

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: **1559052** Originating District: **Kansas City KS District Office**
Local Filing Number: **2009-221-09526** Investigating District: **Kansas City KS District Office**
WHMIS Case Number: Lead Investigator: **(b) (6), (b) (7)**
Registration Date: **09/21/2009**
Assignment Date: **05/21/2010**

Employer Information

Trade Name: **Hardees of Southwest MO, Incorporated** Legal Name: **Hardees of Southwest MO, Incorporated**
Address: **2260 N. Glenstone** EIN: **36-3221187**
County: **Greene**
NAICS Code: **722211**
No. Of Employees: **(b)**
Springfield, MO65803

Investigation Information

Period Investigated From: **05/30/2008** BNPI:
To: **05/27/2010** Reinvestigation:
Investigation Type: **(b) (7)(E)** Recurring Violation:
Investigation Tool: **Full Investigation** Future Compliance Agreed:
Compliance Status: **Agree to Comply** Involved in AG:

Recommended Action:

BWFS: RO/NO Review:
CMP: Follow Up Investigation:
Litigation: Other Action:
Civil Action: Denial of Future Certificate:
Criminal Action: BW Payment Deadline: **12/15/2010**
Submit For Opinion: Trailer forms attached:

CL

Violation / Compliance Status	Violations	EES ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

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FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to pay Minimum Wage / Agree to Comply</i>	6	6	\$179.99	\$179.99	\$0.00	\$0.00	
<i>Failure to pay proper overtime / Agree to Comply</i>	25	25	\$2,521.96	\$2,521.96	\$0.00	\$0.00	
FLSA Totals:	31	31	\$2,701.95	\$2,701.95	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	31	Unduplicated Employees Agreed:	31
Total Amount BWs Computed:	\$2,701.95	Total Amount BWs Agreed:	\$2,701.95
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(S)(1)(A) enterprise cov. Sec 6&7 violations occurred when er made deductions for cash shortages out of minimum wage employees and salaried exempt managers. ER Mike Shay agreed to comply and agreed to pay back wages by 12-15-10. Pubs: 516,778, 785, 1330 and posters. Recommend case be closed upon proof of payment due in KCDO by 12-22-10.

WHI Signature: _____ Date: 12/02/2010

Reviewed By: _____ Date: _____

FLSA NARRATIVE

Hardees SOUTHWEST MISSOURI, Inc.
d/b/a Hardees
2260 N. Glenstone
Springfield, MO 65803
FEIN# 36-3221187
WHISARD# 1559052

Headquarters location:
608 Kathryn
Nixa, MO 65714

CASE ASSIGNMENT:

This case was assigned (b) (7)(E), (b) (6)

This investigation was a full investigation of the above location.

COVERAGE:

This firm is a fast food franchise of Carl Jr. out of California.
The owner of the franchise is Michel Shay. He owns 16 Hardees both in Missouri and Arkansas. He is considered the 3D employer.

Shay stipulated that the firm's ADV has exceeded over (b) (4) annually for the last three years. (See Ex. C-1).

The firm is a 3(s)(1)(A) covered enterprise and all employees are covered under the provisions of the FLSA for the entire investigative period of 05-30-08 to 05-27-10.

The WHI dealt with owner Michel Shay throughout the entire investigation.

PREVIOUS HISTORY:

There is no history of this franchise.

MODO:

The MODO is the KCDO. (See D-1).

EXEMPTIONS:

541.100-applicable-General Manager, Shawn Erdman-\$ (b) (4) annually.

Erdman oversees the day to day operation of the above store location. He supervises (b) (4) crew members and has the authority to hire and fire.

SECTION 6: Violations occurred when minimum wage crew members pay was deducted for shortages at the cash register. As a result of these shortages the employee's pay fell below the federal minimum wage.

Section 6 back wages due to 6 employees is \$179.99.

SECTION 7: Violations occurred when salaried managers pay was deducted for shortages at their store. As a result in the weeks the deductions were made their exempt status would be loss and they are entitled to the overtime premium for hours over 40 that they worked.

Interview statements as well as a statement by the owner indicated that all employees were held accountable for shortages through their cash control policy. All shortages are recorded for payroll purposes and are in the file. (See Ex. B-1,2 and C-1 and E-1-).

It was determined through interview statement that managers work an average of 55 hours per week. The weeks the deduction was made the managers are due an additional 15 hours of overtime.

Section 7 back wages due to 25 employees is \$2521.96.

ER agreed to pay the back wages by 12-15-10 and the signed WH-56 is in the file.

SECTION 11:

All records were in compliance.

SECTION 12:

No violations as minors (16&17 year olds) do not operate any hazardous equipment and there are no minors under the age of 16 employed.

DISPOSITION:

A final conference was held with owner Michel Shay over the phone on May 27, 2010. At the time enterprise coverage was discussed and how it applied to the firm.

The record keeping requirements and the Child Labor laws were discussed at length.

The minimum wage violation was discussed as it pertained to the deduction of shortages from employees earning the federal minimum wage. Shay stated that the firm does assure that if the deduction occurred it did not bring anyone below the minimum wage but that he would review payroll to confirm this.

WHI explained that if there were any employees whose pay was brought below the minimum wage it would have to be restored to make the employee whole and that back wages would be due. Shay stated that he understood and would do the calculations for all locations.

The violation of overtime due to managers as a result of deductions from their salary was discussed. Shay stated that the managers are held accountable for their stores and the shortages have always been their responsibility. WHI explained in detail that an exempt salaried employee can not be deducted in this fashion or it takes the employee out to the exempt status and is treated as if an hourly employee. Shays stated that he understood and would correct the matter immediately and absorb the shortages through the business and all deductions of managers would stop.

WHI advised Shay that in the weeks the managers were deducted for shortages they would be entitled to overtime based on 55 hours a week worked; so 15 hours of additional half time would be due in back wages.

Shay stated that he understood and that he would do the calculations on all locations.

Shay agreed to future compliance and agreed to pay the back wages by 12-15-2010 and the signed WH-56 is in the file.

PUBLICATIONS:

The following publications were given: 516, 541, 778, 785,1330 and posters.

RECOMMENDATION:

- 1) As Shay agreed to comply and pay the back wages by 12-15-2010 it is recommended that this case be concluded upon payment and proof of payment due in the KCDO by 12-22-2010.

(b) (6), (b) (7)
(C)

Wage and Hour Investigator