

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

JIMMY BELUE, ET AL. PLAINTIFFS

VS. CASE NO. 2:07CV1004-KS-MTP

WAYNE FARMS LLC DEFENDANT

CONSOLIDATED WITH

ROBERT THOMAS DUNN, ET AL. PLAINTIFFS

VS. CASE NO. 2:07CV1005-MTP

WAYNE FARMS LLC DEFENDANT

**BRIEF SUPPORTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT (QA)**

Three of our Plaintiffs are or were quality assurance workers at Wayne Farms' Albertville, Alabama, chicken processing facility.¹ They do not belong in this suit about the adequacy of processing line master card time tracking. In fact, they have no FLSA claims at all, because quality assurance workers perform the preliminary and post-liminary tasks cited in the First Amended Complaint during their paid shift time.

FACTS

Plaintiffs complain that paying them based on a master time card that only measures the running time of a processing line ignores the time they spend donning work clothing and walking to the line before the line starts, and walking away from the line and doffing that clothing after the line stops. They demand pay for that time too, when it makes a difference in overtime pay due them under the Fair Labor Standards Act.

¹ Margaretta M. Hicks, Denise Whiteside and Vickie L. Woods. See Motion Exhibit 1.

As to quality assurance workers, the answering facts are simple and clear. They are not paid by master card, nor are they paid only for the running time of a processing line. They are paid each shift for the time they spend in the alleged activities.

STANDARD OF REVIEW

Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The movant carries the initial burden of showing that there is no genuine issue as to any material fact but is not required to negate the opponent’s claim. *Id.* Rather, the movant may meet its burden merely by “‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” *Celotex*, 477 U.S. at 325. Once this burden has been met, the non-movant must then go beyond the pleadings and designate “specific facts showing that there is a genuine issue for trial.” *Id.* at 324, (quoting Fed. R. Civ. P. 56(e)). The existence of some factual disputes between the litigants will not defeat an otherwise properly supported motion for summary judgment. “[T]he requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) (emphasis in the original). The substantive law applicable to the causes of action claimed will establish which facts are material. *Id.*

ARGUMENTS AND AUTHORITIES

As a general rule, the FLSA provides that employees are entitled to receive overtime pay at one and one-half times their regular rate for all hours worked in excess of forty hours per week. *See* 29 U.S.C. § 207(a)(1); *see also Avery v. City of Talladega*, 24 F.3d 1337, 1340 (11th

Cir. 1994). In *IBP, Inc. v. Alvarez*, 546 U.S. 21 (2005), the Court held that the travel time exclusion of the Portal to Portal Act, 29 U.S.C. § 254, does not cover the daily time that employees spend walking in the plant after the work day has begun and before the work day ends. FLSA claims accrue per underpaid work week and are analyzed per work week. *See* 29 U.S.C. § 206. Poultry processing employees across America are suing their employers because many of those employers pay only for the time that employees spend on the line. The employees contend that the work day starts before and ends after their line work, and, citing *Alvarez*, demand overtime re-calculations including the daily minutes spent in their preliminary and postliminary tasks, counting time spent walking to the line after the first task and walking away from the line before the last one. For this motion's purposes, Wayne Farms will not quarrel with that logic, as far as it goes, because it is inapplicable to quality assurance workers.

Quality assurance workers are required to report to the QA Office and as long as they are at the QA Office by their scheduled shift start time, they are considered timely. *See* Declaration of Ryan Harper, attached to Wayne Farms' Motion as Exhibit 2. It is only after they get to the QA Office that they are required to gather and put on the things they need to wear and use. *Id.* Typically, they have from five to fifteen minutes to gather their things and walk from the QA Office to a position on the floor, a time that is more than adequate in almost every circumstance. *Id.* Even if they take too long getting from the QA Office to their assigned position, they are not docked for that delinquency. *Id.*

At the end of the shift, second shift QA employees are paid to the very minute that they clock out, after dropping off everything they wore and used while working in the plant. *Id.* First shift QA employees are also paid to the minute they clock out, unless they clock out later than

their expected time because they wasted time in non-work activities, in the judgment of their supervisor. *Id.*

In short, what is alleged to be true for purposes of processing line employee recovery is demonstrably untrue of quality assurance workers and what is true of quality assurance workers cannot support the FLSA violations pled. Therefore, Wayne Farms is entitled to partial summary judgment dismissing all three who have worked, during the longest arguable limitation period, only as quality assurance workers.

Respectfully submitted this the 24th day of November, 2008.

WAYNE FARMS LLC

BY: BALCH & BINGHAM LLP

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