 5.)”. This is in fact completely incorrect. Nowhere in the record is there one single trip envelope. Drive Line’s Counsel statement of “complete copies” is misleading and inappropriate. Drive Line’s Counsel does know better than to state this in Drive Line’s brief, as he is an experienced labor attorney and is currently representing 2 trucking industry companies (Drive Line and Energy Enterprises).

Drive Line has stated that Drive Line had objected to Harper’s motion to compel. (Drive

Lines brief p. 32) Drive Line has conveniently failed to show that on Aug. 23rd 2016 UALD objected to Harper's request for documents on that day. Also, the District Court has failed to file this objection and therefore it is completely unknown what was specifically, Respondents objected to at this time as Harper has been attempting to receive documents needed and relevant to this case as early as Feb. 24th 2015, and UALD, Drive Line, and Energy Enterprises have all been denying Harper his requests for Documents since this time. UALD has a conflict of interest as they are the ones that originally decided the wage claim and are the ones that originally blocked Harper from receiving Harpers time cards. Harper then filed his motion to compel on the same day of the Respondent's objection to Harper's request for documents. Drive Line and UALD objected to Harper's motion to compel as to where the District Court did in fact file these documents. The Trial Court's refusal of discovery is clearly erroneous and the Trial Courts arguments are moot, and Drive Lines claims that the requests are interrogatories are also clearly incorrect.

Harper's rebuttal to Drive Line's argument 5 (motion for new trial):

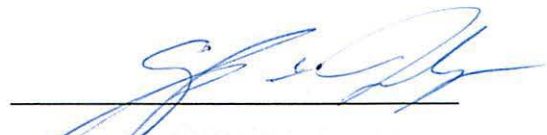
Drive Line claims that Harper does not argue nor attempt to show that the evidence was so slight or unconvincing as to make the trial court's decision to deny his motion for new trial plainly unreasonable and unjust. Drive Lines claim is incorrect as Harper did in fact point out many facts that did not support the trial courts finding and is also clearly erroneous, and contradictory to the court's findings as in argued in Harper's

motion for new trial and reply for new trial and in Harper's brief showing that Drive Line failed to pay Harper pursuant to his employment with Drive Line via: Harper's testimony, Greg Ostlers testimony and documents as outlined and forgoing.

Conclusion:

The Utah Court of Appeals does have authority and jurisdiction. Based on the facts and the evidence the Trial Courts findings are clearly erroneous. Therefore, I respectfully request that the Utah Court of Appeals vacate the Trial Courts Orders and Attorneys fees and deny Drive Line's request for Attorney's fees and reverse the Trial Courts Orders based on the facts and evidence and or Remand the Case for a new trial.

Dated on this 22nd day of October 2018.



Bruce Harper, *Appellant, Pro Se*

Certificate of Compliance:

I hereby certify that this brief, submitted under Utah Rule of Appellate Procedure 24(b)(5), complies with the word limits set forth in Rule 24(g) and that the brief does not contain any private information in accordance with Rule 21(g). According to the word processor used to create this brief, this brief contains less than 7,000 words, 6,996 words (the body of the brief, excluding table of contents, table of authorities, certifications, and Addendums).

Dated on this 22nd day of October 2018.



Bruce Harper, *Appellant, Pro Se*

Certificate of Service:

I hereby certify that I have mailed, first class, postage prepaid, a true and correct copy of the Appellant's Reply Brief on this 22nd day of October 2018 to the following:

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Attorney for Appellees
(Drive Line and Energy Enterprises)



Bruce Harper, *Appellant, Pro Se*

Addendum A and B

Harpers memorialization of trip from Salt Lake City to Toledo Ohio.

And B

Drive Lines pay sheet from Harper's memorialization of trip from Salt Lake City to Toledo Ohio.

DRIVE LINE BI-WEEKLY PAYROLL SUMMARY SHEET

DRIVERS: PLEASE INDICATE: DALLAS - TOLEDO - OR TOTAL MILES OR HOURS IF APPLICABLE.
COMPLETED SUMMARY SHEET MUST ACCOMPANY LAST TRIP PACKET FOR THE PAY PERIOD.

