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8 IN THE SUPERIOR COURT
9 FOR THE
10 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

11 WILFREDO C. LIMON) Civil Action No. 93-508
12)
13 Complainant and Appellant,) Labor Case No. 302-91
14 v.)
15 ROSA CAMACHO) **MEMORANDUM DECISION**
16 Respondent and Appellee,) **AND ORDER**
17 and)
18 ATTORNEY GENERAL, COMMONWEALTH)
19 OF THE NORTHERN MARIANA ISLANDS)
20 **Party-in-interest**)
21 _____)

22 Pursuant to 1 **CMC § 9112(b)**, the Complainant, Wilfredo C.
23 Limon, has requested this Court to review the Labor Order issued
24 by the C.N.M.I. Department of Commerce and Labor (Department) on
25 March 28, 1993.

26 **I. FACTS**

27 Mr. Limon began working for the Respondent, Rosa Camacho, on
28 October 21, 1990, and left her employment on October 3, 1991. Mr.

FOR PUBLICATION

1 Limon was employed as a kitchen helper at Mrs. **Camacho's** bakery.
2 Under the terms of the employment contract, Mr. **Limon's** work hours
3 were from **8:00** a.m. until **5:00** p.m. Monday through Friday at a
4 payment rate of \$2.15 per hour. **Under** the terms of his employment
5 contract, he was entitled to an overtime wage equal to 1.5 times
6 more than his hourly rate. The contract **only allowed** him to work
7 as a "**Kitchen Helper.**"

8 On October 2, 1991, after almost one year of employment, Mr.
9 Limon filed a complaint with the Division of Labor alleging that
10 Mrs. Camacho: (1) failed to pay him in the manner prescribed in
11 the contract; (2) failed to pay him for overtime performed before
12 **8:00** a.m. and after **5:00** p.m. on Monday through Friday; (3) failed
13 to pay him for work performed on Saturdays between **4:30** a.m. and
14 **6:00** p.m.; (4) directed him to perform duties that fell well
15 outside the duties relating to his job as a Kitchen Helper.

16 On March 17, 1992, after six months of investigation, the
17 Chief of Labor, Daniel E. Aquino, confirmed all of Mr. **Limon's**
18 allegations by issuing a Determination, a Notice of Violation, and
19 Notice of Hearing. The Chief of Labor found that Mrs. Camacho had
20 violated the employment contract and several sections of the
21 Nonresident Workers Act (**NWA**) by (1) paying Mr. Limon various
22 fixed rates per month rather than paying him the \$2.15 hourly rate
23 bi-weekly in violation of 3 **CMC § 4436(c)** and 3 **CMC § 4437(d)**; (2)
24 failing to pay Mr. Limon 2021.5 hours of overtime in violation of
25 4 **CMC § 9222**; (3) allowing Mr. Limon, a Kitchen Helper, to feed
26 cows in violation of 3 **CMC § 4437(e)**; (4) failing to keep records
27 of Mr. **Limon's** employment in violation of 3 **CMC § 4439(c)**.
28 Pursuant to 3 **CMC § 4444(2)** of the **NWA** and 1 **CMC 9109** of the

1 Administrative Procedures Act (APA), Mr. Aquino set the **matter for**
2 hearing on April 2, 1992. The record indicates that the matter
3 was continued by someone other than the complainant **on** five
4 occasions. When the last continuance issued on June 22, 1992 **at**
5 the hearing **officer's** own request, he failed to notify the
6 Complainant and caused him to arrive at the aborted hearing with
7 three witnesses.

8 Despite an original hearing date on **April 2, 1992**, and the
9 explicit language of **3 CMC § 4444(c)**, requiring such hearings to
10 commence "**within** 30 of the issuance of the Notice of Violation
11 (March 17, 1992), the hearing did not begin until July 13, 1992.
12 Thus the hearing commenced 90 days past the statutory time limit.
13 **Complainant's** witnesses that attended the aborted hearing were not
14 able to attend the July 13th hearing.

