



**Issue Date: 11 February 2014**

**Case Number: 2013-FLS-00009**

*In the Matter of:*

**TEXAS ROADHOUSE MANAGEMENT CORP.,**

*Respondent*

**ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY  
DECISION AND DENYING RESPONDENT'S MOTION FOR SUMMARY  
DECISION**

This case arises under section 16(e) of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. § 216(e), and the regulations at 29 C.F.R. Parts 578 and 580. Before me are Cross Motions for Summary Decision filed by Complainant Office of the Secretary of Labor, U.S. Department of Labor ("Complainant") and Respondent Texas Roadhouse Management Corp. ("Respondent" or "Texas Roadhouse"). After reviewing the Cross Motions for Summary Decision, as well as the briefs in support thereof, Complainant's Motion for Summary Decision is Granted and Respondent's Motion for Summary Decision is Denied.

**I. FINDINGS OF FACT**

The parties have stipulated to the material facts in this case in lieu of an evidentiary hearing. The undisputed material facts in this case are:

1. Texas Roadhouse is a Kentucky corporation with its principal place of business in Louisville, Kentucky. Joint Stipulation of Facts ("JSF") ¶ 1.
2. Texas Roadhouse owns and operates more than 400 casual dining restaurants throughout the United States, including restaurants in Hickory, North Carolina and Bangor, Maine. JSF ¶ 2.
3. Texas Roadhouse and its employees are covered by the FLSA. JSF ¶ 3-5.
4. Each Texas Roadhouse restaurant is operated by a Managing Partner. Each Managing Partner reports to a Market Partner who oversees the operations of several restaurants. Respondent currently employs over 50 Market Partners. JSF ¶ 6.

5. In late 2011 and early 2012, the Wage and Hour Division (“WHD”), U.S. Department of Labor, investigated the Texas Roadhouse restaurant in Hickory, North Carolina (hereinafter referred to as the “Hickory restaurant”). JSF ¶ 7.
6. The Hickory restaurant did not have a prior history of FLSA violations. JSF ¶ 8.
7. The Hickory restaurant’s Managing Partner was Ralph Hatch (“Hatch”), and Greg Beckel (“Beckel”) was its Market Partner. JSF ¶ 9.
8. WHD determined that 12 head waitresses (“headwaits”) working at the Hickory restaurant were improperly paid a \$2.13 per hour tip credit wage for performing administrative work at the end of their shifts between the dates of January 26, 2010 to January 24, 2012. JSF ¶ 10.
9. Specifically, the headwaits collected sales reports and calculated each server’s tip-share responsibility at the end of their shifts. JSF ¶ 10.
10. WHD determined that the headwaits had no ability to receive tips while performing this administrative work and therefore should have been paid the minimum wage of \$7.25 per hour. JSF ¶ 10.
11. WHD determined that the 12 headwaits were underpaid \$4,424.12. JSF ¶ 10.
12. WHD also found that one employee at the Hickory restaurant (a meatcutter) received production bonuses, but that the bonus payments were not properly factored into the employee’s overtime compensation, resulting in an underpayment of \$631.80. JSF ¶ 11.
13. As a result of these two failures to properly calculate and pay minimum wage and overtime (collectively referred to as the “Hickory violations”), WHD concluded that the Texas Roadhouse violated sections 6 and 7 of the FLSA, and determined that Texas Roadhouse owed a total of \$5,055.92 in back wages to 13 employees. JSF ¶ 12.
14. At a final conference with WHD on January 26, 2012, Hatch and Beckel agreed to pay the full amount of the underpayments back to the 13 employees, and agreed that Texas Roadhouse would comply with all applicable provisions of the FLSA. JSF ¶ 13.
15. Vicki Elder, Texas Roadhouse’s Senior Payroll Manager, signed form WH-56 on February 14, 2012. JSF ¶ 14.
16. WHD did not assess any civil money penalties against Texas Roadhouse for the Hickory violations because WHD did not designate the violations as repeated. JSF ¶ 15.
17. WHD’s Manchester, New Hampshire Area Office investigated the Texas Roadhouse restaurant in Bangor, Maine in early 2012 (hereinafter referred to as the “Bangor restaurant”). JSF ¶ 16.

