

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

Joseph Clark, On Behalf of Himself and All Others Similarly Situated,)	Civil Action No: 1:17-cv-00240-MR-DLH
)	
)	DEMAND FOR JURY TRIAL
Plaintiff,)	
)	FIRST AMENDED
vs.)	COLLECTIVE/CLASS ACTION
)	COMPLAINT
)	
)	
Harrah's NC Casino Company, LLC, d/b/a)	
Harrah's Cherokee Casino Resort and d/b/a)	
Harrah's Cherokee Valley River Casino and)	
Hotel and Brooks Robinson,)	
)	
Defendants.		

Plaintiff, Joseph Clark, on behalf of himself and all similarly situated individuals, brings this collective and class action against Defendants Harrah's NC Casino Company, d/b/a Harrah's Cherokee Casino Resort and d/b/a Harrah's Cherokee Valley River Casino and Hotel ("Harrah's") and Brooks Robinson ("Robinson") (together "Defendants"), for unpaid wages, overtime compensation and statutory penalties alleging violations of the federal Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, and the North Carolina Wage and Hour Act ("NCWHA") N.C. Gen. Stat §§ 95-25.1 *et seq.* In support of the claims stated above, Plaintiff alleges the following:

INTRODUCTION

1. This case implicates the longstanding policy of Defendants, which fails to compensate table games dealers, dual rate dealers and floor supervisors as required by the FLSA and the NCWHA.

2. Defendants maintained a companywide policy and practice of requiring table games dealers, dual rate dealers and floor supervisors to begin work between 30 and 37 minutes before the start of their scheduled shifts, without compensation.

3. Defendants did not provide table games dealers with an uninterrupted 30-minute meal period each shift, but, pursuant to companywide policy and practice, deducted 30-minutes from the time worked by table games dealers each shift.

4. Defendants failed to pay Plaintiff and other similarly situated table games dealers all earned overtime compensation in violation of the FLSA by requiring them to work off-the-clock before the start of their scheduled shifts and/or deducting 30-minutes from the time worked each shift.

5. Defendants failed to pay Plaintiff and other similarly situated dual rate dealers and shift supervisors overtime compensation for hours worked in excess of forty in a workweek.

6. Defendants misclassified dual rate dealers and floor supervisors as exempt from overtime under the FLSA.

7. Defendants failed to pay Plaintiff and similarly situated table games dealers, dual rate dealers and shift supervisors all promised and earned wages on their regular pay days for all hours worked in violation of the NCWHA.

8. Plaintiff and similarly situated table games dealers, dual rate dealers and shift supervisors regularly worked in excess of forty hours during individual workweeks.

COVERAGE ALLEGATIONS

9. At all times hereinafter mentioned, Harrah's has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

10. At all times hereinafter mentioned, Robinson has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

11. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA 29 U.S.C. § 203(r).

12. At all times hereinafter mentioned, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that the enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that the enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

13. At all times hereinafter mentioned, Plaintiff has been an employee within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

14. At all times hereinafter mentioned, Plaintiff was an individual employee and was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

15. At all times hereinafter mentioned, Harrah's has been an employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5).

16. At all times hereinafter mentioned, Robinson has been an employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5).

17. At all times hereinafter mentioned, Plaintiff was an employee within the meaning of Section 95-25.2(4) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(4).

PARTIES

18. Plaintiff Clark is a natural person and currently a resident of Georgia. Clark was a resident of North Carolina during 2014 and 2015. Clark was employed at Harrah's Cherokee Casino Resort from July 28, 2014 through September 29, 2015 and at Harrah's Cherokee Valley River Casino from October 2015 through January 18, 2017. Clark has worked in the positions of table games dealer, dual rate dealer and floor supervisor.

19. Harrah's NC Casino Company, LLC is a North Carolina corporation with its principal office located at One Caesars Palace Drive, Las Vegas, Nevada. Harrah's operates two casinos in North Carolina, which are Harrah's Cherokee Casino Resort, located in Cherokee, North Carolina and Harrah's Cherokee Valley River Casino and Hotel, located in Murphy, North Carolina.

