

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

**In the matter of the Appeal of:**

Hearing Examiner File:

**No.: LS-21-002**

**BAJA CONCRETE USA CORP., ROBERTO**

**LS-21-003**

**CONTRERAS, NEWWAY FORMING INC.,**

**LS-21-004**

**and ANTONIO MACHADO**

from a Final Order of the Decision issued by

DECLARATION OF LABOR STANDARDS

the Director, Seattle Office of Labor Standards

INVESTIGATOR DARON WILLIAMS

I, Daron Williams, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

1. I am employed by the City of Seattle, Office of Labor Standards ("OLS") as a Senior Investigator. I have held this position since August 2018.
2. I possess personal knowledge of the matters set forth in this declaration. I am competent to testify to the same, and if called to testify my testimony would be as stated in this declaration.
3. I participated in the investigation of the Appellants in the above-entitled case. Part of my duties in investigating this case was to calculate back wages owed to workers for unpaid overtime, wages owed but not paid, deductions taken in violation of SMC 14.20.020, and amounts owed due to the Appellants' various violations of the Paid Sick and Safe Time Ordinance.
4. The relevant period for the violations was February 2018 to August 2020.
5. As part of the investigation, OLS requested paystubs, each employer's paid sick and safe time policy, meal and rest break information, rate of pay for overtime hours, and any other information that would assist OLS with its investigation.

- 1 6. OLS received timesheets from Newway. These timesheets were ones that were submitted to  
2 Newway from Baja and did not note whether Workers were provided with any meal or rest  
3 breaks.
- 4 7. Also, as part of the investigation, Ashley Harrison and I interviewed Antonio Machado, a  
5 superintendent for Newway Forming who worked at the 1120 Denny Way construction site  
6 during the relevant time period. A true and correct copy of our telephone interview titled  
7 *Interview Notes of Interviewee Antonio (Tony) Machado* is attached as **Exhibit A**. This  
8 interview was conducted on October 20, 2020.
- 9 8. I determined which workers were working for the Appellants during the relevant period by  
10 examining and comparing payroll summaries and paystubs provided by Baja Concrete USA  
11 Corp. (Baja), and timesheets provided by Newway Forming Inc., (Newway), which had been  
12 prepared by Baja for the purpose of supporting its invoices to Newway.
- 13 9. The identities of workers who were recorded in Baja's paystubs did not include all of the  
14 workers who were identified in Newway's timesheets. Records were missing or incomplete  
15 for the following: rates of pay, overtime hours, Paid Sick and Safe Time (PSST) information,  
16 meal and rest break periods, and deduction authorizations. Because of these deficiencies in  
17 the records provided to OLS, it was necessary to calculate back wages and penalties owed to  
18 each worker.
- 19 10. Until March 2020, after OLS had already started its investigation, the records sent by both  
20 Baja and Newway did not show any pay for hours worked over forty hours in a workweek.  
21 Therefore, where I determined that workers had worked overtime in any given week, I  
22 calculated back wages owed by examining employees' 2018, 2019, and 2020 payroll reports,  
23 paystubs, and timesheets from the 1120 Denny Way, 2014 Fairview Avenue, and 707 Terry  
Avenue work sites. From these records, I determined the number of overtime-eligible hours  
which had not been paid at time-and-a-half (i.e., 1.5) as indicated by their paystubs. For each  
affected employee, I multiplied the employee's overtime-eligible hours by .5 to determine the  
amount still owed. After multiplying the overtime eligible hours by .5, I multiplied that  
number by the employee's hourly pay rate, resulting in the amount of back wages still owed.  
In some cases, records of workers' hourly rates were missing. For those instances, I calculated  
their average hourly rate first. If their average hourly pay rate fell below the minimum wage  
and the employee qualified for overtime premium pay, I increased the hourly rate to the  
minimum wage for the corresponding year.
11. The records provided by both Baja and Newway did not show consistent hourly rates of pay  
for any workers. To determine whether workers had worked hours that were not compensated

at the required minimum wage, I divided the gross wages from the paystub records by the total hours worked from the timesheets for that pay period. If the wages fell below the minimum wage, I calculated the difference between what the employee received in pay and what the employee should have received at the higher minimum wage rate. I assessed interest on that amount based on the length of time that the wages had been overdue.