18. The Bangor restaurant did not have a prior history of FLSA violations. JSF ¶ 17.
19. The Bangor restaurant's Managing Partner was John Hafford ("Hafford"), and Brian Kendall ("Kendall") was its Market Partner. JSF ¶ 18.
20. WHD found that 33 employees were clocking-out for short (20 minutes or less) rest/smoke breaks, and therefore were not being paid for the time on their rest/smoke breaks. JSF ¶ 19.
21. WHD determined that the time spent on these breaks should have been included in hours worked, and that the employees should have been paid for the time while on these rest/smoke breaks (referred to hereinafter as the "Bangor violation"). JSF ¶ 19.
22. WHD determined that the Bangor restaurant violated sections 6, 7, and 11 of the FLSA, and owed a total of \$3,820.21 in back wages to the 33 employees. JSF ¶ 19.
23. At a final conference with WHD on July 9, 2012, Texas Roadhouse's Senior Director of Risk and Administration Patrick Sterling ("Sterling") agreed to comply with the FLSA in the future. JSF ¶ 20.
24. Texas Roadhouse paid back wages to the 33 employees at the Bangor restaurant in August 2012. JSF ¶ 20.
25. As a result of the Bangor violation, WHD notified Texas Roadhouse by letter on December 5, 2012 of its assessment of a civil money penalty pursuant to section 16(e) of the FLSA. JSF ¶ 21.
26. WHD's December 5, 2012 letter to Texas Roadhouse referred to the "previous violations" identified by WHD at the Hickory restaurant. JSF ¶ 21.
27. Texas Roadhouse timely served notice of exception to the assessment of the civil money penalty. JSF ¶ 22.
28. By letter dated May 29, 2013, WHD rescinded and replaced the civil money penalty it assessed in its December 5, 2012 letter. WHD's May 29, 2013 letter assessed a civil money penalty in the amount of \$880.00. JSF ¶ 23.
29. WHD's May 29, 2013 letter again notified Texas Roadhouse of the assessment of a civil money penalty pursuant to section 16(e) of the FLSA related to the Bangor violation, and again referred to the "previous violations" identified by WHD at the Hickory restaurant. JSF ¶ 23.
30. By letter of June 10, 2013, Texas Roadhouse timely served notice of exception to the civil money penalty. The letter preserved Respondent's exception to any determination that the Bangor violation constituted either a willful or repeated violation of the FLSA, and also preserved Respondent's exception to the amount assessed. JSF ¶ 24.

31. On July 16, 2013, Complainant filed an Order of Reference with this Office. Complainant stated therein that Respondent timely appealed, and that the “matter was submitted for a final determination regarding the entry of the assessment and the amount of the penalty, as provided by 29 CFR Parts 578 and 580.”

32. This case was duly docketed, and I issued a Notice of Docketing on July 18, 2013. Therein, I ordered the parties to file and exchange certain pre-hearing information.

33. On October 22, 2013, Respondent filed a Motion for Extension of Time to File Prehearing Exchange and to Submit Motion for Summary Decision. Respondent stated that the parties intended to stipulate to all of the facts in this case. Moreover, the parties intended to forego a formal hearing in this matter and dispose of this matter via summary decision because only issues of law would remain for decision.

34. On October 22, 2013, I issued an Order Granting Motion to Extend Deadline to File Prehearing Exchanges, wherein I granted the parties’ request for an extension.

35. Respondent filed its Motion for Summary Decision (“RMSD”) on November 22, 2013. The only issue in dispute in Respondent’s Motion was whether Respondent engaged in “repeated” violations of the FLSA. RMSD 6; *see* 29 U.S.C. § 216(e)(2).

36. Complainant filed its Cross Motion for Summary Decision, Opposition to Respondent’s Motion for Summary Decision, and Memorandum in Support (“CMSD”) on February 3, 2014.<sup>1</sup> Complainant’s Motion showed that Complainant agreed that the only issue in dispute was whether Respondent engaged in “repeated” violations of the FLSA. CMSD 1.

