2012 IL App (4th) 120258-U

NO. 4-12-0258

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 10, 2012
Carla Bender
4th District Appellate
Court, IL

ESTELLA PORTER, JIM D. CAMP, SHANNON BORTNER, and BRAD STABIER, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs-Appellants, v. KRAFT FOODS GLOBAL, INC., Defendant-Appellee.	)))))))))	Appeal from Circuit Court of Champaign County No. 10L44 Honorable Michael Q. Jones, Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's grant of summary judgment in the defendant's favor, concluding that no genuine issue of material fact existed with regard to the plaintiffs' claim that the defendant failed to pay the plaintiffs and the defined class members for their time at work in violation of the Minimum Wage Law (820 ILCS 105/1 to 15 (West 2010)) or the Wage Payment and Collection Act (820 ILCS 115/1 to 15 (West 2010)).

¶ 2 In September 2010, plaintiffs, Estella Porter, Jim D. Camp, Shannon Bortner, and Brad Stabier (collectively, the employees), filed an amended putative class action lawsuit against defendant, Kraft Food Global, Incorporated, alleging that Kraft failed to pay them and the class members for their time at work in violation of the Minimum Wage Law (820 ILCS 105/1 to 15 (West 2010)) (count I) and the Wage Payment and Collection Act (820 ILCS 115/1 to 15 (West 2010)) (count II). Specifically, the employees alleged in both counts that Kraft failed to

compensate them for (1) 15 minutes of either a required "green room" meeting or a portion of their scheduled breaks, which included a lunch period; (2) the time spent to "don" and "doff" required equipment; and (3) the reasonable time spent walking to and from the work location after entering Kraft's facility.

¶ 3 In March 2011, Kraft filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)). Following two separate hearings, the trial court granted summary judgment in Kraft's favor as to all of the employees' allegations.

¶ 4 The employees appeal, arguing that the trial court erred by granting summary judgment in Kraft's favor. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Kraft's Employment Procedures

¶ 7 The following facts were gleaned from the parties' pleadings, depositions, affidavits, and other supporting documents filed in the trial court.

¶ 8 Kraft operates a 1,000,000 square foot food-production facility in Champaign, Illinois, that employs approximately 1,200 workers. To maximize its 24-hour production cycle, which lasts typically 5 to 7 days, Kraft employs a staggered shift schedule that includes an 8-hour shift that spans 5 days. Kraft personnel normally begin and end their shifts by swiping their electronic identification card at any one of over 30 different terminals located throughout Kraft's facility to ensure an accurate accounting of their work hours.

¶ 9 The employees had an eight-hour shift that began at 7 a.m. and ended at 3 p.m. Each employee would enter the facility and depending on the time available before the start of

his or her shift, would either eat at the cafeteria, visit with others, go to the locker room, or proceed directly to a terminal to scan his or her identification card. Collectively, the employees opined that it took between less than one minute to five minutes to enter Kraft's facility and walk to one of the numerous terminals before entering their respective work areas.

¶ 10 Prior to swiping their cards to begin their workday, each employee was required to "don" the following specific equipment: (1) Porter, a production department employee, was required to wear a hairnet, earplugs, and safety glasses; (2) Bortner, a laboratory department employee, was required to wear a hairnet; (3) Camp, a maintenance department employee, was required to wear a "bump cap," safety glasses, and a hairnet; and (4) Stabier, a production department employee, was required to wear a hairnet and earplugs. Each employee agreed that donning the respective equipment took less than 25 seconds. The employees were also required to "doff"—that is, remove—their equipment after they swiped their time cards to signify the end of their shifts. Camp noted that it took considerably less time to doff the required equipment than to don it.

¶ 11 Some Kraft workers, but not all, began their day by attending a mandatory "green room meeting" 15 minutes prior to their normally scheduled shift start time to discuss pertinent management issues. Workers employed in Kraft's production or laboratory section were required to attend a green room meeting prior to every shift. Workers employed in Kraft's maintenance or distribution section were required to attend a weekly green room meeting, but these meetings were not always held. For example, if an employee's eight-hour shift started at 7 a.m., Kraft required him or her to be present for the green room meeting at 6:45 a.m. In such cases, the employees would swipe their identification cards at a terminal just prior to entering the meeting

but would not end their shift until 3 p.m., which reflected a total time of 8 hours and 15 minutes at Kraft's facility. In contrast, employees who were not required to attend a green room meeting worked an eight-hour shift. In either case, all the workers enjoyed a 20-minute lunch period, which permitted them to leave the facility, if they so desired. In addition, all workers who were required to attend a green room meeting were allowed an extra 15-minute break that their fellow workers—who did not attend such meetings—did not receive. Under these circumstances and regardless of whether Kraft required a worker to attend green room meetings, Kraft compensated the employees for eight hours of work per day.