12. In some pay periods, employees appeared on timesheets but did not appear on any corresponding paystubs. For these workers, I computed back wages by multiplying the hours worked listed on the timesheets by an average hourly rate calculated by averaging all other workers' hourly rates.

13. The records provided by both Baja and Newway did not show that workers were provided with the proper meal and rest breaks, a ten-minute rest period for every four hours of working time and a 30-minute meal period when an employee works more than five hours in a shift. Therefore, where I determined that workers had not been provided with the proper meal and rest breaks, I calculated back wages owed, for 2018 and 2020, because workers only received one rest break and one meal break per shift.

14. To calculate back wages, I reviewed the timesheets and assessed 10 minutes of back wages for one missed rest break if an employee's shift exceeded five hours but was less than 10. I assessed 10 minutes of back wages for one missed rest break and 30 minutes of back wages for one missed meal break if, according to the timesheets, a shift exceeded 10 hours but was less than 12. I assessed 20 minutes of back wages for two missed rest breaks and 30 minutes of back wages for one missed meal break for shifts that were 12 hours or longer, and 15 hours or less. I assessed 20 minutes of back wages for two missed rest breaks and one hour of back wages for two missed meal breaks if a shift was longer than 15 hours but less than 16 hours. I assessed 30 minutes of back wages for three missed rest breaks, and one hour of back wages for two missed meal breaks for shifts between 16 and 19.99 hours. OLS added the total missed breaks per worker, per year to calculate back wages.

15. For those instances that involved missed meal breaks with overtime pay, I calculated back wages by computing the percentage of weeks within the year that each employee exceeded 40 hours and used that percentage to determine the portion of back wages for missed breaks that should be paid using the overtime premium. Whenever an employee worked more than 40 hours in a week and was owed for missed breaks, those breaks were multiplied by time and a half because they were in addition to the 40 hours and because the employee had never received the straight time pay for the breaks.

16. I assessed interest for all back wages for missed breaks in a given calendar year utilizing an individualized midpoint within the year for each employee. The midpoint was calculated

1 based on the first date and last date when the employee appeared in that year's timesheets and  
2 represents an estimated average date from which the missed break wages were due. Interest  
3 was based on the time elapsed since the midpoint, at a rate of 1% per month up until to the  
4 date of the Determination.

5 17. The records sent by both Baja and Newway did not show the proper accrual and use of PSST  
6 hours. Therefore, where I determined that workers had not been provided with proper accrual  
7 and use of PSST, I calculated back wages as 30 paid sick and safe time hours for each year of  
8 noncompliance for up to three years preceding the initiation of the investigation through the  
9 date of the Determination, paid at the employee's rate of pay on the last day of each year of  
10 noncompliance, plus interest. For worker who worked fewer than 2080 hours per year, the  
11 number of paid hours was prorated based on their hours worked. Because of the workers'  
12 variable hourly compensation, I used an average hourly pay rate for each worker for each year.

13 18. I identified fifty-three workers who were owed back wages for overtime, minimum wage,  
14 unauthorized deductions, meal and rest breaks, and PSST. My calculations involve all fifty-  
15 three workers, but not all workers experienced each type of violation and my calculations of  
16 back wages and penalties reflected that.

17 19. I recorded my calculations in Excel spreadsheets. A true and correct copy of the Excel  
18 spreadsheet titled *Baja Calcs (version 3)* is attached as **Exhibit B**. This Excel spreadsheet  
19 reflects the accurate calculations for back wages for the overtime, minimum wage, and PSST  
20 violations.

21 20. Calculations for meal and rest breaks discussed above are not included in Exhibit B, however  
22 they were included in the final Determination.

23 21. Calculations for meal and rest breaks for 2019 were completed by Ashley Harrison, an  
investigator with OLS. Ms. Harrison's calculations for meal and rest breaks are not included  
in Exhibit B, however they were included in the final Determination.