20. Robinson is employed by Harrah's as Senior Vice President and also holds the title and authority of General Manager of Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino and Hotel. Robinson has responsibility to act on behalf of, and in the interest of, Harrah's in devising, directing, implementing, and supporting the wage and hour practices and policies relating to Plaintiff and other similarly situated employees. At all times hereinafter mentioned, Robinson exercised this authority with respect to Plaintiff and other similarly situated employees.

JURISDICTION

21. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1337 (commerce), 28 U.S.C. § 1331 (federal question), 29 U.S.C. § 216(b) (FLSA), and 28 U.S.C. § 1367 (supplemental jurisdiction).

22. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

FACTS

23. Harrah's is the exclusive manager and operator Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino. As explicitly set forth in the Management Agreement it drafted (hereafter "Management Agreement"), Harrah's maintains "exclusive responsibility and authority to direct the election, hiring, training, control and discharge of all employees" at Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino.

24. As explicitly set forth in the Management Agreement, all employees at Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino are under Harrah's supervision.

25. As explicitly set forth in the Management Agreement, Harrah's is responsible for drafting "personnel policies and procedures" for all Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino employees.

26. As General Manager of Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino, Robinson is responsible, and in fact exercises this responsibility, for the day-to-day operation of Harrah's Cherokee Casino Resort and Harrah's Cherokee Valley River Casino as explicitly set forth in the Management Agreement.

27. Despite the FLSA's mandatory requirement to pay employees for all hours worked, Harrah's has a uniform, companywide payroll policy of automatically deducting 30 minutes per shift worked for a so-called meal break for Plaintiff and similarly situated table games dealers, even though these workers are not afforded a 30 minute uninterrupted meal break.

28. This policy applied to all hourly, non-exempt table games dealers, including Plaintiff.

29. As a matter of companywide policy and practice, Harrah's does not allow table games dealers to take a 30 minute uninterrupted meal break.

30. As a matter of companywide policy and practice, Harrah's requires table games dealers to return to their gaming station at least ten minutes before the end of their meal break.

31. Even though Harrah's knows it does not permit table games dealers to take anything close to a 30 minute meal period, it nevertheless deducts a full 30 minute meal period from their pay for each shift worked.

32. Despite the FLSA's mandatory requirement to pay employees for all hours worked, Harrah's has a uniform, companywide policy and practice to require Plaintiff and similarly situated table games dealers, dual rate supervisors and shift supervisors to report to work at least 30-minutes before the start of their scheduled shifts, without pay, which includes attendance at mandatory pre-shift meetings.

33. This companywide policy applies to all hourly, table games dealers, dual rate supervisors and shift supervisors, including Plaintiff.

34. Dual rate dealers and floor supervisors do not qualify for any exemption under the FLSA, yet Harrah's classified these positions as exempt and unlawfully refused to pay overtime to its dual rate dealers and floor supervisors for hours worked in excess of forty in a workweek.

COLLECTIVE ACTION ALLEGATIONS

35. Plaintiff brings this action as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 207 and 216(b).

36. Plaintiff brings this action on behalf of the following two collective classes of similarly situated individuals:

All individuals who worked at Harrah's North Carolina casinos as table games dealers, or any other similarly titled position, during the applicable statute of limitations period who were subject to Harrah's automatic meal deduction policy and/or Harrah's policy of requiring table games dealers to report to work at least 30-minutes prior to the start of their scheduled shifts without pay; and

All individuals who worked at Harrah's North Carolina casinos as dual-rate dealers or floor supervisors, or any other similarly titled position, during the applicable statute of limitations period who were not paid overtime compensation for time worked in excess of forty (40) hours in given workweeks (together, the "FLSA Collectives").

37. Plaintiff is a member of each of the FLSA Collectives he seeks to represent because he worked as a table games dealer, dual-rate supervisor, and floor supervisor during his tenure with Defendants and he was subjected to the unlawful pay practices at issue in this lawsuit.

38. The claims under the Fair Labor Standards Act may be pursued by those similarly situated employees who opt-in to this case pursuant to 29 U.S.C. § 216(b).