¶ 12 B. The Employees' Lawsuit

¶ 13 In September 2010, the employees filed an amended class action suit against Kraft, alleging that Kraft failed to pay them and the class members for their time at work in violation of the Minimum Wage Law (count I) and the Wage Payment and Collection Act (count II). Specifically, the employees alleged in both counts that Kraft failed to compensate them for (1) 15 minutes of either the "green room" meeting or a portion of their scheduled breaks, which included a lunch period; (2) the time spent to "don" and "doff" required equipment; and (3) the reasonable time spent walking to and from the work location after entering Kraft's facility.

¶ 14 C. Kraft's Summary Judgment Motion

¶ 15 In March 2011, Kraft filed a motion for summary judgment, alleging that no genuine issue of material fact existed because (1) courts have overwhelmingly held that time spent donning and doffing generic gear such as earplugs, bump caps, safety glasses, and hairnets is not compensable; (2) the employees were permitted to don and doff the required equipment outside of the workplace; (3) the *de minimis* doctrine prohibits compensation for claims that are

short in duration or difficult to measure accurately; (4) alternatively, donning and doffing equipment are preliminary or concluding activities for which compensation is not required; (5) the employees' claims regarding walk times similarly are unsupported; and (6) the employees' claims regarding unpaid green room meeting time are belied by their own admission that (a) Kraft paid them for meetings they were required to attend and (b) the employees' meal breaks were unquestionably used for the employees' benefit.

¶ 16 D. The Hearing on Kraft's Summary-Judgment Motion

¶ 17 At a June 2011 hearing, the trial court granted summary judgment in Kraft's favor regarding the donning and doffing of required equipment. Specifically, the court, relying on federal court cases that interpreted the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§ 201 to 219 (2006)), which had been subsequently amended by enactment of the Portal-to-Portal Pay Act of 1947 (29 U.S.C. §§ 251 to 262 (2006)), found that no compensation was warranted if the donning and doffing was not a captive activity—that is, the employees were not mandated to don and doff the required equipment at Kraft's facility but, instead, could have done so at any location of their choosing. The court also found that the time spent donning and doffing the required equipment was *de minimis*. In this regard, the court rationalized, as follows:

> "It is *de minimis* because, A, common sense tells you, as well as deposition testimony tells you we're talking about a matter of seconds, B, it's generic safety gear, C, it would be an administrative nightmare to try to capture on the clock the time it takes *** to stick *** earplugs in, all of these things plus the logical conclusion of making this compensable suggests that the time spent donning

and doffing the particular generic safety items the [employees] reference must be noncompensable. It is, simply put, not a principal activity."

¶ 18 The trial court also relied on the amended FLSA to grant summary judgment in Kraft's favor with regard to the employees' claim that they were entitled to compensation for walking to and from their workstations.

¶ 19 With regard to the employees' green room meeting claim, the trial court asked Kraft to reconcile how employees who are required to attend such meetings, which extended their 8-hour workday by an extra 15 minutes, are only paid for 8 hours as their fellow employees who did not have to attend such meetings. Kraft responded as follows:

"The *** vagaries of production require that [Kraft] maintain a cost effective production, and so [Kraft] inform[s] employees at the time that they begin their employment that we have green rooms for production personnel, it starts 15 minutes prior to your shift start time and you will receive at least a *** 20-minute lunch period plus additional break time. [Green room employees] get additional break time that *** the employees [who] don't have to attend the green room meetings do [not] receive. And so the overall time *** is the same amount of compensable time and work time is about the same.

[Kraft] inform[s] the individuals that have to attend the green room meetings *** that, of your 45 minutes of break time, as

opposed to the 30 that the other employees receive, only 30 of it is paid, which is completely consistent with what is being provided to the other employees. Everybody's getting paid for work time and *** receiving pay for 30 minutes of break/lunchtime. These individuals are not receiving pay for 15 minutes of their lunchtime, which is completely consistent with Illinois law."