24 22. The worksheet titled "Hours" via the tab toward the bottom of Exhibit B shows employee  
names. Column B shows pay periods for each worker identified by OLS as being owed back  
wages, and column C shows total hours worked during that pay period.

25 23. The worksheet titled "OLS OT & WT calcs" via the tab toward the bottom of Exhibit B shows  
overtime and non-payment of wages due with corresponding penalty remedies and interest  
owed. Column A shows pay dates on a bi-weekly basis for each worker identified by OLS as  
being owed back wages, and column C shows net amounts paid to employees as listed on  
employee paystubs and Baja payroll summary, column D shows hours worked according to

the Baja payroll summary (unless highlighted in green), column E shows bonus amounts given to employees listed on employee paystubs and Baja payroll summary, column F shows gross amounts given to employees listed on employee paystubs and the Baja payroll summary, column M shows the hourly rate for employees calculated by dividing gross wages (column F) and bonus wages (column E) by total hours worked (column N), column N shows total hours worked bi-weekly according to the Baja timesheets, column O shows total back wages calculated in the methods described above in paragraph 7, column P shows interest assessed at a rate of 12 percent annum computed on a monthly basis on back wages (column O) based on the dates listed on column A and cell W1, column Q shows liquidated damages calculated at 200% of back wages (column O), column R shows civil penalty for violation of the Wage Theft Ordinance for each employee, line 916 contains the total amounts owed to each worker for unpaid overtime and unpaid wages.

24. The worksheet titled "MW Calcs" via the tab at the bottom of Exhibit B shows employee names for five workers. The "date" in column B is the pay date the back wages pertains to, column C shows bonus amounts given to employees listed on employee paystubs and Baja payroll summary, column D shows the amount of gross wages, column E shows that worker's hourly rates as calculated by dividing gross wages (column D) and bonus wages (column C) by total hours worked (column G), column F shows the adjusted hourly rate if the worker was properly paid minimum wage for a given year, column G shows how many hours were worked in the column B pay period, column H shows the back wages owed calculated according to the methods described above in paragraph 8, column I shows interest owed as calculated by interest assessed at a rate of 12 percent annum computed on a monthly basis on the back wages (column H) based on the dates listed on column B and cell N1, column J shows liquidated damages as calculated at 200% of back wages (column H), column K shows a civil penalty associated with that worker because a violation of the Minimum Wage Ordinance was assessed. Line 9 shows the totals for back wages owed, interest, liquidated damages, and civil penalties.
25. The worksheet titled "PSST" reflects the payout owed workers who were denied PSST in violation of the PSST ordinance. Each year utilized hours worked and hourly wages and were calculated according to the methods described above in paragraph 13. Column X shows liquidated damages assessed at 200% of back wages. Column Y displays the total amount of interest assessed for each given year back wages were due. Column Z displays the total back wages assessed. Column AA shows a civil penalty associated with that employee because a violation of the Paid Sick and Safe Time Ordinance. Column AB amount assessed by combining back wages, interest, and liquidated damages.
26. The worksheet titled "OLS OT & WT\_COPYCBE" was a working draft used to help determine calculations for the "OLS OT & WT calcs worksheet."

1 27. The worksheet titled "Avg hourly rate" shows the average hourly rates for each worker, except  
2 for Alberto Pimental, Matias Rodriguez, and Reuben Gonzalez. The average hourly rate on  
3 this spreadsheet (\$26.11) was adjusted prior to final calculations to include those  
4 workers. The "grand total" average hourly rate that OLS ultimately calculated was \$26.26,  
5 which is not reflected in this worksheet.