37. Respondent filed an Opposition to Complainant’s Cross Motion for Summary Decision (“ROMSD”) on February 10, 2014.

## **II. STANDARD OF REVIEW**

Applicable regulations provide that an Administrative Law Judge (“ALJ”) “may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision.” 29 C.F.R. § 18.40(d). The opposing party “may not rest upon the mere allegations or denials of such pleading. . . . [but] must set forth specific facts showing that there is a genuine issue of fact for the hearing.” 29 C.F.R. § 18.40(c).

Section 18.40 is modeled on Rule 56 of the Federal Rules of Civil Procedure, pursuant to which “the judge does not weigh the evidence or determine the truth of the matter asserted, but only determines whether there is a genuine issue for trial” by viewing “all the evidence and factual inferences in the light most favorable to the non-moving party.” *Stauffer v. Wal-Mart Stores, Inc.*, USDOL/OALJ Reporter (HTML), ARB No. 99-107, ALJ No. 99-STA-21 at 6

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<sup>1</sup> Complainant submitted with its Motion a motion to file its brief electronically. Complainant’s motion to file electronically is granted.

(ARB Nov. 30, 1999) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1985)). In this case, however, the parties stipulate as to all of the facts and the only issue remaining is one of law. Summary decision is therefore appropriate. See *Sheline v. Dunn & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991) (when germane facts are not in dispute and the only matter for resolution is a pure legal question then summary judgment is appropriate); *Sherwood v. Washington Post*, 871 F.2d 1144, n. 4 (D.C. Cir. 1989) (cross motions for summary judgment may sometimes be treated as a mutual request for trial on a stipulated record) (internal citations omitted).

### III. CONCLUSIONS OF LAW

#### A. Law

As stated above, the only issue in dispute is whether Respondent engaged in “repeated” violations of the FLSA. Section 16(e)(2) of the FLSA states that “Any person who *repeatedly* or willfully violates section 206 or 207 of this title, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.” 29 U.S.C. § 216(e)(2) (emphasis added). Section 206 of the FLSA covers the minimum wage requirements, and section 207 covers the maximum hours or overtime wage requirements. See 29 U.S.C. §§ 206, 207.

The Secretary of Labor promulgated regulations defining “repeatedly” for purposes of the FLSA at 29 C.F.R. § 578.3(b). It states:

Repeated violations. An employer’s violation of section 6 or 7 of the Act shall be deemed to be “repeated” for purposes of this section:

- (1) Where the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or
- (2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

29 C.F.R. § 578.3(b).

## B. Discussion

### 1. Statutory and Regulatory Text.

#### a. Plain Meaning

Complainant's primary argument is that the texts of the statute and regulation are clear: if an employer has previously violated sections 6 or 7 of the FLSA, then it may be subject to a civil money penalty. CMSD 6. As Texas Roadhouse previously violated sections 6 and 7 at its Hickory restaurant, it was lawful to impose a civil money penalty when Texas Roadhouse again violated section 6 and 7 of the FLSA at its Bangor restaurant. *Ibid.*

Respondent argues that the meaning of "repeatedly" or "repeated" is in need of clarification. RMSD 7. Respondent argues that their meaning is clarified by looking to WHD's responses to the comments to its Notice of Proposed Rulemaking ("NPRM"), which was published in its Final Rule at 57 Fed. Reg. 49,128 (Oct. 29, 1992). Therein, WHD published final regulations implementing the civil money penalty provisions at 29 C.F.R. § 578. Several of the comments to the NPRM urged WHD to "change" section 578.3(b) "so that only an identical minimum wage or overtime violation be considered a 'repeated' violation, and that the statute should not be read to allow the finding of a repeated violation on the basis of a previous violation of either the minimum wage or overtime provisions." 57 Fed. Reg. 49,128 (Oct. 29, 1992). WHD declined to accept the commenters' request stating:

The legislative history of this provision provides that 'granting the Secretary the authority to assess fines for flagrant violations will act as a deterrent to potential violators' (House Report No. 101-260, September 26, 1989, p. 25, reprinted in (1989) U.S. Code Cong. & Ad. News 713). That purpose is best served by the proposed definition of 'repeated.' For example, it is the experience of the Wage and Hour Division that the *same or similar practices or conduct* of an employer can produce a violation of either or both minimum wage and overtime provisions. An employer who improperly fails to count as working time certain preliminary or concluding work activities can violate either the minimum wage and overtime provisions of the Act or both (depending on the employee's rate of pay and whether the unrecorded working time, when added to the paid time, exceeds 40 hours in the workweek). An employer who improperly asserts exempt status under FLSA's executive, administrative, or professional employee exemption (FLSA section 13(a)(1) and Regulations, 29 CFR part 541) for an employee paid a weekly salary of \$200 who works 50 hours each week would likewise violate both the minimum wage and overtime provisions. An employer should not escape liability when *the same proscribed conduct* is done a second time.

*Ibid.* (emphasis added). Respondent argues that the Hickory and Bangor violations were not at all *similar*. RMSD 10; ROMSD 7. The Hickory violations involved "the payment of a tip credit wage for the performance of administrative duties, and the failure to include a bonus in the overtime pay calculation." RMSD 10. The Bangor violation however "involved the failure to record and pay for 'hours worked' associated with short smoke/rest breaks." *Ibid.* "On top of

that, the issues arose under two entirely different management teams at two different restaurants separated by over 1,000 miles.” ROMSD 7. Thus, Respondent did not engage in “repeated” violations of the FLSA and there is no basis for WHD to assess a civil money penalty against it. RMSD 10; ROMSD 7.

Neither section 16(e)(2) of the FLSA nor section 578.3(b) of the implementing regulations limit the imposition of a civil money penalty to instances where a subsequent violation of sections 206 or 207 is the “same or similar.” The first step to determine a statute’s meaning is to look at whether the statute is clear. *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). If a statute is plain and unambiguous, then the inquiry ceases and a court must give effect to the statute’s literal interpretation. *Ibid*; *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002).

Section 16(e)(2) states that any employer who “repeatedly” violates “sections 206 or 207” shall be subject to a civil money penalty. 29 U.S.C. § 216(e)(2). It does not in any way limit the imposition of a civil money penalty to a subsequent violation of section 206 or 207 involving the same or similar conduct. In this case, Respondent violated sections 6 and 7 at its Hickory restaurant, and then violated sections 6, 7, and 11 at its Bangor restaurant. JSF ¶ 12, 19. It is clear from the plain prohibition of the statute that Respondent thus engaged in a “repeated” violation of sections 6 and 7.

Section 578.3(b), 29 C.F.R., the implementing regulation for FLSA’s section 16(e)(2), is even clearer. It states that an “employer’s violation of section 6 or section 7 of the Act shall be deemed to be ‘repeated’ for purposes of this section . . . [w]here the employer has previously violated section 6 or 7 of the Act . . .”<sup>2</sup> 29 C.F.R. § 578.3(b). Put another way, an employer is subject to a civil money penalty if it has previously violated section 6 or 7 and then violates section 6 or 7 again. The regulation does not require that the subsequent violation be the same or similar to previous violation. Again, it is undisputed that Respondent violated sections 6 and 7 at its Hickory and Bangor restaurants. Therefore, Respondent committed a “repeated” violation according to 29 C.F.R. § 578.3(b).

Respondent further argues that “repeated” connotes “similarity.” ROMSD 6. Respondent notes that the dictionary definition of “repeated” means “to express or present (oneself) again in the *same* word, terms, or form.” *Ibid*. (emphasis in original). It therefore asserts that “the term ‘repeated’ must be construed to require similarity in the violations to warrant imposition of a civil money penalty.” *Ibid*.

Respondent, however, again ignores the fact that the Secretary has specifically defined the meaning of “repeated” by regulation. Respondent is correct that “repeat” means “to express or present (oneself) *again* in the same word, terms, or form.” WEBSTER’S NEW COLLEGIATE DICTIONARY 973 (1979). It can also mean “to make, do, or perform *again*.” *Ibid*. Respondent is correct then that there is similarity, but only to the extent that *something* has to occur *again*. Here, the Secretary has specifically defined *what* has to occur *again*: a violation of section 6 or 7. It would be improper to go beyond the plain text of the regulation and impute another layer of

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<sup>2</sup> I note that the regulation goes on to require that the employer had notice of the previous violation. 29 C.F.R. § 578.3(b)(1). However, whether Respondent had notice of a previous violation is not at dispute in this matter.

similarity to the meaning of section 6 or 7. Doing so would be contrary to the clear definition of “repeated” promulgated by the Secretary.

*b. Similarity with OSHA*

Respondent also argues that I should interpret the definition of “repeatedly” under the FLSA in accordance with the interpretation of “repeatedly” in the Occupational Safety and Health Act (“OSHA”), 29 U.S.C. § 666(a). RMSD 8-9; ROMSD 4-5. Section 666(a) of OSHA states “[a]ny employer who repeatedly or willfully violates the requirements of section 654 of [OSHA], any standard, rule, or order promulgated pursuant to section 655 of [OSHA], or regulations prescribed pursuant to [OSHA] may be assessed a civil money penalty of not more than \$70,000 for each violation.” 29 U.S.C. § 666(a). Respondent points out that a substantial body of authority exists which interprets “repeatedly” under OSHA to require the previous and subsequent violation be “substantially similar.” RMSD 8-9.

I find Respondent’s argument unpersuasive. The Secretary of Labor has issued a regulation expressly defining “repeatedly” in the context of the FLSA. In contrast, the Secretary of Labor has not issued a similar regulation defining “repeatedly” for purposes of OSHA. That the Secretary issued a regulation defining “repeatedly” for purposes of the FLSA, but not a similar regulation for OSHA, suggests that OSHA’s definition is inappropriate in this case.<sup>3</sup>

**2. Statutory and Regulatory History**

As noted above, the FLSA’s statutory and regulatory language is clear and unambiguous, and there is no need to look at the regulatory history. *See Barnhart*, 534 U.S. at 457 (legislative history “cannot amend the clear and unambiguous language of a statute.”). However, even if it were necessary to look at WHD’s responses to comments to the NPRM to understand the meaning of “repeatedly,” it is clear that Complainant would still prevail. As mentioned above, WHD declined to revise its definition of “repeatedly” to be limited to an “identical minimum wage or overtime violation” instead of “a previous violation of either the minimum wage or overtime provisions.” 57 Fed. Reg. 49,128 (Oct. 29, 1992). It reasoned that the purposes of the FLSA were best served by WHD’s definition because the “*same or similar practices or conduct* of an employer can produce a violation of either or both minimum wage and overtime provisions.” *Ibid.* (emphasis added). Moreover, the “employer should not escape liability when the *same* proscribed conduct is done a second time.” *Ibid.*

WHD’s description of proscribed conduct may seem inconsistent at first blush. WHD first states that the definition of repeatedly is best served because the “same or similar” conduct can produce either or both minimum wage and overtime violations. Then WHD states that in such cases, an employer should not escape liability for “the same proscribed conduct.” However, WHD could not have meant that the subsequent violations must be the “same” as the

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<sup>3</sup> I note that Complainant and Respondent make additional arguments regarding the purpose (or lack of purpose) behind interpreting “repeated” differently in OSHA and the FLSA. However, I will not address these arguments as such an analysis is unnecessary in light of the fact that the Secretary has promulgated a specific definition for “repeated” under the FLSA but not for OSHA.

first. If so, WHD would be completely negating its definition of “repeatedly” in the regulation and its own reason for rejecting the commenters’ suggestion to require an “identical” violation.

WHD furthermore did not mean to say that the previous and subsequent violations must be “similar.” It specifically rejected the commenters’ request to require an “identical” violation, and chose instead to continue “to allow the finding of a repeated violation on the basis of a previous violation of *either the minimum wage or overtime provisions.*” 57 Fed. Reg. 49,128 (Oct. 29, 1992). Thus, an employer who previously violated section 6 could face a civil penalty if it subsequently violated section 7. This understanding is consistent both with the statute and regulation. WHD’s reference to “similar” conduct in its response to the commenters’ suggestion was provided as an example to show how impracticable an “identical” violation standard would be to carry out Congress’s intent in section 16(e)(2), and not as a limiting interpretation of the regulation.

