

**FILED**

**October 20, 1999**  
DEBORAH L. McHENRY, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

No. 24739 - Randall Conrad, et al. v. Charles Town Races, Inc.

**RELEASED**

**October 22, 1999**  
DEBORAH L. McHENRY, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Risovich, Judge, dissenting:

I respectfully dissent from the majority's conclusion that back pay paid pursuant to the Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §§ 2101 - 2109 (1994), does not qualify as "wages" under the West Virginia Wage Payment and Collection Act ("WPCA"), West Virginia Code § 21-5-1 to -18 (1996 & Supp. 1999). Based on this determination that the provisions of the WPCA do not apply under the facts of this case, the Appellants were prevented from receiving liquidated damages for their former employer's failure to timely pay them for eight days worth of wages that would have been earned had Charles Town Races not prematurely closed its facility before the expiration of the sixty-day period of notice required by federal law.<sup>1</sup> See W. Va. Code § 21-5-4(e) (providing for payment of liquidated damages when employer fails to comply with provisions of WPCA).

Under the definitions set forth in the WPCA, the term "wages" is defined to include "then accrued fringe benefits capable of calculation and payable directly to an employee." W. Va. Code § 21-5-1(c)(1996). The term "fringe benefits" is further defined by the WPCA

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<sup>1</sup>While the Appellants did in fact receive remuneration for the eight-day period when the facility was prematurely closed, they were not sent such payment until more than two months following the facility's closure.

as “any benefit . . . which is required by law.” W. Va. Code § 21-5-1(l). The majority completely overlooks the alternate definitional components of the term “wages,” preferring instead to focus solely on “wages” as being limited to “compensation for labor or services rendered.” W. Va. Code § 21-5-1(c). In defining the term “wages,” however, the Legislature clearly delineated that with reference to the WPCA statutory provision that permits liquidated damages (W. Va. Code § 21-5-4), inter alia,<sup>2</sup> the term “wages” also includes “then accrued fringe benefits.” W. Va. Code § 21-5-1(c). Since back pay awards are required by law pursuant to WARN, they constitute fringe benefits within the purview of the WPCA. See W. Va. Code § 21-5-1 (l). As such, the fringe benefit of WARN back pay falls within the definitional ambit of “wages” under the WPCA, which in turn invokes the liquidated damages provisions of the WPCA. See W. Va. Code § 21-5-4(e).

Moreover, as this Court recognized in Clendenin Lumber & Supply Co. v. Carpenter, 172 W. Va. 375, 305 S.E.2d 332 (1983), our ““Wage Payment and Collection Act is remedial legislation designed to protect working people and assist them in the collection of compensation wrongly withheld.”” Id. at 380, 305 S.E.2d at 337 (quoting Mullins v. Venable, 171 W. Va. 92, 94, 297 S.E.2d 866, 869 (1982)); accord Jones v. Tri-County Growers, Inc., 179 W. Va. 218, 366 S.E.2d 726 (1988). Statutes, such as the WPCA, that are designed for remedial purposes are generally construed liberally to benefit the intended recipients. See e.g., Skaggs v. Elk Run Coal Co., 198 W. Va. 51, 64, 479 S.E.2d 561, 574

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<sup>2</sup>The other statutes which include an expanded definition of “wages” include W. Va. Code §§ 21-5-5, -8a, -10, -12.

(1996) (recognizing that W.Va. Human Rights Act, based on its remedial nature, should be liberally construed to achieve its beneficent purposes); Syl. Pt. 6, Davis v. Hix, 140 W. Va. 398, 84 S.E.2d 404 (1954) (holding that “[u]nemployment compensation statutes, being remedial in nature, should be liberally construed to achieve the benign purposes intended to the full extent thereof”); City of Wheeling ex rel. Carter v. American Cas. Co., 131 W. Va. 584, 590, 48 S.E.2d 404, 408 (1948) (stating that remedial laws should be liberally construed); see also Farley v. Zapata Coal Corp., 167 W. Va. 630, 639, 281 S.E.2d 238, 244 (1981) (observing that “[w]orking people should not have to resort to lawsuits to collect wages they have earned”).

Given this undeniable and previously-articulated preference for liberal construction of the WPCA combined with the lucidly-stated definition of “wages,” I disagree with the majority’s determination that back pay received under WARN does not qualify as “wages” under the WPCA. See W. Va. Code § 21-5-1(c). Accordingly, I believe the Appellants were wrongly denied liquidated damages to which they were clearly entitled.