

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED-1

MAR -9 PM 2:35

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.

DOROTHY BROWN CLERK

EARL KERBES, Individually, and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

RACEWAY ASSOCIATES, LLC, d/b/a
CHICAGOLAND SPEEDWAY,
a subsidiary of
INTERNATIONAL SPEEDWAY,
CORP., A Florida Corporation,

Defendant.

Case No.

10 CH09668

COMPLAINT

NOW COMES the Plaintiff, EARL KERBES, individually and on behalf of all others similarly situated, (hereinafter referred to as "Plaintiff" and the "Class") by and through his attorneys, TOUHY, TOUHY, BUEHEL & WILLIAMS, and JOHN J. DOWNEY, P.C., and complaining of the Defendant, RACEWAY ASSOCIATES, LLC, d/b/a CHICAGOLAND SPEEDWAY, a subsidiary of INTERNATIONAL SPEEDWAY, CORP., a Florida corporation, (hereinafter referred to as "ISC"), allege as follows:

I. SUMMARY OF CASE

1. Plaintiff, Earl Kerbes, alleges that he worked for the Defendant, International Speedway, Corp., which owns and operates NASCAR tracks around the country, as a security guard at one of the Defendant's Illinois tracks. While so employed, Kerbes alleges that he routinely worked over forty (40) hours a week when the track was hosting an event but that the Defendant manipulated the workweek so that he earned no overtime. Mr. Kerbes further alleges that this was done in violation of Department of

Labor rules and regulations and resulted in substantial amounts of unpaid overtime for him and other hourly workers at the track.

2. Plaintiff brings this class action for unpaid overtime compensation, liquidated damages, declaratory and injunctive relief and other equitable and ancillary relief pursuant to the Illinois Wage Payment and Collection Act, 820 ILCS §115 *et seq.*, and the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.* This action is brought as a state-wide class action under the Illinois Code of Civil Procedure 735 ILCS §5/2-801 and §5/2-802.

3. At all relevant times, EARL KERBES was a part time security officer employed in the State of Illinois. He was an employee of ISC from 2002 through the filing of this complaint, and he continues to be employed by the Defendant.

4. Plaintiff and other similarly situated employees have been employed as hourly employees by the Defendant in the State of Illinois and are hereinafter referred to as the "Class".

5. The named Plaintiff and members of the Class are plainly non-exempt under both state and federal law and are therefore entitled to overtime compensation for all hours over forty worked in any one week.

6. Defendant managed the work of Plaintiff and the Class, including the amount of overtime required to be worked, at Defendant's Illinois motorsports tracks: Route 66 Raceway and Chicagoland Speedway, both in Joliet, Illinois. Plaintiffs work at Chicagoland Speedway. Defendant dictated, controlled, and ratified the compensation and all related employment policies of Defendant's two Illinois locations.

7. Defendant operates its two Illinois racing tracks for motorsports entertainment events, including NASCAR series races, other stock car races, truck racing events and Indy car events and drag races.

8. These events normally run on Sunday after a weekend of related events and activities that typically start on Thursday and run through Sunday.

9. During a major weekend event, the Defendant will bring in as many as 800 temporary security and safety workers such as the Plaintiff.

10. In June, 2007, the Defendant, ISC acquired the track where Plaintiff worked. Until June 2007, hourly employees were paid based upon a work week that ran from Tuesday until Monday. Because of the way events are set up, hourly employees like the Plaintiff can (and did) work Thursday through Sunday and work between sixty and eighty hours in that four day period. This resulted in the Plaintiff (and others) earning substantial overtime pay.

11. In June, 2007, the Defendant changed the work week for all of its hourly employees in Illinois. Beginning in June, 2007, Plaintiff and the Class were now paid for a work week that ran from Saturday through Friday. Because events rarely run on consecutive weekends, this effectively split a weekend racing event into two workweeks and thereby did away with overtime for the part time workers.

