

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHAWN MCMINN, both individually and
on behalf of all other similarly situated
persons,

Plaintiffs,

v.

ATP FLIGHT ACADEMY, LLC; ATP
USA, INC.; and ATP FLIGHT ACADEMY
OF ARIZONA, LLC,

Defendants.

Case No.:

COLLECTIVE
ACTION COMPLAINT

DEMAND FOR JURY
TRIAL

INTRODUCTION

1. Named Plaintiff Shawn McMinn (“Named Plaintiff”) brings a nationwide Fair Labor Standards Act (“FLSA”) collective action on behalf of himself and all other flight instructors, including lead flight instructors, who were improperly classified as independent contractors by Defendants ATP Flight Academy, LLC, ATP USA, Inc., and ATP Flight Academy of Arizona, LLC (collectively “ATP”) and not paid overtime premium pay at the rate of time and one-half for all of their hours worked over 40 in a workweek.

2. Named Plaintiff McMinn seeks unpaid overtime wages, liquidated and statutory damages, costs and attorneys' fees, service awards, as well as declaratory relief under the FLSA, 29 U.S.C. §§ 201, *et seq.*

JURISDICTION & VENUE

3. Jurisdiction is conferred upon this Court by 29 U.S.C. § 216(b) of the FLSA, by 28 U.S.C. § 1331 because this action arises under laws of the United States, and by 28 U.S.C. § 1337, under Acts of Congress regulating commerce.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) - (d) because a substantial part of the events, acts, or omissions giving rise to the claims occurred in this District and Defendants are subject to personal jurisdiction here because Defendants reside in this District.

5. Venue is also proper in the Tampa Division because the action is most directly connected and conveniently advanced in this Division as ATP has a major training facility in the Tampa and Clearwater area.

6. Named Plaintiff McMinn represents a class of workers engaged in foreign or interstate commerce.

PARTIES

Plaintiffs

7. Named Plaintiff Shawn McMinn is a resident of California. His FLSA consent-to-sue form is attached hereto.

8. Named Plaintiff McMinn, and the FLSA collective members whom he seeks to represent (“FLSA Collective”), were misclassified as independent contractors, worked in ATP’s training locations as flight instructors, including lead instructors, worked more than 40 hours in a week, and were not paid overtime premium pay at the rate of time and one-half for all hours worked over 40 in a workweek.

9. Plaintiffs are employees of ATP engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

10. The term “Plaintiffs” as used in this complaint refers to Named Plaintiff McMinn and any additional represented parties pursuant to the collective action provision of 29 U.S.C. § 216(b) individually, collectively, or in any combination thereof.

Defendants

11. Defendant ATP Flight Academy, LLC operates nationwide and is registered as a for-profit Florida corporation.

12. Defendant ATP Flight Academy, LLC lists its business address as 1555 The Greens Way, Jacksonville Beach, FL, 32250, USA. Defendant ATP USA, Inc. operates nationwide and is registered as a for-profit Georgia corporation.

13. Defendant ATP USA, Inc. lists its business address as 2 Sun Court, Suite 400, Peachtree Corners, GA, 30092, USA.

14. Defendant ATP Flight Academy of Arizona, LLC, is registered as a for-profit Arizona corporation.

15. Defendant ATP Flight Academy of Arizona, LLC lists its business address as 8825 N 23rd Avenue, Suite 100, Phoenix, AZ 85021, USA.

16. Collectively, “ATP” refers to Defendants ATP Flight Academy, LLC; ATP USA, Inc.; and ATP Flight Academy of Arizona, LLC.

17. ATP acted as an employer of Named Plaintiff McMinn, and acted as and continues to act as an employer of the FLSA putative collective within the meaning of 29 U.S.C. § 203(d).