Even if I were to assume that WHD intended that repeated conduct must be “similar” to warrant imposition of a civil penalty, I find that Respondent’s Hickory and Bangor violations in this case were similar. At its Hickory restaurant, Respondent improperly paid its headwaiters a tip wage while they performed administrative work and did not properly account for one employee’s production bonuses in his or her overtime pay. JSF ¶¶ 8-12. At its Bangor restaurant, Respondent again improperly paid its employees by failing to compensate them for taking smoke/rest breaks. JSF ¶¶ 20-22. At bottom, the Hickory and Bangor violations both involved Respondent improperly compensating its employees for the hours they worked.

Finally, as previously noted, Respondent argues that the violations at issue here were dissimilar because the two restaurants in question had entirely different management teams and were separated by 1,000 miles. RMSD 10; ROMSD 7. Assuming again that WHD meant that the repeated violations must be “similar,” I find Respondent’s argument unpersuasive. WHD addressed this exact issue in its Final Rule. Several commenters argued that a repeated violation should not be charged “to multi-establishment employers when the violations occurred at different establishments.” 57 Fed. Reg. 49,128 (Oct. 29, 1992). WHD declined to adopt the change stating:

There is nothing . . . in the statute which relieves an employer from liability for civil money penalties in . . . a situation [involving multi-establishment employers with violations at different establishments]. A different approach would encourage employers to not take responsibility for the actions of their establishment, and to fail to take steps to ensure that violations do not recur. However, this is one of the considerations which may be taken into account, in reviewing the employer’s previous history of violations, in determining the amount of the penalty pursuant to § 578.4(b)(3).

57 Fed. Reg. 49,128-29 (Oct. 29, 1992). Respondent’s argument that it did not engage in “repeated” violations of the FLSA because the violations at issue were committed at two separate restaurants is therefore rejected.

#### IV. CONCLUSION

I find Respondent engaged in “repeated” violations, as defined by the FLSA, 29 U.S.C. § 16(e)(2), and its implementing regulation at 29 C.F.R. § 578.3(b). The plain meaning of the statute and regulation allow for the imposition of a civil money penalty if an employer has previously violated section 6 or 7 of the FLSA. Neither requires the previous and subsequent violation to be the “same or similar.” Moreover, Respondent’s argument that I interpret the meaning of “repeatedly” in the same manner given the interpretation of “repeatedly” under OSHA by Federal and administrative courts is unpersuasive because the definition of “repeatedly” under the FLSA is defined by regulation while that term under OSHA is not.

Assuming *arguendo* that the meaning of “repeated” is somehow ambiguous, and resort to regulatory history is thus necessary, I find that the regulatory history in this instance demonstrates that WHD did not mean to define “repeated” as requiring the same or similar conduct as a requirement for the imposition of civil money penalties. If WHD meant to require an employer to engage in the “same” conduct, then it would not have rejected the commenters’ suggestion that the regulation be reworded to require an “identical” violation of section 6 or 7. WHD also did not mean to limit the violation to similar conduct because the regulation’s language is clear and its reference to “similar” conduct was provided as an example of the impracticability to require “identical” violations and was not meant as a limiting interpretation.

Finally, even assuming that WHD meant to require “similar” violations before civil penalties could be imposed, I find that the Hickory and Bangor violations were similar in that both involved Respondent improperly paying its employees for the hours they worked. Likewise, Respondent’s argument that the Hickory and Bangor violations were dissimilar because they operated under different management teams and were separated geographically is irrelevant to whether Respondent engaged in repeated violations. As the WHD stated when promulgating its regulation, multi-establishment employers are subject to civil money penalties for violations even when those violations occur at different locations.

#### V. ORDER

For the foregoing reasons, it is hereby **ORDERED** that Complainant’s Motion for Summary Decision is **GRANTED** and Respondent’s Motion for Summary Decision is **DENIED**.

**SO ORDERED.**

**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** If you are dissatisfied with the administrative law judge's decision, you may file an appeal that is received by the Administrative Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days of the date of issuance of the administrative law judge's decision. *See* 29 C.F.R. § 580.13. The address for the Board is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the appeal with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001. *See* 29 C.F.R. § 580.13.

If no appeal is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 580.12(e).