39. Plaintiff and the members of the Collective Classes are similarly situated because they work or have worked for Defendants and were subject to the same uniform operational, compensation, and timekeeping policies and practices. Specifically:

- a. Defendants required Plaintiff and members of the FLSA Collectives to follow uniform Harrah's policies, practices and directives;
- b. Plaintiff and other similarly situated table games dealers were subject to the same compensation plans;

- c. Plaintiff and other similarly situated dual-rate dealers and floor supervisors were subject to the same compensation plans;
- d. Plaintiff and other similarly situated dual-rate dealers and floor supervisors were misclassified as exempt from the overtime provisions of the FLSA;
- e. Plaintiff and members of the FLSA Collectives worked in excess of 40 hours per week;
- f. Defendants failed to pay Plaintiff and the members of the FLSA Collectives an overtime premium of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week;
- g. Defendants failed to record the time actually worked by Plaintiff and the members of the FLSA Collectives.

40. All of the work that Plaintiff and the Collective Classes have performed has been assigned by Defendants, and/or Defendants has been aware of all of the work that Plaintiff and the Collective Classes have performed.

41. As part of its regular business practice, Defendants have intentionally, willfully and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the Collective Classes.

42. Defendant knew or should have known that Plaintiff and the members of the FLSA collectives performed work that required additional wages and overtime compensation to be paid.

CLASS ACTION ALLEGATIONS

43. Plaintiff also brings this action under Rule 23(b)(3), Fed.R.Civ.P., for back wages and liquidated damages under N.C.Gen.Stat. §§ 95-25.6, 95-25.7, 95-25.22, and 95-25.22(a1) (“NCWHA”).

44. Plaintiff seeks class certification under Rule 23 for the following two classes under the NCWHA:

All individuals who worked at Harrah's North Carolina casinos as table games dealers, or any other similarly titled position, during the applicable statute of limitations period who were not paid all accrued and earned wages on their regular paydays as a result of Harrah's automatic meal deduction policy and/or Harrah's policy of requiring table games dealers to report to work at least 30-minutes prior to the start of their scheduled shifts without pay; and

All individuals who worked at Harrah's North Carolina casinos as dual-rate dealers or floor supervisors, or any other similarly titled position, during the applicable statute of limitations period who were not paid all accrued and earned wages on their regular paydays (together, the "NCWHA Classes")

45. This action is maintainable as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure pursuant to NCWHA, N.C. Gen. Stat. §§ 95-25.6 and 95-25.7, for failure to pay promised and earned wages on regular paydays for all hours worked by Plaintiff and the NCWHA Classes.

46. The NCWHA Classes are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court. While the exact number of class members is unknown to Plaintiff at this time, upon information and belief, the class is comprised of at least 1000 persons.

47. There is a well-defined commonality of interest in the questions of law and fact involving and affecting the NCWHA Classes in that Plaintiff and all members of the NCWHA Classes have been harmed by Defendants' failure to pay earned wages. The common questions of law and fact include, but are not limited to the following:

(a) whether Defendants failed to pay Plaintiff and members of the NCWHA Classes promised and earned regular and overtime wages for all hours worked on their regular pay day in violation of NCWHA §§ 95-25.6 and 95-25.7;

(b) whether Defendants had a policy and/or practice of automatically deducting 30 minutes per shift worked for a so-called meal break for Plaintiff and similarly situated table

games dealers, even though these workers are not afforded a 30 minute uninterrupted meal break;

(c) whether Defendants had a policy and/or practice of requiring Plaintiff and similarly situated table games dealers to report to work 30-minutes prior to the start of their scheduled shifts and perform work without compensation;

(d) whether Defendants had a policy and/or practice of requiring Plaintiff and similarly situated table games dealers to work off-the-clock;

(e) whether Defendants failed to pay dual-shift supervisors and floor supervisors all of their earned and accrued wages on their regular pay days; and

(e) whether Defendants' refusal to pay all earned and accrued compensation to the NCWHA Classes is in violation of NCWHA.

48. Plaintiff's claims are typical of those claims that could be alleged by any NCWHA Class member and the relief sought is typical of the relief that would be sought by each member of the class in separate actions. The NCWHA Classes were subject to the same compensation practices of Defendants; i.e. refusing to timely pay all promised and earned wages on regular pay days. The compensation policies and practices of Defendants affected all class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each class member. Plaintiff and members of the proposed classes sustained similar losses, injuries, and damages arising from the same unlawful policies, practices and procedures.