15 Administrative Hearing Officer, Mr. Felix R. Fitial, presided
16 over the hearing and issued his Order on July 21, 1992. Mr.
17 Fitial affirmed the Chief of **Labor's** finding that Mrs. Camacho had
18 violated Sections **4437(d)** and **4439(c)** by paying a monthly wage
19 rather than the hourly wage and failing to keep records of
20 payment. Mr. Fitial "**repealed**" the portion of the Notice of
21 Violation which found Mrs. Camacho in violation of Section **4437(e)**
22 for allowing Mr. Limon to do chores outside of his job
23 description. Instead, Mr. **Fitial** found that all the work
24 performed on Saturday and Sunday were "**voluntarily services**" and
25 thus, Mr. Limon was not entitled to any overtime compensation for
26 weekend work. In addition, Mr. Fitial found that no overtime work
27 was performed during the week. In effect, the Hearing Officer
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1 rejected the Chief of **Labor's** finding that Mr. Limon completed
2 2021.5 hours of overtime work.

3 Finally, although Hearing Officer **Fitial** found that Mr. Limon
4 was entitled to some compensation for his work from November of
5 1990 through May of 1991, his Order does not make any
6 determination about whether the compensation paid in the remaining
7 months of the contract (**i.e.**, fixed monthly payments) constituted
8 overpayment or underpayment. Therefore, his Order failed to
9 adequately decide the ultimate issue of whether Mr. Limon had
10 received proper payment for his services.

11 On July 30, 1992, pursuant to Section 4445 of the NWA, Mr.
12 Limon filed a general notice of appeal to the Director of the
13 Department requesting de novo review. Although Hearing Examiner
14 Maggie Gleason refused to hear the matter de novo, she agreed to
15 allow both parties to supplement the record with new evidence
16 concerning (1) the voluntariness of the weekend work performed by
17 Mr. Limon, and (2) the issue of actual wages owed to Mr. Limon.
18 Ms. Gleason allowed the witnesses who were unable to attend the
19 original hearing to offer testimony on these two issues.

20 Ms. Gleason found that Mr. **Limon's** weekend labor was not
21 voluntary and that Mrs. Camacho failed to compensate Mr. Limon for
22 hours worked on Saturdays and Sundays. Mr. Limon claimed that he
23 worked on Saturdays from 4:30 a.m. until 6:00 p.m. His testimony
24 was corroborated by the testimony of two witnesses who were also
25 former employees of Mrs. Camacho. According to Ms. **Gleason's**
26 findings, Mrs. Camacho admitted that Mr. Limon "**help[ed]** in food
27 preparation prior to the actual cooking which begins at **6:00 a.m.**"
28 However, in her Order on Appeal, Ms. Gleason contradicted this

1 finding by concluding that Mr. Limon worked in the kitchen from
2 6:00 a.m. to 4:30 p.m.

3 The Complainant claims that the Hearing Examiner's decision
4 with respect to the amount of compensable hours worked on weekdays
5 and Saturdays was arbitrary and capricious because it was contrary
6 to all the evidence before her. The Respondent claims that the
7 determination is supported by substantial evidence.

8 In addition to the compensable hours controversy, the
9 Complainant claims that the **Hearing** Examiner has unlawfully
10 withheld agency action by failing to award liquidated damages and
11 attorney's fees in accordance with Section 4447(d) of the NWA.
12 The Respondent claims that the Hearing Examiner correctly withheld
13 these awards by employing the "**willful**" test found in Section 9243
14 of the Commonwealth Minimum Wage and Hours Act of 1978 (the Wage
15 Act) and, in her discretion, "**impliedly**" found that the
16 **Respondent's** violations were not willful.

17 18 **II. ISSUES**

19 1. Whether the Hearing **Examiner's** findings with respect to
20 compensable hours worked on Saturdays and weekdays were arbitrary,
21 capricious and unsupported by substantial evidence.

22 2. Whether Section **4447(d)** of the Nonresident Workers Act
23 requires a Hearing Examiner to award a nonresident worker
24 liquidated damages and **attorney's** fees once the examiner has found
25 that the worker is entitled to unpaid wages and overtime
26 compensation.