12. Pursuant to the Department of Labor, an employer, like the Defendant herein can set a workweek however it chooses. It must make the move permanent and it must not discriminate between classes of employees. The only prohibition is that it cannot change the work week to avoid paying overtime. That is what the Defendant has done here.

13. In particular, the Department of Labor Regulations state the following:

“As stated in § 778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the **overtime** requirements of the Act.” 29 C.F.R. §778.301. (emphasis in original)

14. This practice of failing to pay Plaintiff and other part time hourly employees overtime compensation violates provisions of the Illinois Wage Payment and Collection Act, 820 ILCS §115 *et seq.*, and the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.* As a result of this unlawful practice, Plaintiff and members of the Plaintiff class suffered a loss of wages.

15. Plaintiff will timely request that the Court certify a class or classes of Illinois part time hourly employees pursuant to the Illinois Code of Civil Procedure 735 ILCS §5/2-801 and §5/2-802 for the purpose of seeking unpaid wages and overtime compensation under the Illinois Wage Payment and Collection Act, 820 ILCS §115 *et seq.*, and the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.*

CLASS ALLEGATIONS

16. EARL KERBES brings this action as a class action on behalf of himself and all other persons similarly situated, subject to entry of an Order certifying this cause as a class action pursuant to the Illinois Code of Civil Procedure, 735 ILCS §5/2-801 and §5/2-802.

17. Section 2-801 of the Illinois Code of Civil Procedure provides that a cause of action may be maintained as a Class Action if:

- a. The Class is so numerous that the joinder of all members is impracticable;
- b. There are questions of fact or law common to the Class, which common questions predominate over any questions affecting only individual members;

- c. The representative parties will fairly and adequately protect the interest of the Class; and,
- d. The Class Action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801;

PROPOSED CLASS

18. Plaintiff seeks certification of the following class:

“All individuals who were employed by Defendant, its subsidiaries or affiliated companies, as part time hourly employees in the state of Illinois at any time during the relevant statute of limitations period, whose work week runs from Saturday through Friday.

Numerosity

19. The Class satisfies the numerosity standards. There is no question that this lawsuit encompasses hundreds of potential claimants. The proposed class can be identified and located using Defendant’s payroll and personnel records. Therefore, the Class is so numerous that the joinder of all members is impracticable. Class members may be informed of the pendency of this Class Action by direct mail based upon and/or published and broadcast notice.

Common Questions

20. There are questions of fact and law common to the Class that predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendant’s actions include, without limitation, the following:

- a. Whether Defendant failed to pay Plaintiff and the Class all compensation due them;
- b. Whether Defendant failed to pay Plaintiff and the Class all overtime compensation due to them;

- c. Whether the Defendant's decision to alter the workweek of Plaintiff and the Class was done for an unlawful reason;
- d. Whether the Plaintiff and the Class worked in excess of 40 hours per week;
- e. Whether Defendant's practices violate provisions of the Illinois Wage Payment and Collection Act;
- f. Whether Defendant's practice violates the Eight Hour Work Day Act;
- g. Whether the Defendant's failure to pay compensation, including overtime, was willful;
- h. Whether Plaintiff and the Class have suffered damages and the proper measure of those damages.

21. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of the controversy.

Typicality

22. Plaintiffs' claims are typical of the claims of the Class. Mr. Kerbes, the named Plaintiff, suffered injuries similar to those suffered by other class members as a result of Defendant's decision to change the workweek for part time employees. Defendant's policies with respect to the hours worked and unpaid wages are and were uniform at both of the Defendant's Illinois race tracks and its tracks were operated under uniform procedures.

Adequacy

23. The named Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the members of the Class he seeks to represent. The interests of the Class members will be fairly and adequately protected by

the named Plaintiff and his undersigned counsel. Plaintiff has hired competent attorneys who are experienced in class action litigation of this type and who are committed to prosecuting this action.