6 DATED this 29th day of June, 2022 at Seattle, Washington.

7  
8  
9 /s/



10 **Daron Williams**  
11 **Labor Standards Senior Investigator**

*Interview Notes of Interviewee Antonio (Tony) Machado*

**EXHIBIT A**  
**TO DECLARATION OF INVESTIGATOR DARON WILLIAMS**

BEFORE THE SEATTLE OFFICE OF LABOR STANDARDS

INTERVIEW NOTES

INTERVIEWEE: Antonio (Tony) Machado

PHONE 760-613-6403

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**NO PERSON MAY RETALIATE AGAINST YOU FOR TESTIFYING IN THIS INVESTIGATION**

The Seattle Labor Standards Ordinances prohibit discrimination or retaliation against a person who assists in an investigation by the Seattle Office of Labor Standards. If you experience discrimination or retaliation because you testified in this investigation, please contact the Seattle Office of Labor Standards at (206) 684-4500.

In most circumstances, you have a right to a private interview with OLS. If you want another person to be present during the interview, please discuss that request with the Investigator.

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Antonio (Tony) Machado gave the following information in response to questions asked regarding this case by Seattle Labor Standards Investigators Daron Williams and Ashley Harrison in a phone interview on October 20, 2020:

Q: When did you start working for Newway? In what role?

I've been working with Newway for many years. I started about 20 years ago, off and on.

Q: When did you start working at 1120 Denny Way?

I've been working here three years, as superintendent.

Q: Have you held any other positions at 1120 Denny Way?

No.

Q: Do you have any involvement or responsibilities at other Newway sites in or around Seattle?

No, none.



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Q: Explain in detail your daily duties at Newway.

Each day I talk to my foremen in the morning, the labor foreman, carpenter foremen, cement finisher foreman, to keep Newway on the project schedule.

Q: List all the projects that you worked on in Seattle over the past three years, including the dates when you worked there.

No others. Before this I was in San Diego, California.

Q: Who directs your work?

I had a project manager, I look after the field and I had the PM working in the office. Before it was Chris Birtch, and for the last year and a half, Tom Grant.

Q: How did they direct your work?

We had a meeting in the morning, we would talk to the owners of the building, make a weekly project schedule, and talk throughout the day. We had another office guy, Craig – so it was the management team that met each day.

Q: How often do you interact with contracted workers on the site?

I don't work with them, I just work with Newway people. Other companies, other trades, we see each other the site and say 'Good morning, how are you' but don't work with them.

Q: When did Baja Concrete USA get involved in the 1120 Denny Way project?

I can't be precise but it was probably about two years ago.

Q: How did Baja Concrete get hired or involved in the 1120 Denny Way project?

I don't know. That's all paperwork and contracts, that has nothing to do with me, that's with the office. I saw their boss here on site a few times, I'd say "Roberto, how are you," but I was not involved with his employees.

1 Q: Describe the connection between the companies Baja Concrete and Newway Forming  
2 Inc.

3 To be honest, I don't know.

4  
5 Q: How many employees worked for Baja Concrete at your job site?

6 I don't know exactly how many guys – maybe five, maybe six or seven? I didn't really  
7 interact with them. I had a cement finisher foreman and would tell them what needed to  
8 get done this week, but I didn't work with the subcontractor.

9 Q: Did you have authority to or input into hiring and firing Baja Concrete workers? If  
10 not, who?

11 No. I don't tell him, 'Fire that guy', no. If my foreman had an issue with a guy the  
12 foreman would talk to Roberto. The labor foreman and cement finish foreman would say  
13 "I don't like this guy" but those foremen would deal with that, not me. With Roberto's  
14 workers, I'd see them sometimes and I speak a little bit of Spanish, so I'd say 'Hi, how  
15 are you,' but that's all.

16 Q: Did you have authority to or input into reprimanding or disciplining Baja Concrete  
17 employees? If not, who?

18 No. I don't interfere with them, no.

19 Q: Did anyone at Newway direct Baja workers?

20 I had a cement finisher foreman, first it was Pedro, now Mario, they interacted with the  
21 Baja guys. They'd tell them, 'after you're done with that, we're gonna do this.' You've  
22 got to give them directions to get the work done.

23 Q: Who would they talk to about breaks?

24 We all have a timed break for the whole site, at 10:00 we stop for half an hour, and at  
25 12:00 for another half hour, everyone stops, all the trades, unless we have a concrete pour  
26 and have to work through the break or take it earlier or later. Each group's foreman  
27 would let them know.