1 **III. ANALYSIS**

2 **A. Hours Worked per Week**

3 According to the Enforcement Provisions of the **NWA**, judicial
4 review of a final action of the Director shall be pursuant to
5 Section 9112 of Title 1 of the Commonwealth Code. 4 CMC §4446.
6 The standard of review set out in Section **9112(f)(2)(A)** directs
7 the Court to "**hold** unlawful and set aside agency action, findings,
8 and conclusions found to be...[a]rbitrary and capricious, an abuse
9 of discretion, or otherwise not in accordance with **law**." Id. The
10 arbitrary and capricious standard of review embodies a
11 comparatively low level of judicial scrutiny which only allows a
12 reviewing court to overturn an administrative decision if a review
13 of the administrative record reveals that the decision is totally
14 intolerable and outside any conceivable rational alternative.
15 **CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE at §9.6 (1994). Thus,**
16 the party appealing an administrative adjudication has the burden
17 of rebutting a presumption of regularity. In *re the Estate of*
18 *Taisakan*, 1 CR 326, 335 (D.N.M.I. App. 1992).

19 The Complainant argues that the decision rendered by Hearing
20 Examiner Gleason was arbitrary and capricious with respect to: (1)
21 her finding that Mr. **Limon** worked Saturdays from approximately
22 **6:00 a.m. to 4:30 p.m.**^{1/}; (2) her decision not to alter the
23 Hearing **Officer's** conclusions concerning Mr. **Limon's** regular
24 weekday hours.

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^{1/} The Complainant does not dispute the portion of Ms.
Gleason's decision concerning Sunday work hours.

1 **1. Saturday Hours Worked**

2 The **Complainant's** argument is straightforward. Most of the
3 evidence before Ms. Gleason indicated that Mr. Limon worked on
4 Saturdays from 4:30 a.m. until 6:00 p.m., a period of thirteen and
5 one-half hours.^{2/} The Respondent claimed that the Complainant did
6 not work Saturdays because the bakery was closed. Hearing at 68.
7 The findings contained in Ms. **Gleason's** Order clearly indicate her
8 belief that the Complainant did work a substantial amount of time
9 on Saturday helping to prepare, cook, and deliver Chamorro food to
10 ten retail stores. Order on Appeal, Labor Appeal Case No. 302-91
11 at 2 (March 28, 1993). However, the second finding of fact in her
12 Order specifically states that the **Complainant's** Saturday hours
13 were 6:00 a.m. until 4:30 p.m. Id. The Complainant has taken the
14 position that the Order simply contains a typographical error in
15 which the starting and finishing times have been transposed.

16 The **Complainant's** position gathers support from the third
17 finding of fact contained in Ms. **Gleason's** Order which
18 acknowledges the **Respondent's** admission that the Complainant
19 helped in food preparation prior to the actual cooking which
20 begins at **6:00** a.m. Id. The finding that Mr. Limon prepared food
21 prior to 6:00 a.m. simply does not wash with the preceding finding
22 that his work day began at **6:00** a.m.

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^{2/} The **Complainant's** testimony that he worked from **4:30**
26 a.m. until **6:00** p.m., Transcript of Labor Hearing at 83 (July 13,
27 1992)(hereinafter Hearing), was corroborated by three of his
28 fellow workers (Sally Domingo, Faye Pangelinan and Estrella **Gozum**)
who testified to having a similar Saturday work schedule and to
having seen the Complainant work these hours. See Hearing at 96;
see also Transcript of Labor Appeal at 14-15, and 32-33 (Jan. 8,
1993)(hereinafter **Appeal**).

1 The Court has scoured the transcripts of both the July 1992
2 labor hearing and the January 1993 appeal in order to glean some
3 sense from the determination of Mr. **Limon's** Saturday work schedule
4 contained in Ms. **Gleason's** Order. However, testimony to the
5 effect that Mr. Limon worked Saturdays from 6:00 a.m. until 4:30
6 p.m. does not exist.^{3/} Without a trace of evidence in the record
7 to sustain Ms. **Gleason's** finding that Mr. Limon worked Saturdays
8 from 6:00 a.m. until 4:30 p.m., the Court is inclined to agree
9 with the **Complainant's** stance that the hours were accidentally
10 transposed in the Hearing **Examiner's** written decision. The
11 testimony of the Complainant and three of his fellow workers
12 verifies such a result. See supra footnote 2. In any case, the
13 Court finds the portion of the Order on Appeal relating to Mr.
14 **Limon's** Saturday work schedule arbitrary and capricious as it
15 could not have been based on the facts presented. Based on
16 substantial evidence contained in the transcript, the Court finds
17 that Mr. Limon began working on Saturday mornings at 4:30 a.m. and
18 completed work at 6:00 p.m.

20 **2. Weekday Hours Worked**

21 Ms. Gleason never addressed the number of hours of work
22 performed by Mr. Limon on Monday through Friday. As a result,
23 despite her assurances that the issue of "**actual** wages due [to Mr.
24 **Limon**]" would be revisited during the Labor Appeal, Appeal at 6,
25 Ms. Gleason's written decision contains no findings regarding
26 Monday through Friday hours.

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28 ^{3/} With respect to Saturday, the Respondent has not wavered
from her position that no work occurred because the bakery was
closed. Hearing at 68.

1 The Complainant contends that Ms. Gleason's silence on this
2 issue has resulted in her implied affirmance of Hearing Officer
3 **Fitial's** finding that Mr. Limon worked 6:00 a.m. to 3:00 p.m. on
4 Mondays through Fridays. Whether she intended this result or not,
5 the Court agrees with Complainant that Ms. **Gleason's** silence on
6 the issue of Mr. Limon's weekday work schedule amounts to a
7 validation of Hearing Officer **Fitial's** finding. Thus, the
8 question now before the Court is whether Ms. **Gleason's** affirmance
9 of Mr. **Fitial's** finding is wholly inconsistent with her finding
10 that Mr. Limon "**helps** in food preparation prior to the actual
11 cooking which begins at 6:00 a.m." and with this Court's finding
12 that Mr. Limon worked Saturdays from 4:30 a.m. until 6:00 p.m.

13 Throughout both labor hearings, neither party claimed that
14 Saturday work hours differed from weekday work hours. In fact,
15 Ms. Pangelinan, one of **Complainant's** fellow workers, testified
16 that the **Bakery's** Monday through Friday work schedule was no
17 different than its Saturday work schedule. Appeal at 10. To be
18 sure, when the Respondent spoke of her business' daily delivery of
19 baked goods which required her employees to prepare food prior to
20 6:00 a.m., see Hearing at 74, she only could have been referring
21 to weekday hours since it had been her **contention** all along that
22 no work at the Bakery occurred on weekends. See Hearing at 72, and
23 Appeal at 62, and 145.

24 Turning to Ms. **Gleason's** Order on Appeal, the Court sees a
25 glaring inconsistency. On the one hand, Ms. Gleason is convinced
26 that the Bakery was open for business Monday through Saturday and
27 that Mr. Limon had to prepare food prior to 6:00 a.m. on each of
28 these days. Substantial evidence in the record supports both of

1 these findings. Nevertheless, she does not disturb Mr. **Fitial's**
2 finding that Mr. Limon worked weekdays from **6:00** a.m. until **3:00**
3 **p.m.**

4 Although testimony supporting Mr. Fitial's finding does exist
5 within the transcript of the original **hearing,**^{4/} the Respondent's
6 admission that Mr. Limon prepared food **prior** to **6:00** a.m. casts
7 serious doubt on such testimony. Accordingly, Ms. Gleason decided
8 to rehear the issue of actual wages owed to Mr. Limon and
9 subsequently heard testimony concerning work hours from both
10 parties including three of Complainant's witnesses who were
11 unavailable at the original hearing. All of these witnesses
12 agreed that Mr. **Limon's** work day began at **4:30** a.m. and ended at
13 **6:00 p.m.**^{5/} In light of this testimony and Ms. Gleason's previous
14 findings that the Bakery was open for business Monday through
15 Saturday and that Mr. Limon had to prepare food prior to **6:00** a.m.
16 on each of these days, her failure to depart from Mr. **Fitial's**
17 inconsistent finding amounts to an arbitrary and capricious action
18 which this Court can not allow to stand. Based on substantial
19 evidence contained in the transcripts, this Court sets aside Ms.
20 Gleason's adoption of Mr. **Fitial's** finding concerning weekday
21 hours and finds that Mr. Limon worked Monday through Friday from
22 **4:30** a.m. to **6:00 p.m.**

