

Williams v Air Serve Corp.

2013 NY Slip Op 31134(U)

April 19, 2013

Sup Ct, New York County

Docket Number: 108648/2010

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

Index Number : 108648/2010
WILLIAMS, BRENDA
vs.
AIR SERV
SEQUENCE NUMBER : 002
ORDER MAINTAIN CLASS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 6, were read on this motion ~~and~~ for class certification

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1-2</u>
Answering Affidavits — Exhibits _____	No(s). <u>3-5</u>
Replying Affidavits _____	No(s). <u>6</u>

Upon the foregoing papers, it is ordered that ~~this motion is~~ :

The court grants plaintiffs' motion for class certification pursuant to the accompanying decision. C.P.L.R. § 901, 902.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

MAY 23 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/19/13

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

-----x

BRENDA WILLIAMS, TAMERLANE BURTON,
and JAMES BERRY, individually and
on behalf of all other persons
similarly situated who were employed
by AIR SERVE CORPORATION and/or any
other entities affiliated with or
controlled by AIR SERVE CORPORATION,

Index No. 108648/2010

Plaintiffs

- against -

DECISION AND ORDER

AIR SERVE CORPORATION,

Defendant

FILED

MAY 23 2013

-----x

LUCY BILLINGS, J.S.C.:

COUNTY CLERK'S OFFICE
NEW YORK

Plaintiffs seek damages in this action for defendant's
alleged underpayment of plaintiffs' wages, including overtime
pay. Plaintiffs now move to certify this action as a class
action for a class of all persons, "other than managers,
corporate officers or directors, or clerical or office workers,
who performed work for Air Serve Corporation at John F. Kennedy
International Airport between June 2004 and the present." Mem.
of Law in Supp. of Pls.' Mot. for Class Certification at 1.

I. STANDARDS FOR CLASS CERTIFICATION

One or more members of a class may sue as representative
parties on behalf of all class members if plaintiffs meet the
following prerequisites. C.P.L.R. § 901(a). (1) The class is so
numerous that joinder of all members is impracticable. (2)
Questions of law or fact common to the class predominate over any

questions affecting only individual members. (3) The representative parties' claims are typical of the class' claims. (4) The representative parties will protect the class' interests fairly and adequately. (5) A class action is superior to other methods for the controversy's fair and efficient adjudication.

Plaintiffs, as the parties seeking class certification, bear the burden to present evidence establishing these criteria.

Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d 481 (1st Dep't 2009).

The criteria are to be construed liberally in favor of class certification. Id.; Pruitt v. Rockefeller Ctr. Props., 167 A.D.2d 14, 21 (1st Dep't 1991). The court may consider the merits of plaintiffs' claims only to the extent of ensuring those claims are not a sham. Pludeman v. Northern Leasing Sys., Inc., 74 A.D.3d 420, 422 (1st Dep't 2010); Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482; Jim & Phil's Family Pharm. v. Aetna U.S. Healthcare, Inc., 271 A.D.2d 281, 282 (1st Dep't 2000).

II. APPLICATION OF THE STANDARDS

A. Numerosity

The proposed class is sufficiently numerous that individual joinder of all plaintiffs is impracticable. One of defendant's dispatchers testified at her deposition that approximately 100 employees came under her supervision alone. Other deposition testimony demonstrates that approximately 50 employees worked at any given time, and 500 employees were trained over two years. At this early stage of the litigation, plaintiffs need not show the exact number of class members. Kudinov v. Kel-Tech Constr.

Inc., 65 A.D.3d 481. A class as small as the 50 workers each shift would be impracticable to join individually, Dabrowski v. Abax Inc., 84 A.D.3d 633, 634 (1st Dep't 2011), so 100, 500, or more certainly would be. Id.; Pesantez v. Boyle Envtl. Servs., 251 A.D.2d 11 (1st Dep't 1998).

B. Commonality

Common questions of law and fact predominate over individual questions. The class is limited to one employer at one location. One of defendant's employees attests on personal knowledge that, although the class includes employees in different trades on different assignments, a single supervisor ultimately oversaw all the assignments at the location, and a systemic policy of underpayment originated with that single supervisor. Lamarca v. Great Atl. & Pac. Tea Co., Inc., 55 A.D.3d 487 (1st Dep't 2008). The named plaintiffs' deposition testimony and affidavits by other employees of defendant attest that the named plaintiffs and proposed class members, routinely and universally, were underpaid and regularly complained about their underpayment. This deposition testimony and these affidavits establish that, whether or not plaintiffs' claims ultimately are meritorious, they at least are not a sham. Pludeman v. Northern Leasing Sys., Inc., 74 A.D.3d at 422; Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482; Jim & Phil's Family Pharm. v. Aetna U.S. Healthcare, Inc., 271 A.D.2d at 282.

The fact that the named plaintiffs do not represent employees working in all the trades or on all the contracts

performed by defendant does not defeat commonality. Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482. See Nawrocki v. Proto Constr. & Dev. Corp., 82 A.D.3d 534, 535-36 (1st Dep't 2011). Nor does class members' use or nonuse of an internal appeals process defeat commonality, because plaintiffs attest that the appeals process was futile. The extent to which class members may have retained authority to control their lunch breaks is irrelevant, because the issue is not whether or when lunch breaks were provided, but whether the payroll accurately accounted for lunch breaks or their absence. Similarly, the use of different methods or devices by different groups of employees to clock in and out does not defeat commonality, because plaintiffs' complaint rests on a unified policy of underpayment, rather than individual failures of different time recording methods.

C. Typicality and Adequacy of Representation

The named plaintiffs' claims are typical of these classwide claims, as the named plaintiffs seek the same relief as the relief sought on the class' behalf. The fact that the named plaintiffs do not represent all defendant's trades or contracts similarly does not defeat the named plaintiffs' typicality. Nawrocki v. Proto Constr. & Dev. Corp., 82 A.D.3d at 535-36. See Kudinov v. Kel-Tech Constr. Inc., 65 A.D.3d at 482. Neither atypicality nor any other reason suggests that the named plaintiffs will not adequately and fairly represent the class. Nor does the record reveal any other source of conflict between the named plaintiffs and the class as a whole. Nawrocki v. Proto

Constr. & Dev. Corp., 82 A.D.3d at 535. The fact that the named plaintiffs did not work for defendant during the entire period for which the class seeks relief poses no conflict or other impediment to class certification. Id.

E. Superiority

Finally, a class action is superior for the fair and efficient adjudication of laborers' wage disputes. Dabrowski v. Abax Inc., 84 A.D.3d at 634; Nawrocki v. Proto Constr. & Dev. Corp., 82 A.D.3d at 536; Pesantez v. Boyle Env'tl. Servs., 251 A.D.2d at 12. Individual class members' numerosity, relative unsophistication, and limited resources and the likely value of their recovery compared to the expenses entailed in separate, individual actions outweigh any anticipated difficulties in managing a class action. To the contrary, managing multiple individual actions likely would tax judicial resources more heavily. C.P.L.R. § 902.

III. CONCLUSION

For all these reasons, the court grants plaintiffs' motion for class certification and certifies a class of all persons, other than managers, corporate officers or directors, or clerical or office workers, who performed work for Air Serve Corporation at John F. Kennedy International Airport between June 2004 and the present. C.P.L.R. §§ 901, 902. This decision represents the court's order.

DATED: April 19, 2013

FILED

MAY 23 2013

Lucy Billings
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LUCY BILLINGS, J.S.C.
NEW YORK

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