28 Q: Were you aware of Baja Concrete employees' concerns regarding improper pay?

1 No one ever came to me about that. If they had come to me, I would have talked to my  
2 upper management and gone to them to say, 'These guys say they aren't getting paid.'

3  
4 Q: Did you ever hear about the Baja Concrete workers' pay concerns from other people  
at the site?

5 No, no one told me anything about that.  
6

7 Q: Did you ever work with Roberto Soto Contreras? Please describe your understanding  
8 of his role and the extent of your work with him.

9 I guess he was the manager or something, but I haven't see him for the longest time, we  
10 don't really know where he is. I guess he would hire people, I'm not too sure, I guess he  
was representing Baja.

11  
12 Q: Who from Baja is in charge of directing the workers on site?

13 Those guys would come to the Newway foremen and the Newway foremen would guide  
14 them and give them directions, what to work on, when to go home. Sometimes concrete  
comes late or it's slow and you have to stay late, it's not uncommon for us to work ten  
15 hours in a day and the foremen let them know how late to stay.

16 Q: Does that mean that there were no managers on site for Baja workers at any point?

17 No. No managers, no.  
18

19 Q: If a Baja Concrete worker became ill and had to leave the site, who would they  
20 inform?

21 If a guy got sick he would call Roberto to come and pick him up, and he'd tell the  
22 Newway cement finisher foreman that he didn't feel good and he had to go home. And he  
had a right to go home, because if you are sick, you are sick.

23  
24 Q: Did you ever work with anyone else from Baja Concrete, besides Roberto and the  
workers at the 1120 Denny Way site?

25 No. I met Roberto in Seattle about two years ago when they started bringing people to  
26 our jobsite.  
27  
28

1 Q: Do you know how they are brought to the jobsite?

2 I guess they drive or come on the bus, I don't know.

3  
4 Q: Did you ever work with Carlos Penunuri in relation to Baja Concrete?

5 Carlos? Plenty of guys named Carlos but I don't know if I know that Carlos. We went  
6 through so many places, so many people that I don't even recognize some of the names  
7 and faces. But I know we never had a manager here from Baja. The only guy who  
8 managed them was Roberto, bringing the guys in and out, and confirming the hours.

9 Questions about Exhibit A - Invoice

10 Q: In Exhibit 1, you can see that Baja Concrete billed Newway at different hourly rates  
11 for different trades, for example, \$40 per hour for a finisher, \$34 per hour for a laborer,  
etc. Who determined those billing rates?

12 I never got involved with the bills. We have a timecard system here, Connor would go  
13 through the invoices and make sure that the hours match, but I never got involved in the  
14 timecards, timesheets, none of it.

15 Q: Did the Baja workers use those timecards?

16 Yes, they would sign in, sign out. Now they have a timeclock, punch in, punch out. The  
17 last year, maybe a year and a half ago it changed to timeclock. Now it's probably Tom  
18 Grant who looks at invoices.

19 Q: You don't know how the hourly rates were determined?

20 No. I never asked them, 'How much do you pay your guys?'

21  
22 Q: Who from Baja Concrete completed and submitted these invoices?

23 It's got to be Roberto, but I really don't know.

24  
25 Q: We noticed that some Newway people signed off on these timesheets, do you know  
26 who?

27 No, I don't know.  
28

1  
2 Q: Who at Newway Forming approved payment of Baja Concrete's invoices?

3 I don't know.

4  
5 Q: Did anyone at Newway ask you to verify that the invoiced hours were correct?

6 No, we have a manager Tom Grant or before Connor, who would check this. I don't get  
7 involved with those things. For the past 2-3 months, I think it would be Tom Grant to  
8 check the hours and make sure it was the right time.

9 Questions about Exhibit 2 - Timesheets:

10 Q: Newway provided us with copies of invoices from Baja Concrete to Newway  
11 Forming, with the associated weekly timesheets for the workers. Each timesheet appears  
12 to be signed by someone from Newway. Does the signature mean someone verified the  
13 hours?