25 Rodney **Cruz**, the Complainant's co-worker, testified that
26 Mr. Limon worked from **6:00** a.m. until **3:00** or **3:30** p.m. Hearing at
27 47-48. Joe Carnacho, the Respondent's son, claimed that Mr. Limon
28 worked the mornings from **6:00** until **10:30** and the afternoons from
2:00 until **3:00**. Id. at 57-58. The Respondent also testified that
Mr. Limon worked from **6:00** a.m. until **3:00** p.m. Id. at 67.

^{5/} See supra, footnote 1.

1 Section 9222 of the Wage Act requires any employee **working in**
2 excess of 40 hours per week to receive compensation equal to one
3 and one-half times the regular rate of pay for each work hour over
4 the 40 hours-per-week limit. 4 CMC § 9222. Based on the foregoing
5 determinations concerning Mr. **Limon's** work schedule, **the Court**
6 finds that Mr. Limon worked 12.5 hours per day (**4:30 a.m. to 6:00**
7 **p.m.** with a one hour lunch break) from Monday through Saturday.
8 The Court shall not disturb the Hearing Officer's finding **that Mr.**
9 **Limon** performed eight hours of work on **Sunday.**^{s/} **Thus,** the Court
10 arrives at the following calculation of the hours **worked by Mr.**
11 **Limon** each week at the Respondent's bakery:

12 1) Regular work hours:

13 Mondays through Fridays from **8:00 a.m.** to
14 **5:00 p.m.**
(8 hrs. x 5 days) = 40 hours

15 2) Overtime work hours:

16 a) Weekday overtime:

17 Mondays through Fridays from **4:30 a.m.** to
18 **8:00 a.m.** and **5:00 p.m.** to **6:00 p.m.**
(4.5 hrs. x 5 days) = 22.5 hours

19 b) Weekend overtime:

20 Saturdays from **4:30 a.m.** to **6:00 p.m.**
21 and Sundays from **7:00 a.m.** to **11:00 p.m.** and
22 **2:00 p.m.** to **6:00 p.m.**
(12.5 hrs. + 8 hrs.) = 20.5 hours

23 c) Total overtime:

24 22.5 hrs. + 20.5 hrs. = 43 hours

25 In his Order, the Hearing Officer made it clear that Mr.
26 Limon had already received **\$3,604.00** as a result of the monthly
27 payments made by the Respondent. However, the record contains
conflicting information about the commencement and completion

^{s/} Neither party filed an appeal questioning the Hearing
Officer's findings concerning Mr. **Limon's** Sunday work schedule.
According to the Hearing Officer, Mr. Limon performed fanning
duties with the knowledge of his employer from **7:00 a.m.** until
11.00 a.m. Order on Appeal at 2. On Sunday afternoons, Mr. Limon
prepared food in the kitchen from **2:00 p.m.** until **6:00 p.m.** Id.

1 dates of Mr. **Limon's** work for the Respondent. Therefore, the
2 Court does not have the information necessary to determine whether
3 the \$3,604.00 constituted an overpayment or underpayment of
4 straight wages. To be sure, Mr. Limon is entitled to a
5 substantial amount of overtime wages at the rate of \$3.225 per
6 hour. However, the Court is in no position to complete the
7 calculation of the overtime wages with any accuracy.

8
9 **B. Liquidated Damages and Attorney's Fees**

10 **1. Unlawfully Withheld Agency Action**

11 In its plea to recover liquidated damages and attorney's
12 fees, Petitioner relies on Section 4447(d) of the NWA which
13 directs that a "**non-resident** worker that prevails in [a labor
14 **dispute**] shall recover unpaid wages and overtime compensation, an
15 additional equal amount as liquidated damages and court costs." 3
16 CMC 4447(d) (emphasis added). Thus, liquidated damages and court
17 costs shall constitute an amount equal to the amount of unpaid
18 wages and overtime compensation recovered by the employee. Id.
19 Section 4447(d) also awards reasonable **attorney's** fees to those
20 employees who prevail in wage and overtime disputes. Id. Given
21 his successful recovery of unpaid wages and the plain language of
22 Section **4447(d)** of the NWA, the Petitioner contends that the
23 Hearing Officer unlawfully withheld agency action by failing to
24 award liquidated damages and **attorney's** fees.