18. At all times relevant herein, ATP has been an enterprise within the meaning of 29 U.S.C. § 203(r).

19. At all times relevant herein, ATP has been an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1) in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has

had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

20. Upon information and belief, ATP operates in concert and together in a common enterprise and through related activities so that the actions of one may be imputed to the other and/or so that they operate as joint employers within the meaning of the FLSA.

21. Upon information and belief, ATP is a single employer.

22. Upon information and belief, the ATP shares the same management.

23. ATP's labor decisions and personnel are controlled and operated by the same management personnel. Philip R. Cooper, who is the Vice President for all three entities of ATP, signed the Independent Contractor Agreement ("Agreement") with Named Plaintiff Shawn McMinn on behalf of all three entities.

FACTS

24. ATP is a for-profit pilot training institution.

25. ATP provides immersive flight training to tuition-paying students through its Airline Career Pilot Program or "ACPP." The purpose of ATP's ACPP is to prepare students to become professional airline pilots. According to ATP's Student & Instructor Handbook ("ATP Handbook"), the ACPP is a "fixed-cost" program whereby students pay upfront for a fixed amount of flight training and

experience. If additional training is required, however, ATP will charge the students for the additional time.

26. ATP employs flight instructors to provide this immersive flight training. ATP employs flight instructors in at least 77 training locations across the country.

27. Named Plaintiff McMinn was employed at the ATP training facility in Indiana (also known as the Louisville Training Center) from approximately July 2023 through January 2024.

28. There are at least two types of ATP flight instructors: an instructor and a lead instructor (together “ATP Instructors”). A flight instructor becomes a lead instructor based on experience level. Their responsibilities are similar.

Plaintiffs Are Employees of ATP Engaged in Interstate Commerce

29. At all times relevant herein, Plaintiffs’ responsibilities necessarily require them to regularly cross state lines because the routes for the in-flight training program regularly cross state lines, thereby requiring them to engage in interstate commerce.

30. ATP Instructors and students must often refuel across state lines, which also required them to engage in interstate commerce.

31. ATP Instructors also regularly accompany students who are required to fly round trips of 150, 250, or 300 nautical miles across different states. Named

Plaintiff McMinn accompanied students during trainings from Indiana to Georgia and Ohio.

32. ATP required Named Plaintiff McMinn and other ATP Instructors to sign the Agreement.

33. In the Agreement, ATP acknowledges that ATP Instructors perform services “involving interstate commerce.”

34. The Agreement states that “performance of the Services discussed herein constitute transactions involving interstate commerce.”

Plaintiffs Are Misclassified as Independent Contractors

35. ATP exercised a high degree of control over Named Plaintiff McMinn’s and other ATP Instructors’ role in its operations.

36. The ATP Handbook details ATP Instructors’ role and responsibilities. It states that ATP Instructors in ACP, including Named Plaintiff McMinn, “must deliver quality flight, simulator, and ground lessons.” Among other duties and responsibilities, ATP’s Instructors must deliver a ground training program that includes Plans of Action, flight lessons, solo flights, ground school, private pilot checkrides, instrument checkrides, cross-country flights scheduled by ATP’s Flight Operations, initial commercial checkrides, and commercial multi-engine training and checkrides.

37. The duties of an ATP flight instructor and a lead flight instructor overlap. According to the ATP Handbook, some of the additional duties and responsibilities of lead flight instructors include:

- a. Meeting with assigned instructors weekly to foster open communication, review challenges, and coordinate schedules;
- b. Reviewing student training records and progress regularly;
- c. Assisting with remedial training and Training Improvement Plans;
- d. Conducting stage evals and mock checkrides;
- e. Reviewing logbooks and audits during the mock checkride;
- f. Participating in the standards portion of the training center's weekly instructor meeting;
- g. Participating in the weekly nationwide call;
- h. Notifying the Regional Flight Standards Instructors (RFSTIs) of issues needing additional attention;
- i. Performing Training Center "Indoc" and local familiarization flights for new instructors;
- j. Assisting new instructors with using ATP resources to ensure standardization across all instructors and training centers; and
- k. Conducting "Intro Flights."