EMPLOYEE NAME

Bruce Harper

PAY PERIOD

7/28 - 8/10

DATE START	DATE END	DAL	TOL	OR MILES PER TRIP	DESCRIPTION OF TRIP: ORIGIN, DESTINATION, PICKS, DROPS, ETC.	HOURS
<i>7/29/14</i>	<i>7/31/14</i>		<i>X</i>	<i>3431</i>	<i>SLE. to Toledo to SLE.</i>	<i>60</i>
<i>8/1/14</i>	<i>8/3/14</i>		<i>X</i>	<i>3359</i>	<i>3359</i>	<i>60</i>

RCN DATE: 07/31/2014
TIME: 10:33:52

DRIVE LINE, LLC
EMPLOYEE PAY SHEET: ALL ENTRIES

PAGE 1
PR27A

HARBRU BRUCE HARPER
5308 CYGNUS HILL COVE

WEST JORDAN UT 84081+

** PAY **

DATE	TRIP #	ORIGIN	ST	DESTINATION	ST	PAY TYPE	RATE TYPE	RATE	UNITS	AMOUNT
07/14/14	DL-009003-02					REGULAR	F OPER BONUS	.0200	621.00	12.42
07/14/14	DL-009003-01					REGULAR	F OPER BONUS	.0200	621.00	12.42
07/15/14	-	-00				REGULAR	H	17.0000	3.00	51.00
07/16/14	DL-009105-01					REGULAR	M REGULAR	.2700	621.00	167.67
07/16/14	DL-009105-01					PER DIEM	M PERDIEM	.0900	621.00	55.89
07/17/14	DL-009105-02					REGULAR	M REGULAR	.2700	621.00	167.67
07/17/14	DL-009105-02					PER DIEM	M PERDIEM	.0900	621.00	55.89
07/18/14	DL-009106-01					REGULAR	M REGULAR	.2700	621.00	167.67
07/18/14	DL-009106-01					PER DIEM	M PERDIEM	.0900	621.00	55.89
07/19/14	DL-009106-02					REGULAR	M REGULAR	.2700	621.00	167.67
07/19/14	DL-009106-02					PER DIEM	M PERDIEM	.0900	621.00	55.89
07/19/14	DL-009111-01					REGULAR	M REGULAR	.2700	813.00	219.51
07/19/14	DL-009111-01					PER DIEM	M PERDIEM	.0900	813.00	73.17
07/20/14	DL-009111-02					REGULAR	M REGULAR	.2700	813.00	219.51
07/20/14	DL-009111-02					PER DIEM	M PERDIEM	.0900	813.00	73.17

* PAY SUMMARY						REGULAR	H	17.0000	3.00	51.00
* PAY SUMMARY						PER DIEM	M	.0900	4110.00	369.90
* PAY SUMMARY						REGULAR	M	.2700	4110.00	1109.70
* PAY SUMMARY						REGULAR	O	.0200	1242.00	24.84

** TOTAL PAY

1555.44

ENERGY000025

Addendum C and D

Drive Line's pay sheet that Greg Ostler created for Utah Labor
Commission

And D

Ms. Martino's phone call notes

All Miles listed below are based on 1/2 of the miles from SLC, UT Estes yard to Toledo, OH Estes yard and back. This is a team run & mileage is between the 2 drivers of the team in the truck.

Mileage (one Way) from SLC Estes Yard to Toledo, OH Estes Yard with no diversions and traveling on the toll roads (via Google Maps)	1620
Mileage (1 way) from SLC Estes Yard to Toledo, OH Estes Yard w/both deviations to avoid the Toll roads in applicable states (Via Google Maps)	1677
Mileage (1 way) paid for Run (before incentives) as set by Estes/JJT	1625
Difference between drive/paid	52
Times the Runs Driven	13
Times current base wage of .36	\$0.36
Equals the total amount of "claimed unpaid miles driven"	\$243.36
 "Op Bonus/Incentive" which includes driving the prescribed route as mapped out for drivers using Google maps to avoid tolls came to	 \$252.58
 This equates to pay above and beyond the actual miles driven equal to	 \$9.22

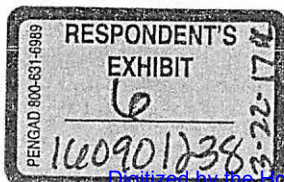
It is by these calculations that determines Bruce Harper has been paid slightly above what the "actual miles driven" would have been even though we pay by the miles established for the run by Estes/JJT

November 6, 2014

Conversation with Bruce Harper today. He stated that he had not been paid for the "extra miles" for the Toledo, loads. He had spoken with the Labor Commission.

I reminded him that he knew the set rates when he hired on. All payroll detail is mailed to the employees on a bi-weekly basis (to accompany ACH payment).

kim



ENERGY000034