¶ 20 In denying Kraft's motion for summary judgment as to the employees' green room meeting claim, the trial court placed emphasis on a chart contained within Kraft's employee policy manual, which illustrated, in pertinent part, the following:

"Schedule Examples

	Lunch	Paid Break	Unpaid Break
8 hour shift (6:30am - 2:30pm)	20 min	10 min	*None
8 hour & 15 min shift (6:45am - 3:00pm)	20 min	10 min	15 min

- Departments with a regular scheduled shift of 8 hours will be allowed a total of 30 paid minutes for lunch/break.

- Departments with a regular scheduled shift of 8 hours and 15 minutes will be allowed a total of 45 minutes for lunch/break (30 minutes paid, 15 minutes unpaid).

* * *

* You are not eligible to receive a 15 minute paid break because your 15 minute Green Room is already incorporated into your shift."

Specifically, the trial court stated, as follows:

"Kraft argues that [the employees are] not getting paid for 15 minutes of their lunch. It's unclear to [the court] whether it is contemplated by the way the [employees] on the clock for eight

> hours and 15 minutes have three discrete times away from work, 20 minutes lunch, 10-minute break[,] and then a 15-minute break or whether that 20 and 10 is commonly taken together for the equivalent of a 30-minute lunch, but the problem that [the court has] is this is completely *** inconsistent *** with [Kraft's] policy manual. [Kraft's] policy manual says the [employees] on the clock for eight hours and 15 minutes can take an additional 15-minute unpaid break. Well, Kraft can't do that, so what [it does] then is essentially [it's] saying forget that. [It's] taking the 15 minutes *** from lunch.
>
> * * *
>
> [The court's] response and reaction and *** ruling is that this creates a genuine issue of material fact on the issue of whether Kraft is not paying worker some pay, smaller class of workers for 15 minutes of work because what Kraft is doing is substituting a 15-minute break you may take and actually not paying them for that, which they are required to pay[.]"

¶ 21 In November 2011, Kraft filed a supplemental motion for summary judgment, arguing that the FLSA "is clear" that "payments made for meal breaks (which are not required under Illinois law)" can be used to "offset compensation allegedly owed for time spent attending meetings." At a January 2012 hearing, the trial court reversed its ruling at the June 2011 hearing, denying Kraft's motion for summary judgment as to the employees' green room meeting claim.

In particular, the court found that (1) the employees' 20-minute lunch break was a *bona fide* break in that the employees were not required to perform any duties on Kraft's behalf, (2) under Illinois law, Kraft was not required to compensate the employees for the lunch break period, and (3) Kraft was permitted to offset the unpaid lunch period against the green room meeting time.

¶ 22 This appeal followed.

¶ 23 II. THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT

¶ 24 A. Summary Judgment and the Standard of Review

¶ 25 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744, 940 N.E.2d 1176, 1179 (2010). We review *de novo* a trial court's order granting summary judgment (*id*.) and may affirm that judgment on any basis appearing in the record, regardless of whether the trial court relied on that ground (*Perez v. Sunbelt Rentals, Inc.*, 2012 IL App (2d) 110382, ¶ 7, 968 N.E.2d 1082, 1084).

¶ 26 B. The Trial Court's Grant of Summary Judgment in Kraft's Favor

¶ 27 The employees argue that the trial court erred by granting summary judgment in Kraft's favor. Specifically, the employees contend that (1) Illinois law requires Kraft to pay the entire duration of their 8-hour and 15-minute shift, including green room meetings, breaks, and lunch period and (2) the court should not have relied on federal law that was "incompatible" with Illinois law to grant Kraft summary judgment as to their remaining claims. We address the employees contentions in turn.

¶ 28 1. *The Employees' Green Room Meeting Claim*

¶ 29 As previously noted, the employees contend that Illinois law requires Kraft to pay the entire duration of their 8-hour and 15-minute shift, including green room meetings, breaks, and lunch period. We disagree.

¶ 30 We first note that the employees' 8-hour and 15-minute shift is comprised of the following components: (1) 7 hours and 30 minutes of work at their respective stations, (2) a 10-minute break, (3) a 15-minute break, and (4) a 20-minute lunch period. Although the employees couch a portion of their contention in terms of the green room meeting, each of them acknowledged in their respective deposition that Kraft paid them for their green room meeting time. With regard to the employees' contention that Kraft failed to compensate them for a portion of their break time, they claim that because Kraft contractually agreed to pay them for their lunch period, it necessarily did not pay them for a 15-minute portion of their break time. With regard to the employees' break and lunch claims, they rely, in pertinent part, on the aforementioned portion of Kraft's policy manual. In response, Kraft concedes that despite its "imperfect" policy manual, it is required by law to compensate the employees for their work time, green room meeting time, and 25 minutes of breaks. Regardless of their respective positions, the parties do not dispute that Kraft compensated the class employees at issue for eight hours of work per day.

¶ 31 Given Kraft's admissions, the only disputed time component of the employees' 8 hour and 15 minute shift at Kraft's facility is the 20-minute lunch period. In this regard, Kraft contends that it is not required to pay the employees for their lunch period. The employees, relying on the aforementioned portion of Kraft's policy manual, posit that Kraft contractually agreed to pay them for their lunch period. In support of their position, the employees rely on the

Illinois Supreme Court's decision in *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 505 N.E.2d 314 (1987). We are not persuaded.

¶ 32 In *Duldulao*, 115 Ill. 2d at 490, 505 N.E.2d at 318, the supreme court held that when an employer makes a clear policy statement to its employee in a written policy statement, an enforceable contract may arise between the employer and its employee. In so holding, the supreme court provided the following guidance regarding the required proof to establish such an obligation:

> "First, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made. Second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by commencing or continuing to work after learning of the policy statement."
> *Duldulao*, 115 Ill. 2d at 490, 505 N.E.2d at 318.

¶ 33 Simply put, we conclude that the portion of Kraft's policy manual the employees rely upon, as written, fails to provide a clear promise that contractually obligates Kraft to pay for the employees' lunch period. In addition, the record shows that in disseminating its policy to the employees, they signed the following disclosure statement:

> "This policy manual is not intended to alter the employment status of any employee. Nothing in this policy manual is intended to express or imply a contract between you and the Company.

> Notwithstanding any provisions of this policy manual, any employee or the Company may terminate the employment relationship, with or without cause, and with or without notice, at any time."

Thus, *Duldulao* does not provide any support for the employees' contractual claim.

¶ 34 In this case, the issue underlying the controversy between the parties concerns whether the 20-minute lunch period was considered "hours worked" for purposes of determining the appropriate compensation. See 820 ILCS 105/4a (West 2010) (mandating that a workweek in excess of 40 hours requires compensation at 1 1/2 times the normal rate for each hour above the threshold). In this regard, section 3 of the One Day Rest in Seven Act, provides as follows:

> "Every employer shall permit its employees who are to work for 7 1/2 continuous hours or longer, except those specified in this Section, at least 20 minutes for a meal period beginning no later than 5 hours after the start of the work period." 820 ILCS 140/3 (West 2010).

(The enumerated exceptions do not apply to the employees in this case.)

¶ 35 Section 210.110 of Title 56 of the Administrative Code, which pertains to regulation of working conditions under the Minimum Wage Law, provides as follows:

> " ' Hours worked' means all the time an employee is required to be on duty, or on the employer's premises, or at other prescribed places of work, and any additional time he or she is required or permitted to work for the employer.

> An employee's meal periods and time spent on-call away from his/her employer's premise are compensable hours worked when such time is spent predominantly for the benefit of the employer, rather than for the employee." 56 Ill. Adm. Code 210.110 (2012).

¶ 36 Applying the plain language of the statute and associated definitions contained within the administrative code to the facts of this case—in a light most favorable to the employees—we conclude that the employees' 20-minute lunch period is not "compensable hours worked" because the time spent during their lunch period was not predominately for Kraft's benefit. Absent that 20-minute lunch period, the record shows that the employees worked 7 hours and 55 minutes on a daily basis for which they were appropriately compensated under Illinois law.

¶ 37 Accordingly, because we conclude that Kraft appropriately compensated the employees for their hours worked, we reject the employees' claim that the trial court erred by granting summary judgment in Kraft's favor.

¶ 38 2. *The Employees' Remaining Claims*

¶ 39 To place the employees' remaining contention in context, we note that nine years after the FLSA was enacted, Congress passed the Portal-to-Portal Pay Act of 1947, based, in part, on the following rationale:

> "The Congress finds that the [FLSA], as amended ***, has been interpreted judicially in disregard of long-established cus-

> toms, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; [and] (3) there would be created both an extended and continuous uncertainty on the part of industry[.]" 29 U.S.C. § 251(a) (2006).

(Section 251(a) of the Portal-to-Portal Pay Act lists an additional seven negatively impacted activities such as interstate commerce, voluntary collective-bargaining agreements, and increased costs to consumers.)