14 They use the timeclock for hours. Before it was timecard, now just the timeclock.

15 Q: Do the Baja workers use that same system?

16 It's a timeclock. Everyone has a card he puts there to punch in. They clock in and out  
17 every day. It's inside our [Newway's] office here on site. We have an office here for my  
18 PM, and we have a clock hanging there. This is how we've done it for a year and a half.  
19 Before that, timecards. Every employee would do this. When a guy walks in, he goes into  
20 the office and writes the time he starts in the morning, goes in to write the time he leaves  
21 in the evening. Each day of work they would do that. Now it's the timeclock.

22 Q: Who would sign the timesheets?

23 Our guy Connor who was here, he would check. At the end of the week Roberto would  
24 come with the invoice and Connor would make sure that those matched the hours on the  
25 timecard.

26 Q: Do you know where Roberto would get the timesheet numbers from?

27 He would come here to check on time cards and make his invoice according to the  
28 timecards here.

1 Q: Did he ever work as a cement finisher himself?

2 No, he would come here to bring the guys.

3  
4 Q: Did your PM know how many hours those workers were working?

5 It's not the PM or even me, it's the cement finisher in charge, sometimes we'd work 8  
6 hours, sometimes we'd stay late, Connor was in the office so he'd know people's punch  
7 out times, and foremen would sometimes keep people late. All the PM does is signs the  
8 bills. I have other things to do. Roberto would come here Monday mornings, check how  
9 many hours his guys worked, and make out the invoice according to the hours his guys  
10 worked.

11  
12 Q: Did that foreman coordinate with Roberto about how many hours the workers would  
13 work in a day?

14 No, the foreman figures out how long they work. It's hard to predict sometimes which  
15 days will go late. At the end of the day we all stay late. Sometimes we work 8 hours,  
16 sometimes 9, 10. You've got to work as we need, that's how we work.

17  
18 Q: To your knowledge, were Baja Concrete employees compensated for all the hours  
19 invoiced in these records?

20 Newway paid everything from the invoices. Sometimes the guys worked through breaks,  
21 so if they worked through lunch you have to pay double, so they'd include that in the  
22 hours they submitted.

23  
24 Q: Let's say for example, if someone from Baja Concrete worked 60 hours in a week, do  
25 you know if they got paid for 40 hours of straight time and 20 hours of overtime?

26 Honestly, I don't know.

27  
28 Q: To your knowledge, who is the person or persons with ultimate responsibility for the  
full project at 1120 Denny Way?

Onni owns the building, but I think Onni has nothing to do with this. This is between  
Roberto and his employees.

Q: Was there anyone from Onni at the jobsite?

1 Yes, they are here full time: superintendents, PMs, interior foreman, they are here. The  
2 main person was Luis Martinez but he was laid off, he's gone. I'm not sure if he even  
3 knows of the Baja company.

4 Q: Did you report to anyone at Onni regarding the jobsite?

5 No, all we do once a week is have a trades meeting. The plumbers, electricians, to discuss  
6 matters about the jobsite – everything.

7 Q: Have you ever worked for or on behalf of Baja Concrete USA?

8 No, never. They work for us here. I never met Roberto anywhere, no.  
9

10 Q: Did you receive any form of payment, for any reason, from Baja Concrete USA  
11 anytime between 2017 - 2020?

12 No, no sir.

13 Q: Do you have any other questions about any of this?

14 No.  
15

16 This statement was drafted at the time of the interview and edited by the Investigator for  
17 clarity and conciseness. This statement is not a transcript. By signing below, I  
18 acknowledge that I have been provided an opportunity to review and correct the accuracy  
19 of this statement based on my recollection of the interview.

20 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE  
21 OF WASHINGTON THAT THIS STATEMENT IS TRUE AND CORRECT.

22 10/23/20

23 Date Signed

Antonio Machado

Antonio Machado

24 SEATTLE WA

25 Location (City and State)  
26  
27  
28