25 The Respondent contends that the Hearing Examiner did address
26 the issue of liquidated **damages.**^{1/} In essence, the Respondent
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^{1/} The **Appellee's Brief** filed by Respondent does not
address the issue of withheld attorney's fees.

1 asserts that the lack of a liquidated damages award in the **Order**
2 on **Appeal** resulted from Ms. **Gleason's** implied ruling that no
3 liquidated damages should issue because **Respondent's** violations
4 were not "**willful**" under Section **9243** of the Commonwealth Minimum
5 Wage and Hours Act of **1978** (the Wage Act) **4 CMC § 9243**.

6 According to the Commonwealth Administrative Procedure Act,
7 "**a** reviewing court shall...**[c]ompel** agency action unlawfully
8 withheld." **1 CMC § 9112(f)(1)**. Upon her review of the case at
9 bar, the Hearing Examiner found that the Respondent owed Mr. Limon
10 unpaid wages.^{9/} Such a conclusion required her to at least
11 address, if not award liquidated damages.^{9/} Indeed, the
12 Petitioner submitted a brief on the subject of liquidated damages
13 to the Hearing Officer. Nevertheless, her **Order on Appeal**
14 excluded any discussion or award of liquidated damages.=/ Thus,
15 the Hearing Examiner disregarded statutes which require an award
16 or at least consideration of liquidated damages. Her actions
17 contravene the Wage Act and the Nonresident Workers Act and thus
18 amount to agency action unlawfully withheld.

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22 ^{9/} "**[T]he** Respondent shall compensate Complainant for
23 unpaid wages...in the amount of **\$1,603.47** at a rate of **3,225** per
24 hour for services performed on Saturdays at the bakery from **6:00**
a.m. until **4:30** p.m. and for two hours worked at the farm weekly
between the hours of **7:00** a.m. to **11:00** a.m." **Order on Appeal** at
3.

25 As discussed infra, both the NWA and the Wage Act direct
26 the Hearing Examiner to address the issue of liquidated damages in
the event the employee succeeds on the merits. **See 3 CMC § 4447(d)**
and **4 CMC § 9243**.

27 ^{10/} Respondent's position, that a Hearing Examiner can reach
28 and decide the issue of liquidated damages under the Wage Act by
not addressing it at all, borders on frivolity. **Appellee's Brief**
at 5.

1 **2. The NWA Controls Liquidated Damages for Non-resident Workers**

2 The Respondent refers the Court to federal **caselaw** citing
3 Section 216(b) of the Fair Labor Standards Act for the proposition
4 that the Court has discretion to withhold all or part of an award
5 of liquidated damages when the employer shows a lack of a
6 **"willful"** violation. Next, the Respondent directs the Court to a
7 1984 decision by the **NMI** District Court Appellate Division, *Elayda*
8 *v. J & I Construction Co.*, which involved a nonresident employee's
9 attempt to recover unpaid wages and overtime. *Elayda*, 1 CR 1025
10 (1984). The *Elayda* court relied on the **"willful"** language
11 contained in Section 13(b) of the Commonwealth Minimum Wage and
12 Hours Act of 1978 (the Wage Act) 4 **CMC** § 9243, and held that a
13 determination of liquidated damages under the Wage Act should be
14 governed by the **"willfulness"** inquiry used in federal minimum wage
15 law. *Elayda v. J & I Construction Co.*, 1 CR 1025, 1038 (1984).

16 The wage dispute which led to the *Elayda* decision took place
17 during 1979 and 1980. On August 8, 1982, Governor Pedro Tenorio
18 signed the NWA making it effective immediately. The NWA contains
19 no language of retroactivity. Thus, the *Elayda* court correctly
20 reached its decision without discussing the NWA. In contrast, the
21 case at bar originates from a 1990-91 wage dispute. Thus, the
22 *Elayda* decision is not binding on this Court to the extent its
23 holding has been displaced by the NWA.