¶ 40 One such amendment Congress enacted under that Portal-to-Portal Pay Act concerned the following issue:

> "Except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the [FLSA], as amended *** on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following

activities *** —

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." 29 U.S.C. § 254(a) (2006).

¶ 41 As previously noted, the employees also contend that the trial court should not have relied on federal law that was "incompatible" with Illinois law to grant Kraft summary judgment as to their remaining claims. Specifically, the employees take exception with the court's consideration of the phrase "activities which are preliminary to or postliminary to said principal activity" contained within section 254(a)(2) of the Portal-to-Portal Pay Act as a basis to grant summary judgment in Kraft's favor. In this regard, the employees assert that section 254(a)(2) is incompatible with section 210.110 of title 56 of the Administrative Code, which defines " '[h]ours worked' " as "all the time an employee is required to be *** *on the employer's premises*." (Emphasis added.) 56 Ill. Adm. Code 210.110 (2012). Because we affirm the court's grant of summary judgment in Kraft's favor under the common-law doctrine of *de minimis non curat lex* we confine our analysis of the employees' claims in accordance with the requirements

of that doctrine. See *County of Lake v. Board of Education of Lake Bluff School District No. 65,* 325 Ill. App. 3d 694, 702, 761 N.E.2d 163, 171 (2001) (under the common-law doctrine of *de minimis non curat lex*, the law does not regard trifles).

¶ 42 In support of their assertion, the employees claim that "[t]he Administrative Code plainly requires compensation no later than when the employee was required to be on the employer's premises, regardless of when the employee begins the employer's principal activity." Even if we were to agree with the employees' assertion, that interpretation does not apply here given that they each acknowledged that Kraft did not "require" them to be on their premises to don and doff any of the gear they were required to wear when performing their respective work responsibilities. Indeed, the employees admitted that they routinely donned and doffed the required equipment at various places in and out of Kraft's facility and did so in less than a minute.

¶ 43 In this same vein, the employees also acknowledged that with regard to their arrival at Kraft's facility, they either dined, conversed, or participated in some other activity that was not associated with their employment. Again, the only requirement Kraft levied upon the employees was that they swipe their cards to signify their readiness to begin their work responsibilities at the mandated start time. In this regard, the employees agreed that to fulfil that obligation, they required less than one minute to five minutes—depending on the terminal used—once they entered Kraft's facility.

¶ 44 Moreover, we reject the employees' reliance on the United State Supreme Court's decision in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), superseded by statute on other grounds as stated in *Carter v. Panama Canal Co.*, 463 F. 2d 1289, 1293 (D.C. Cir. 1972),

because the issue before the Supreme Court in that case was whether the six to eight minutes the plaintiffs spent walking to their workstation, *after* they "clocked-in," were compensable. In concluding that it was compensable, the Supreme Court noted that "[n]o claim is here made, though, as to the time spent in waiting to punch the time clocks and we need not explore that aspect of the situation." *Anderson*, 328 U.S. at 691.

¶ 45 In *Lindow v. United States*, 738 F.2d 1057, 1062-63 (9th Cir. 1984), the United States Court of Appeals for the Ninth Circuit set forth the following three-part test to determine whether a claim is *de minimis*: (1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work. See *Bartoszewski v. Village of Fox Lake*, 269 Ill. App. 3d 978, 985, 647 N.E.2d 591, 596 (1995) (Second District, applying the three-part *de minimis* test announced in *Lindow*).

¶ 46 Applying the *Lindow de minimis* test to the facts of this case, we agree with the trial court that the administrative burden of attempting to record the time it takes up to 1,200 employees to apply differing equipment requirements or proceed from the threshold of Kraft's entrance to 1 of over 30 different time terminals, especially given that the time expended would amount to mere seconds or minutes, respectively, renders the plaintiffs' claims *de minimis*. In this regard, we find particularly persuasive the following guidance in *Sandifer v. United States Steel Corp.*, 678 F.3d 590, 593 (7th Cir. 2012):

> "[P]utting on the glasses and the hard hat and putting in the ear plugs is a matter of seconds and hence not compensable, because *de minimis*. 'Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor

> Standards Act. It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved.' *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692, 66 S. Ct. 1187, (1946)."

¶ 47 Accordingly, we conclude that the trial court did not err by granting summary judgment in favor of Kraft.

¶ 48 II. CONCLUSION

¶ 49 For the reasons stated, we affirm the trial court's judgment.

¶ 50 Affirmed.