

Summary of K&R Transportation DLSE Decisions (April 15, 2019)

Highlights: On April 10, 2019, the Division of Labor Standards Enforcement (DLSE) issued an Order, Decision, or Award (ODA) in the cases of 10 port truck drivers against K&R Transportation.¹

In the 97-page decision, the Hearing Officer for **the DLSE found that the 10 drivers are employees – not independent contractors** – and therefore protected by California’s wage and hour laws.

The decision orders **K&R Transportation to pay those 10 drivers a total of \$1,285,629.01** for:

- **Unpaid wages** that include the following:
 - **Nonproduction hours** – K&R Transportation failed to pay drivers for hours worked which fall outside the scope of piece rate, such as pre-trip inspections of the truck, waiting for dispatches, waiting to request pay for waiting time, waiting to submit daily reports.
 - **Illegal paycheck deductions** - California’s Labor Code prohibits an employer from making deductions from an employee’s paycheck. K&R Transportation made illegal deductions from drivers’ paychecks for fuel, LNG physical damage, CLN physical damage, parking, truck maintenance, electronic logging device, trip deductions, radio used, materials and supplies, citations, and driver placards.
- **Unreimbursed expenses** – K&R Transportation failed to reimburse drivers for out-of-pocket business expenses, such as fuel, DMV payments, and truck repair.
- **Meal and rest break premiums** – K&R Transportation failed to provide 30-minute meal periods for every five hours worked and 10-minute rest period for every four hours worked.
- **Liquidated damages** - for failure to pay the state’s minimum wage under California’s Industrial Welfare Commission Wage Orders.
- **Waiting time penalties** - for all earned wages due immediately upon termination for five of the 10 drivers.
- **Interest** - accrued for all due and unpaid wages for five of the 10 drivers.
- **Attorney fees**

The highest individual award is \$243,578.33 with the average award being \$128,562.90.

Summary of process: The claims were filed on May 19, 2017 and July 21, 2017. Hearings were held from December 11 through December 18, 2017. Drivers have different claim periods depending on termination date if a driver is no longer with K&R Transportation. Drivers who opted out of a class action settlement were able to claim three years back from the filing of the class action they opted out (as opposed to the statute of limitations which goes back to three

¹ ODAs were issued against KRT2931, LLC (fka K&R Transportation, LLC). Under the California Secretary of State filings, Robert A. Curry appears to be the principal for KRT2931, LLC.

years from the date they filed their claim with the DLSE).² Thus **under equitable tolling, driver claims can go back to September 19, 2013.**

Total K&R claims: In total, since 2014, 20 wage and hour claims have been filed against K&R Transportation. Of these, 10 appear to have been settled or dismissed.

Status of claims: K&R Transportation has 15 days from the ODA date to either pay the drivers the amounts owed or appeal; if they do neither, then the decisions will become final judgments. If final judgments go unpaid, K&R's customers could be held liable for future claims under California's new joint liability law, SB1402.

² *Constanza, et al. v K&R Transportation, LLC*, Case No. CIVDS1615424