Superiority

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow 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 if these claims were brought individually. Moreover, as the damages suffered by each class member may be relatively small, the expenses and burden of individual litigation would make it difficult for plaintiffs to bring individual claims. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant or substantially impair or impede the ability of class members to protect their interests.

25. Defendant is liable to Plaintiff and the Class for actual damages, equitable relief, recovery of attorneys' fees and cost, and prejudgment interest as provided by law, and the Illinois Code of Civil Procedure 735 ILCS §5/2-801 and §5/2-802.

COUNT I- FAILURE TO PAY OVERTIME

26. Plaintiff repeats and re-alleges the above paragraphs.

27. Illinois law provides that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of eight per day and forty per week. Illinois Wage Payment and Collection Act, 820 ILCS §115 *et. seq.*, and the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.*

28. Earl Kerbes regularly worked more than eight hours per day and forty hours per week during his employment, but was not paid overtime after the workweek was changed. Other similarly situated part time employees also regularly worked more than eight hours per day and forty hours per week during their employment, but were not paid overtime. Plaintiff and the Class do not meet any exemptions under Illinois law, because, *inter alia*, they are not paid on a salary basis and their duties do not qualify for the executive, administrative, or professional exemptions under 820 ILCS § 105/4(a)(2)(e), nor do their regular rates of pay qualify for exemption under the commissioned employee exemption under 820 ILCS 105/4(a)(2)(f).

29. The foregoing actions of Defendant constitute violations of the Illinois Minimum Wage Law, 820 ILCS §105 *et. seq.*, and the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.* Defendant's actions were willful and not in good faith.

30. Defendant is liable to Plaintiff and the class for actual damages, equitable relief, recovery of attorneys' fees and costs, and prejudgment interest as provided by law, pursuant to Illinois Wage Payment and Collection Act, 820 ILCS §115 *et seq.*, the Eight Hour Work Day Act, 820 ILCS §145/1 *et seq.*, and the Illinois Code of Civil Procedure 735 ILCS §5/2-801 and §5/2-802.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff EARL KERBES individually and on behalf of all others similarly situated, by and through his attorneys, demands judgment against the Defendant and in favor of the Plaintiff and all others similarly situated, for a sum that will properly, adequately and completely compensate Plaintiff and the Class for the nature, extent and duration of their damages, the costs of this action and as follows:

- A. Certify a class of "all individuals who were employed by Defendant, its subsidiaries or affiliated companies, as part time hourly employees in the State of Illinois and whose workweek runs from Saturday through Friday at any time during the relevant statute of limitations period, who worked more than eight hours in a day or forty (40) hours in a week as calculated under the former workweek of Tuesday through Monday, but did not receive overtime pay."
- B. Declare and find that the Defendant committed one or more of the following acts:
- C. Violated provisions of the Illinois Wage Payment and Collection Act by failing to pay Plaintiff and the Class wages due and owing; and,
- D. Willfully violated provisions of the Illinois Wage Payment and Collection Act by failing to pay Plaintiffs wages due and owing;
- E. Violated provisions of the Eight Hour Workday Act by failing to pay overtime wages; and,
- F. Willfully violated provisions of the Eight Hour Workday Act by failing to pay overtime wages; and
- G. Award compensatory damages, including all wages and overtime pay owed, in an amount according to proof;
- H. Award interest on all overtime compensation due accruing from the date such amounts were due;
- I. Award an equal amount as liquidated damages;
- J. All costs and attorney's fees incurred prosecuting this claim;
- K. Grant leave to amend to add claims under applicable laws;
- L. Grant leave to add additional plaintiffs; and,
- M. For such further relief as the Court deems just and equitable.

Respectfully Submitted,


One of the Attorneys for Plaintiff

Timothy Touhy
Terrence Buehler
Touhy, Touhy, Buehler & Williams
55 West Wacker Drive
14th Floor
Chicago, Illinois 60601
(312) 372-2209

John Downey
John J. Downey, P.C.
907 North Elm Street
Suite 100
Hinsdale, Illinois 6521-3644
(630) 323-1605