38. To accomplish their duties and responsibilities, ATP Instructors must follow a pre-set lesson plan and other guidelines, which outline every stage of the training. According to the ATP Handbook, “ATP strives to deliver a standardized program through standardized materials, processes, and procedures.” Thus, the ATP Instructors were required to follow ATP’s approach to teaching and evaluation of students.

39. ATP required all ATP Instructors to attend “Indoc” training. The purpose of “Indoc” training was to ensure that all ATP Instructors adhere to the ATP policies and procedures before they could continue to work as ATP flight instructors. During this training, ATP instructs ATP Instructors on every aspect of ATP’s policies and procedures, including dress and hygiene. ATP Instructors were required to conduct flights during which flight maneuvers are monitored and corrected until they are consistent with the way that APT wanted them to operate in ACPP and teach in the program.

40. ATP Instructors must also provide mentoring to students. The ATP Handbook states that ACPP advises students to “[a]sk questions, be at the training center, and soak in the wisdom of professionals with more experience.”

41. To ensure that its students perform adequately, ATP requires ATP Instructors to “spot check” students’ knowledge and perform routine quizzes of the students.

42. ATP enforces strict uniform, appearance, and hygiene policies outlined in its Handbook. The uniform policy requires some of the following:

- a. Appearance and hygiene standards for instructors are the same as for students;
- b. All clothing must be professional, clean, and free of wrinkles;
- c. Blue ATP button-up shirt, which is provided by ATP, worn tucked in;
- d. Only approved hats with ATP logo, worn facing forward;
- e. ATP identification badge on a lanyard issued by ATP or an ATP-affiliated airline;
- f. Adherence to ATP's uniform policy or dressing in business attire when attending off-site visits to partner airlines;
- g. Formal business attire, namely a full, dark-colored suit, when interviewing with an airline for a job or partnership program.

43. According to the ATP Handbook, ATP also imposes strict guidelines on the hygiene and hair of the ATP Instructors, stating that they “must maintain good personal hygiene” and “be aware of body odor [and] oral hygiene.” Their hair “must be clean [and] well-groomed.” They “must be clean-shaven” or wear “a neatly trimmed mustache.” Jewelry must “represent a conservative business appearance” and tattoos must be “covered by the uniform.”

44. ATP also limits the ATP Instructors' opportunity for business growth and profit.

45. ATP Instructors were dependent upon ATP in securing students.

46. ATP Instructors cannot bring their own students unaffiliated with ATP; students must be enrolled through ATP.

47. ATP instructors may not cultivate their own students.

48. ATP assigns students to ATP Instructors as they see fit, for example, based on the ATP Instructor's seniority.

49. ATP controlled ATP Instructors' work by scheduling their work hours.

50. ATP Instructors must enter their schedules through an online scheduling program, which is frequently monitored by ATP.

51. According to its Handbook, ATP also requires ATP Instructors to be "available to work with full-time students" and that they "must notify ATP via the Instructor Fees page when they are unavailable to work with students."

52. For flight lessons, ATP Instructors are told to follow a specific schedule protocol on a block system. For example, an A block would be approximately 6 a.m. to 9 a.m. Named Plaintiff McMinn was specifically told to schedule flight lessons during the A block because there were not enough flight lessons during that block.

53. ATP Instructors must make scheduling change requests to their supervisors. For example, Named Plaintiff McMinn attended weekly meetings with his supervisors when he and other ATP Instructors could make requests for changes to their schedules.

54. ATP closely monitored ATP Instructors' work throughout the day through ATP's own supervisors, the student performance tracking dashboard, and via GPS systems tracking the flight paths. ATP required ATP Instructors to instruct at ATP's training locations.