24 However, four years after the *Elayda* decision, the **NMI**
25 District Court Appellate Division had another opportunity to
26 address the issue of liquidated damages in a labor case involving
27 a nonresident employee. *Loren v. E'Saipan Motors, Inc.*, 3 CR 564
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1 (1988).^{11/} Pursuant to its decision to remand the case, the
2 Loren court directed the trial court to award liquidated damages
3 if the employer's violations were "willful" in accordance with the
4 Elayda decision. Loren, 3 CR at 577. As it did in the Elayda
5 decision, the Loren court based its remand directions on the
6 "willful" language contained in Section 13(b) of the Wage Act. 4
7 CMC § 9243. However, the Loren court did not acknowledge the
8 NWA's existence despite the fact that it had been effective since
9 August 1982. See generally Loren.

10 Thus, the Court is faced with the NWA which mandates
11 liquidated damages for non-resident workers prevailing in labor
12 disputes and a decision from the NMI District Court Appellate
13 Division which requires such an award to hinge upon the existence
14 of willfulness on the part of the employer. Both the NWA and the
15 Loren decision's application of the Wage Act are binding upon this
16 Court.

17 In the case at bar, both the NWA and the Wage Act contain
18 sections concerning the award of liquidated damages in unpaid wage
19 disputes between employees and employers. When faced with two
20 conflicting statutes which by their terms apply to the facts of a
21 case, the court should implement the more recent and specific
22 statute. SUTHERLAND STATUTORY CONSTRUCTION § 51.02 (5th Ed) (emphasis
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25 ^{11/} The Superior Court's Judgment After Remand from the
26 District Court Appellate Division was reversed by the Supreme
Court with directions to comply with the original instruction of
the Appellate Division. Loren v. *E'Saipan* Motors Inc., 1 NMI 133,
138 (1990). However, the Supreme Court did not engage itself in
the merits of the Appellate Court's instructions, but rather
concentrated on the Superior Court's failure to follow specific
directions on remand. Id.

1 added); *see Northern Border Pipeline Co. v. Jackson Cty., Etc.*,
2 512 F.Supp. 1261, 1264 (1981).

3 The Wage Act became law in 1978 and the liquidated damages
4 clause contained therein has not been amended since its inception.
5 4 CMC § 9243. In contrast, the NWA became law in 1983 and Section
6 4447(d) concerning liquidated damages has been amended as recently
7 as 1987. *See* 3 CMC 4447(d) *repealed and reenacted by P.L. No. 5-32*
8 § 19 (1987). The NWA is the more recent statute.

9 Although the Wage Act contains language governing the area of
10 liquidated damages in wage disputes, that statute applies to "all
11 individuals employed by an employer." *See* 4 CMC § 9212(e) defining
12 "employee". Therefore, the liquidated damage clause in Section
13 9243 of the Wage Act reaches all individuals earning minimum wage
14 in the Commonwealth. When enacted in 1982, the NWA purported to
15 establish procedures and requirements for the hiring of
16 nonresident workers. The legislature restricted the reach of the
17 liquidated damage clause in Section 4447(d) to nonresident
18 workers.^{12/} Thus, the legislature introduced a general
19 liquidated damage measure in the Wage Act, and later designed a
20 more specific liquidated damage provision in the NWA applicable
21 only to nonresident workers.

22 Based on the foregoing statutory analysis, the Court
23 concludes that the NWA, as a more recent and nonresident-specific
24 statute, contains the correct liquidated damage provision to be
25 applied in nonresident worker cases. Given the mandatory language
26

27 ^{12/} The NWA defines a nonresident worker as "any available
28 individual who is at least 18 years old and who is capable of
performing services or labor desired by an employer and who is not
a resident worker." 3 CMC § 4412(i).

1 of the **NWA's** liquidated damage provision, the Court hereby awards
2 the Petitioner liquidated damages and court costs in an amount
3 equal to the award for unpaid wages and overtime compensation
4 which has yet to be determined. In addition, the Petitioner shall
5 receive an award of reasonable **attorney's** fees in accordance with
6 Section **4447(d)** of the NWA.