49. Plaintiff is able to fairly and adequately protect the interests of all members of the classes, and there are no known conflicts of interest between Plaintiff and members of the proposed classes. Plaintiff's interests in the claims are in no way antagonistic or adverse to those of other

class members and the undersigned counsel are experienced litigators who have been named counsel for many class and collective actions.

50. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Because the loss, injuries, and damages suffered by each of the individual class members are modest, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them.

51. Important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for adjudication of individual litigation and claims would be substantial and substantially more than if the claims are treated as a class action. Prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the classes, establishing incompatible standards of conduct for the Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

COUNT I
(Violation of the FLSA)

52. Plaintiff re-alleges and incorporate by reference the above allegations.

53. Plaintiff bring Count I on behalf of the Collective Classes as defined above.

54. Defendants have violated and continue to violate the FLSA, 29 U.S.C. § 201, *et seq.*, by failing to pay Plaintiff and the members of the Collective Classes for all overtime hours worked in excess of forty in a workweek.

55. Defendant's conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

56. Defendant violated the FLSA by failing to keep, make and preserve accurate records of all time worked by Plaintiff and the Collective Class.

57. Due to Defendant's willful FLSA violations, Plaintiff, on behalf of himself and the members of the Collective Classes, are entitled to recover from Defendant (1) compensation for unpaid wages; (2) an additional equal amount as liquidated damages; and (3) reasonable attorneys' fees and the costs of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(Violation of North Carolina Wage and Hour Act)

58. Plaintiff re-alleges and incorporates by reference the above allegations.

59. Count II arises from Defendants' policy and practice of suffering or permitting Plaintiff and the NCWHA Classes to work without paying promised and earned wages for all hours worked in violation of N.C. Gen. Stat. §§ 95-25.6 and 95-25.7.

60. Defendants violated N.C. Gen. Stat. §§ 95-25.6 and 95-25.7 by failing to pay Plaintiff and the NCWHA Classes all promised wage and overtime payments on the employees' regular payday for all hours worked.

61. Defendant's violation of the NCWHA was willful.

62. Due to Defendants' willful NCWHA violations, Plaintiff, on behalf of himself and the members of the NCWHA Classes, are entitled to recover from Defendant (1) compensation for

unpaid wages; (2) an additional equal amount as liquidated damages; and (3) reasonable attorneys' fees and the costs of this action, pursuant to the NCWHA.

WHEREFORE, Plaintiff respectfully prays that this Court:

1. Enter an order finding that this Court has jurisdiction over Plaintiff's claims;
2. Certify this action as a collective action under 29 U.S.C. § 216(b) with respect to the Collective Classes;
3. Certify this action as a class action under Rule 23(b)(3), Fed.R.Civ.P., for back wages and liquidated damages under N.C.G.S. § 95-25.22 with respect to the NCWHA Classes;
4. Enter a judgment against Defendants, and in favor of the named Plaintiff and the Collective Classes, under Count I in an amount equal to the total of the unpaid wages due the named Plaintiff and the Collective Classes under 29 U.S.C. § 206(a)(1), plus an equal amount as liquidated damages under 29 U.S.C. § 216(b);
5. Enter judgment against Defendants, and in favor of the named Plaintiff and NCWHA Classes, under Count II in an amount equal to the total of the unpaid wages due Plaintiff and the NCWHA Class of workers under N.C.G.S. §§ 95-25.22(a), plus an equal additional amount as liquidated damages under N.C.G.S. § 95-25.22(a)(1) plus interest in the manner and at the rate prescribed in N.C.G.S. § 95-25.22(a);
6. Award Plaintiff reasonable attorneys' fees and costs under 29 U.S.C. § 216(b), and N.C.G.S. § 95-25.22(d) against Defendants;
7. Award Plaintiff and the Classes prejudgment and post judgment interest as allowed by law against Defendants;

8. Enter a Declaration and finding by the Court that Defendants willfully violated provisions of the FLSA by failing to comply with the overtime requirements of the FLSA; and
9. Grant such other relief as the Court may deem just and proper.

JURY TRIAL DEMAND

The named Plaintiff demands a trial by jury for all issues of fact.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on November 8, 2017 a copy of the foregoing has been filed with the Clerk of the Court using the CM/ECF system which will send notification to the following:

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