55. Upon information and belief, ATP prohibits ATP Instructors from having other jobs.

56. ATP Instructors were economically dependent on ATP.

57. ATP determines pricing of the flight lessons and training. ATP cannot determine how much to charge each student.

58. ATP Instructors could not and did not run their own businesses to train students to become airline pilots.

59. The work that ATP Instructors performed was one of the core business functions that ATP offered for its customers, the students participating in the ACPP program.

60. ATP did not require ATP Instructors to invest any sum of money into its operations.

61. ATP Instructors used ATP equipment or materials to instruct ATP's students.

62. ATP provided all of the necessary tools for ATP Instructors to instruct students, including lesson plans, scheduling programs, performance tracking, flight simulator equipment, and flight equipment, such as the planes they flew.

63. ATP Instructors were required to personally perform the work that ATP assigned to them, and they could not hire others to do it.

Plaintiffs Are Not Exempt from FLSA's Protection and Are Entitled to Overtime

64. Section 13(b)(3) of the FLSA provides that the overtime provisions of the Act do not apply to "any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. §§ 181–88 ("RLA")]".

65. ATP however is not an exempt common carrier by air subject to the provisions of Title II of RLA, 45 U.S.C. § 152. Specifically, the aircraft that ATP Instructors use to teach students are not common carriers by air. Instead, these aircraft are covered under Part 91 of the Federal Aviation Regulations ("FAR"), which applies to private or non-commercial carriers. Thus, the ATP Instructors are entitled to be paid overtime wages at the rate of time and one-half the regular rate for all hours worked over 40 in a workweek.

Plaintiffs Worked Overtime and Were Not Paid Premium FLSA Overtime Wages

66. ATP scheduled Named Plaintiff McMinn and other ATP Instructors to work for more than 40 hours a week.

67. Named Plaintiff McMinn regularly worked more than 40 hours a week.

68. Upon information and belief, other ATP Instructors worked the same or a similar schedule as Named Plaintiff McMinn.

69. Upon information and belief, other ATP Instructors also worked more than 40 hours a week.

70. ATP did not track or record Named Plaintiff McMinn or ATP Instructors' work hours within a work week.

71. ATP paid Named Plaintiff McMinn and other ATP Instructors on an hourly basis.

72. ATP paid Named Plaintiff McMinn and other ATP Instructors a different set hourly rate for different types of instruction. The rates were non-negotiable.

73. For example, ATP paid Named Plaintiff McMinn at a rate of \$23 per hour for in-flight instruction.

74. For example, ATP paid Named Plaintiff McMinn \$17 per hour for ground instruction, if it was before or after the flight instruction, and for simulator instruction.

75. ATP compensated Named Plaintiff McMinn for checking the plane during pre-flight and debriefing a student post-flight at the ground instruction rate.

76. ATP did not compensate ATP Instructors for various time periods spent working. For example, ATP did not compensate Named Plaintiff McMinn for monthly group ground training that was not adjacent to in-flight instruction, or weekly scheduling meetings.

77. ATP paid ATP Instructors for simulator instruction, but only if that instruction was given within the students' allotted hours. If a student was allotted 10 hours of simulator training but the ATP Instructor needed 14 hours to complete the training, the hours above the allotted 10 hours were uncompensated.

78. ATP Instructors were paid a set amount of pay for the mandatory "Indoc" training, *see supra*, including a per diem. Upon information and belief, during "Indoc," ATP failed to pay the ATP instructors any premium overtime wages at the rate of time and one-half for all hours that they worked over 40 in a workweek.

79. ATP failed to pay Named Plaintiff McMinn any premium overtime wages at the rate of time and one-half for all hours that he worked over 40 in a workweek.

80. ATP did not pay ATP Instructors overtime wages at the rate of time and one-half for all hours that they worked over 40 in a workweek.

81. ATP occasionally pays ATP Instructors non-discretionary bonuses. For example, the ATP Instructors may receive bonuses if their students pass flight checks on their first attempt, or be given annual holiday bonuses.

