

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 January 2012

CASE NO.: 2011-LCA-9

In the Matter of:

ADMINISTRATOR,
WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,
Prosecuting Party

v.

S V TECHNOLOGIES, LLC,
Respondent

**DECISION AND ORDER APPROVING
CONSENT FINDINGS**

This proceeding arises under the H-1B provisions of the Immigration and Nationality Act, (“INA”), 8 U.S.C. § 1101(a)(15)(H)(1)(b) and the applicable regulations issued thereunder at 20 C.F.R. Part 655. I was assigned the case on January 10, 2011. A hearing was scheduled for May 10, 2011, in Indianapolis, Indiana. On April 22, 2011, counsel for the Administrator, Wage and Hour Division submitted a Motion for Summary Judgment which I granted in part. In my Order, dated April 28, 2011, I found the Respondent had failed to pay Rupal Vora, a nonimmigrant E-3 worker, \$30,499.51 in compensation for productive and nonproductive time, in violation of 20 C.F.R. section 655.731. I further found that a dispute of material fact remained as to whether Mr. Vora had requested leave and was unavailable to work for an eight-week period and whether the Respondent had failed to post notice of Mr. Vora’s LCA, in violation of 20 C.F.R. section 655.734. Accordingly, I reset the matter for hearing on December 6, 2011.

Prior to the hearing, Mr. Vinod Sadhu, the Respondent’s President, requested a continuance. Given the age of the case, the previous delays, and the reasons for the request, I denied the continuance. I advised the Respondent’s Mr. Sadhu, that he could choose to attend the hearing or send a representative to defend the case. At the time, Mr. Sadhu stated he would send a representative. However, before the scheduled hearing, counsel for the Administrator advised the undersigned that the parties had reached a settlement as to the remaining contested issues and requested the hearing be cancelled. I subsequently issued an order canceling the hearing and required the submission of Consent Findings which the parties submitted on January 6, 2012 Findings.

It is noted that, in the Decision and Order Granting Summary Decision in Part and Canceling Hearing, the Respondent has been found liable for the payment of \$30,499.51. That finding is not affected in any manner by the presently submitted settlement of the remaining disputed matters. The Administrator, in exchange for the Respondent's additional \$4,000 payment, has withdrawn the complaint related to his failure to post notice of the LCA.

Pursuant to 29 C.F.R. § 18.9(a), an administrative law judge must review factors including, "the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement will result in a just disposition of the issues involved" in order to determine whether a settlement is in the best interest of the parties.

The Respondent has waived any right to dispute or appeal the resolution and settlement of the previously disputed eight-week period and \$4000.00 additional payment in settlement thereof.

The undersigned, having reviewed the Consent Findings and all of the above-mentioned factors, concludes that this settlement is in the best interests of all the parties. Accordingly;

ORDER

It is hereby ORDERED that:

- (1) The terms and conditions contained in the above-mentioned Consent Findings are hereby APPROVED. Such terms and conditions are hereby incorporated by reference into this order;
- (2) The Consent Findings and Order shall have the same force and effect as an order made at a full hearing;
- (3) The entire record on which any Order may be based shall consist solely of the Determination Letter and the Consent Findings;
- (4) Any further procedural steps before this office and any right to contest the validity of the Consent Findings and this Order of Approval shall be waived by the parties;
- (5) The Consent Findings and this Order of Approval, shall become effective immediately upon the issuance of this order;
- (6) The fees, costs and expenses incurred in connection with all stages of this proceeding (including but not limited to attorney's fees which may be available under the Equal Access to Justice Act, as amended) shall be borne by each party; and

- (7) That the additional amount of \$4,000.00 be paid by SV Technologies, LLC, to the United States Department of Labor, Wage and Hour Division by certified check within ten (10) days of the signing of this order (if not paid earlier) which shall be deemed to be full satisfaction of the remaining back wage claim against SV Technologies, LLC, arising out of its employment of Mr. Vora, for the previously disputed eight-week period.

A

RICHARD A. MORGAN
Administrative Law Judge