7 Even if this Court interprets Loren in its broadest sense and
8 applies the willful test contained in the Wage Act, it still
9 reaches a similar result. In that event, the correct inquiry is:
10 whether the Respondent knew or should have known that she had
11 underpaid the Petitioner. See Loren, at 577. As part of her
12 defense, the Respondent claimed that the Petitioner could not have
13 worked on Saturday because the Bakery was not open for business on
14 Saturday. The Hearing **Examiner's** findings indicate that the
15 Respondent's testimony was not credible. The Court looks
16 unfavorably upon such testimony and views it as sufficient
17 evidence of Respondent's knowledge that she had been underpaying
18 the Petitioner. In addition, the Court cannot fathom how the
19 **Complainant's** grueling work schedule including over forty hours of
20 overtime per week could have gone unnoticed. Therefore, the Court
21 finds that the Respondent willfully violated 4 CMC § 9222, and
22 pursuant to Section 9243 of the Wage **Act**, owes the Complainant
23 liquidated damages in an amount equal to the amount of unpaid
24 wages and overtime compensation as well as reasonable **attorney's**
25 fees.

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IV. CONCLUSION

For the foregoing reasons, the Court concludes as follows:

1. The Hearing Examiner's finding concerning Mr. Limon's Saturday work schedule was arbitrary and capricious. Based on substantial evidence contained in the record, the Court finds that Mr. Limon began working on Saturday mornings at 4:30 a.m. and completed work at 6:00 p.m.

2. The Hearing Examiner's adoption of the Hearing Officer's finding concerning weekday hours was arbitrary and capricious. Based on substantial evidence contained in the record, the Court finds that Mr. Limon worked Monday through Friday from 4:30 a.m. to 6:00 p.m.

3. The Hearing Examiner's finding that Mr. Limon worked eight (8) hours on Sundays was not contested by either party, and thus shall not be disturbed.

4. Mr. Limon worked a total of eighty-three (83) hours per week, forty-three (43) of which constitute overtime hours payable at a rate of \$3.225 per hour. The Respondent's failure to compensate the Complainant for most, if not all of this labor constitutes a violation of 4 CMC § 9222.

5. The Court shall refrain from awarding a specific amount of damages at this time but shall retain jurisdiction over this matter. The parties are ordered to stipulate to the actual number of weeks worked by Mr. Limon, and ultimately to the amount of straight and overtime wages still owed to Mr. Limon. In particular, the parties should discount the weeks Mr. Limon spent on vacation and the time he spent fleeing his employment in late September 1991. Once the parties have determined the actual number

1 of weeks worked by Mr. Limon, the parties shall multiply that
2 amount by \$86.00 (\$2.15 x 40 hrs.) to arrive at the straight wages
3 earned by Mr. Limon. Likewise, the parties shall multiply the
4 actual number of weeks worked by Mr. Limon by \$138.68 (\$3.225 x 43
5 hrs.) to arrive at the total overtime wages earned by Mr. Limon.
6 The sum total of straight wages and overtime wages will constitute
7 the amount of money Mr. Limon should have received from the
8 Respondents for his labor. Finally, the parties should determine
9 the amount of wages still owed to Mr. Limon by subtracting
10 \$3,604.00 (wages already collected) from the figure representing
11 the sum of straight and overtime wages.

12 6. The Hearing **Examiner's** disregard for the liquidated
13 damage measures contained in the NWA and the Wage Act constitute
14 agency action unlawfully withheld.

15 7. Given the mandatory language of the **NWA's** liquidated
16 damage provision, the Court hereby awards the Petitioner
17 liquidated damages and court costs in an amount equal to the award
18 (as yet to be determined) for unpaid wages and overtime
19 compensation. In addition, the Petitioner shall receive an award
20 of reasonable **attorney's** fees in accordance with Section 4447(d)
21 of the NWA.

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23 So ORDERED this 1 day of July, 1994.

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26 EDWARD MANIBUSAN, Associate Judge
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