82. ATP pays ATP Instructors on a bi-weekly basis. This wage payment schedule is nonnegotiable.

83. ATP's failure to pay premium overtime wages for each hour worked over 40 per week was willful.

84. Named Plaintiff McMinn complained to ATP about its failure to pay him wages for work performed for the benefit of ATP, such as ground training.

85. Upon information and belief, ATP Instructors have made similar complaints and about its failure to pay them lawful wages.

86. As a result of these complaints, ATP was on notice and aware of its obligations under the FLSA to classify ATP Instructors as employees and pay them at the proper rate of time and one-half for all hours worked over 40 in a workweek.

COLLECTIVE ACTION ALLEGATIONS

87. Named Plaintiff McMinn brings this case as a collective action consisting of:

All flight instructors, including lead flight instructors, whom ATP classified as an independent contractor and worked over 40 hours in any workweek within the 3 years preceding the filing of this Complaint. ("FLSA Collective" or "FLSA Collective Members").

88. ATP is liable under the FLSA for failing to pay all the overtime wages due to Named Plaintiff McMinn and the FLSA Collective. Named Plaintiff McMinn and the FLSA Collective Members work or have worked for ATP as flight instructors, including flight instructors, gave students flight training across state lines, were classified as independent contractors, and were subjected to the same ATP policy and pattern or practice of failing to pay premium overtime wages for all hours worked in excess of 40 hours per week.

89. Named Plaintiff McMinn's claim for overtime pay is similar to the claim of other FLSA Collective Members, and his claim depends on similar factual and legal questions including, but not limited to, whether ATP misclassified ATP Instructors as independent contractors as opposed to employees; whether ATP knew or should have known that ATP Instructors worked overtime hours; whether ATP failed and/or refused to pay the FLSA Collective Members' premium overtime wages; and whether ATP's violations were willful.

90. There are many similarly situated ATP Instructors who have been underpaid in violation of the FLSA and would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join it. Those similarly situated employees are known to ATP, are readily identifiable, and can be located through ATP's records. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

FIRST CAUSE OF ACTION

(Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*:
On Behalf of Named Plaintiff and the FLSA Collective)

91. Named Plaintiff and other members of the FLSA Collective worked in excess of 40 hours a week but did not receive premium overtime pay for all of their overtime hours.

92. ATP's failure to pay premium overtime wages to Named Plaintiff and the FLSA Collective for all of their hours of work in excess of 40 hours per week violated FLSA, 29 U.S.C. § 207 and its implementing regulations and caused Named Plaintiff and the FLSA Collective injury.

93. Named Plaintiff and other members of the FLSA Collective are entitled to relief for ATP's FLSA violation, including unpaid wages, liquidated damages, costs, and attorneys' fees pursuant to 29 U.S.C. § 216(b).

94. ATP's violation of the FLSA was willful.

RELIEF SOUGHT

WHEREFORE, Named Plaintiff prays for judgment against ATP with respect to the FLSA violations as follows:

95. Certifying this proceeding as a collective action under § 216(b) of the FLSA and ordering notice to the putative collective members at the earliest opportunity to ensure that their claims are not lost to the FLSA statute of limitations;

96. Finding ATP liable for unpaid overtime wages due to Plaintiffs under the FLSA;

97. Finding ATP liable for liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs under the FLSA;

98. Finding that ATP willfully violated the FLSA;

99. Awarding to Named Plaintiff (and those other Plaintiffs who have joined in the suit) the costs of this action as provided under the FLSA;

100. Awarding to Named Plaintiff (and those other Plaintiffs who have joined in the suit) their attorneys' fees as provided under the FLSA;

101. Awarding to Named Plaintiff (and those other Plaintiffs who have joined in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law; and

102. Granting such other and further relief as may be necessary and appropriate.

Dated: June 20, 2024

Respectfully Submitted,

/s/ W. John Gadd
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