UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DARREN BROWN, on behalf of himself and all others similarly situated, PLAINTIFF, vs. CENTURY LINES, INC., DEFENDANT.	)	CASE NO. 1:08 CV 1113 JUDGE SARA LIOI **MEMORANDUM OPINION AND ORDER**

Before the Court is defendant's motion for summary judgment (Doc. No. 16), plaintiff's memorandum in opposition (Doc. No. 19), and defendant's reply (Doc. No. 23). Because, as discussed below, there are disputed material factual issues, the motion is **DENIED**.

I. DISCUSSION

A. Factual Allegations and Procedural Posture

On May 2, 2008, plaintiff Darren Brown filed his complaint against defendant Century Lines, Inc. alleging that he and similarly situated employees have been denied full overtime pay. On June 13, 2008, the Court approved the parties' joint proposed stipulation for conditional certification.

This is what is known as a "collective action," where others who wish to participate are required to opt in. Six additional employees of the defendant have opted in: Harold Crislip, Frank Strope, Michael Connor, Gary Glover, Michael Ziegler and John Estep. (Doc. Nos. 9 through 15.)[1] The opt-in period expired as of July 18, 2008. *See* Doc. No. 8, ¶ 4.

[1] Mark Pavlik also opted in, but later withdrew. *See* Doc. Nos. 10 and 18.

Plaintiff, on behalf of himself and the others, alleges that he is employed by defendant trucking company as an "in-town driver." He further alleges that defendant has violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*., by (1) failing to pay in-town drivers overtime compensation for all of the hours they have worked over 40 in a workweek; and (2) only paying in-town drivers overtime compensation for the hours they worked over 10 in a workday.

Rather than filing an answer, defendant filed a motion for summary judgment[2] arguing that, pursuant to 29 U.S.C. § 213(b)(1), it is exempt from the FLSA overtime pay requirement because it falls under the Motor Carrier Act of 1935. Defendant's motion has now been fully briefed and is ripe for determination.

B. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) governs summary judgment motions and provides:

> The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law [. . .].

In reviewing summary judgment motions, this Court must view the evidence in a light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *White v. Turfway Park Racing Ass'n*, 909 F.2d 941, 943 44 (6th Cir. 1990). A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Determination of whether a factual issue is "genuine" requires consideration of the applicable

[2] Strictly speaking, defendant is in default because neither an answer nor a proper Rule 12 motion has been filed. Since plaintiff has not raised this argument, the Court does not address it.

evidentiary standards. Thus, in most civil cases the Court must decide "whether reasonable jurors could find by a preponderance of the evidence that the [non-moving party] is entitled to a verdict." *Id*. at 252.

C. Analysis

Section 7 of the FLSA provides that "[. . .] no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1).

Section 13 of the FLSA, however, provides that the overtime requirements of Section 7 "shall not apply with respect to [. . .] any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49[.]" 29 U.S.C. § 213(b)(1). For "motor carriers" subject to the jurisdiction of the Secretary of Transportation, the Secretary may prescribe "requirements for -- (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier[.]" 49 U.S.C. § 31502(b)(1).

"The exemption of an employee from the hours provisions of the Fair Labor Standards Act under section 13(b)(1) depends both on the class to which his employer belongs and on the class of work involved in the employee's job. The power of the Secretary of Transportation to establish maximum hours and qualifications of service of employees, on which exemption depends, extends to those classes of employees and those only who: (1) [a]re employed by carriers whose transportation of passengers or property by motor vehicle is subject

to his jurisdiction under section 204 of the Motor Carrier Act [. . .] and (2) engage in activities of a character directly affecting the safety of operation of motor vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of the Motor Carrier Act." 29 C.F.R. § 782.2(a) (internal citations omitted). The burden is on the defendant to establish that the exemption applies. It can meet this burden only by showing that plaintiff meets both of these requirements.

Defendant asserts in its motion for summary judgment that the "motor carrier" exemption applies. Plaintiff counters, supported by affidavits, that neither he nor any of the opt-in parties ever drove across state lines. He claims to have been only an "in-town" driver who did not keep any of the driving logs required by the Department of Transportation ("DOT"). He further asserts that "most of the property" he transported "originate[d] from a local source[.]" (Brown Aff. ¶¶ 14, 15.) Each of the opt-in parties has filed an affidavit with similar assertions.

A motor carrier may engage in interstate commerce either by "'actually transporting goods across state lines or (by) transporting within a single state goods that are in the flow of interstate commerce.'" *Flowers v. Regency Transp., Inc.*, 535 F.Supp.2d 765, 767 (S.D. Miss. 2008) (parenthetical in original), quoting *Barefoot v. Mid-America Dairymen, Inc.*, No. 98-1684, 1994 WL 57686, at *2 (5th Cir. Feb. 18, 1994).

Defendant admits in its motion that plaintiff and the others were in-town truck drivers who did not drive their vehicles across state lines. However, it still asserts that the exemption applies because the freight being hauled by plaintiff and the others had its point of origin or its destination outside the State of Ohio. In other words, defendant argues that its freight was in interstate commerce and that its trucks were part of "an interstate flow and journey of goods." Freight bills allegedly reflecting this interstate transport are attached to the affidavit of

Robert C. Rucker, President and Chief Operating Officer of Century Lines, Inc. (*See* Doc. No. 16-3.)

The Court finds little doubt that defendant is a "motor carrier." The material factual disputes arise with respect to whether plaintiff and the other drivers were engaged in interstate commerce or, more particularly, whether the freight they typically transported in their jobs as in-town truckers actually originated from or went to locations out of state such that their driving activities would be part of the "flow of interstate commerce."

Although each of the plaintiffs filed an affidavit stating that they only drove within the state of Ohio and transported goods that were "primarily" made in Ohio or "most [of which . . .] originated from a local source," defendant has presented a competing affidavit attesting that "Century Lines continues an interstate flow and journey of goods."

In order for the Court to determine whether, as a matter of law, the motor carrier exemption to overtime pay applies in this case, a fact-finder must first determine whether goods transported entirely in-state by the plaintiffs actually had their origin or their destination outside of the state.

II. CONCLUSION

Accordingly, since the Court concludes that there are material factual disputes, the motion for summary judgment (Doc. No. 16) must be **DENIED**.

III. SUBSEQUENT PROCEEDINGS

Since the motion for summary judgment has now been resolved, pursuant to the Order dated August 29, 2008 (Doc. No. 22), defendant shall supply the relevant payroll records by no later than October 27, 2008. Thereafter, there will be a settlement conference conducted by

Magistrate Judge Benita Pearson on Thursday, November 6, 2008 beginning at 9:00 a.m. in Chambers 480. In the event the parties resolve the case before that date, they shall forthwith inform Judge Pearson and submit a proposed judgment entry for the Court's signature.

IT IS SO ORDERED.

Dated: September 23, 2008

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE