

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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8 BEFORE THE LABOR COMMISSIONER
9 OF THE STATE OF CALIFORNIA

11 JENNIFER MEADES,) No. TAC 7-90
12)
13) Petitioner,)
14) vs.) DETERMINATION
15) OF CONTROVERSY
16)
17) BEST MODELS SAN FRANCISCO, INC.,)
18) TALENT AGENCY & ELITE MODEL CENTER)
19) SAN FRANCISCO (an extension of BEST)
20) MODELS & TALENT AGENCY),)
21) Respondents.)

22 INTRODUCTION

23 On April 25, 1990, Petitioner JENNIFER MEADES filed a
24 Petition to Determine Controversy pursuant to Labor Code
25 §1700.44, alleging that Respondents BEST MODELS SAN FRANCISCO,
26 INC., TALENT AGENCY and ELITE MODEL CENTER breached their
27 contractual obligations by failing to pay the amounts owed for
modeling work performed by Petitioner. A hearing was held on
March 26, 1991 in San Francisco, California, before Miles E.
Locker, the Labor Commissioner's designated hearing officer.
Petitioner JENNIFER MEADES was present. Tania Toporkov, an

1 administrator for Elite Model Center, was also present and
2 represented both Respondents. The parties were given the
3 opportunity to testify and present evidence. Based upon the
4 testimony and evidence received, the Labor Commissioner adopts
5 the following determination of controversy.

6 FINDINGS OF FACT

7 1. On December 2, 1988, Petitioner entered into a
8 written contract with Respondent ELITE SAN FRANCISCO MODEL
9 CENTER ("Elite") under which Petitioner agreed to pay specified
10 tuition in order to receive training in professional modeling.
11 Petitioner began her training with Elite on December 10, 1988
12 and graduated from the program in August, 1989.

13 2. As specified in Petitioner's written contract with
14 Elite, Elite provides a modeling "placement service" for its
15 trainees and requires its trainees to refrain from contracting
16 with any modeling or talent agency that does not agree to pay
17 Elite a fixed percentage of the trainee's modeling earnings for
18 a fixed period of time.

19 3. Elite is not licensed by the Labor Commissioner as
20 a talent agency.

21 4. Sometime after her graduation from Elite's
22 training program, Petitioner was contacted by Mr. Chang, Elite's
23 booker, and was asked to work at an upcoming fashion show.
24 Petitioner accepted the assignment and modeled at the show,
25 which was held in Elite's premises in September or October,
26 1989. The show was open to the public and was intended to
27 promote Elite's training program. Petitioner and Mr. Chang had

1 never discussed the terms of compensation for modeling at this
2 show.

3 5. Petitioner assumed she would be paid \$40 for
4 modeling at Elite's fashion show, pursuant to the terms of
5 compensation set forth in a document entitled "Metamorphosis
6 Placement Service (MPS) Rate sheet and Guidelines for Trainees
7 and Graduates". The MPS Rate Sheet lists \$40 as the standard
8 compensation for an "informal" fashion show. Petitioner
9 received this Rate Sheet from Elite's placement service, which
10 operates under the Metamorphosis name, prior to her graduation
11 from Elite's training program.

12 6. Petitioner never received any compensation for her
13 modeling at Elite's fashion show. According to Elite's
14 administrator, there is no budget for paying models who work at
15 Elite's promotional fashion show; and it is expected that such
16 models will work without compensation as a means of getting
17 additional exposure.

18 7. Respondent BEST MODELS SAN FRANCISCO, INC., TALENT
19 AGENCY ("Best") is licensed by the Labor Commissioner as a
20 talent agency.

21 8. Mr. Chang, Elite's booker, also works as a booker
22 for Best. Elite has an ongoing business relationship with Best
23 under which Elite's graduates are referred to Best's Beginners
24 Board for job placements. Best uses the MPS Rate Sheet as the
25 basis for determining compensation for its models who obtain
26 work through Best's Beginners Board.

27 9. In early November, 1989, Mr. Chang, acting on

7
1 behalf of Best, advised Petitioner to report for a job modeling
2 for a client called "Extra! Extra!" The job was located in
3 Pleasanton, 25 miles away from Petitioner's home. Mr. Chang
4 informed Petitioner that the job would pay \$12 an hour.
5 Petitioner and Mr. Chang did not discuss whether she would be
6 compensated for her travel expenses.

7 10. Barbara Martin, a representative of "Extra!
8 Extra!", met with a group of Best models, including Petitioner,
9 prior to the start of Petitioner's modeling job in Pleasanton.
10 At this meeting, Ms. Martin told Petitioner to record her travel
11 expenses on the daily invoices that Petitioner was required to
12 submit to Best. These invoices are used by Best to determine
13 the amount it must pay the model and the amount it will bill the
14 client for the model's services. The client, "Extra! Extra!",
15 pays Best directly, and Best then pays the model.

16 11. Petitioner modeled for the "Extra! Extra!"
17 assignment from November 9, 1989 until December 24, 1989. She
18 submitted 21 invoices for her work. Each invoice represented 4
19 hours of work, for a total \$1,008 earned (84 hours work performed
20 at \$12 per hour). On each invoice, under the category entitled
21 "travel", she listed her daily mileage between her residence and
22 the assignment; however, she did not list any rate for this
23 mileage because she was not sure what rate it would be
24 compensated at. She now seeks a total of \$51.75 reimbursement
25 for her travel expenses based on approximately 50 miles driven
26 each day of the assignment at the rate of five cents per mile.

27 12. Best disagrees that it owes any money for mileage

1 reimbursement. Petitioner never discussed mileage reimbursement
2 with anyone other than Barbara Martin. According to Tania
3 Toporkov, Martin never advised Best that "Extra! Extra!" had
4 agreed to pay Petitioner's mileage; consequently, Best never
5 billed "Extra! Extra!" for the mileage. Best also contends that
6 because the MPS Rate Sheet provides that "all rates will be
7 negotiated and finalized prior to booking", it cannot now be
8 held responsible for a mileage reimbursement since the mileage
9 rate was never negotiated or finalized.

10 13. Petitioner was never fully compensated for her
11 "Extra! Extra!" assignment. She received two separate checks
12 from Best in January, 1990, one for \$192 and the other for \$150,
13 for a total of \$342 that has been paid to her for this
14 assignment. Best concedes that it still owes money to the
15 Petitioner, but the parties disagree on the amount that is owed.
16 Best asserts that it is entitled to deduct 20% of Petitioner's
17 total earnings based on a clause in the MPS Rate Sheet, which
18 provides that "for all graduates who are without an agent after
19 Metamorphosis, MPS is available to them at a 20% service fee."
20 Thus, Best contends that it is entitled to a \$201.60 service fee
21 from Petitioner (20% of the \$1,008 earned on the "Extra! Extra!
22 job), so that it now owes Petitioner only \$464.40. In June,
23 1990, Best offered a \$464.40 check to Petitioner as "payment in
24 full". Petitioner refused to accept the check because she
25 disputes that this amount constitutes full payment. She argues
26 that Best is not entitled to the 20% service fee and thus, that
27 she is still owed \$666 in unpaid wages for the "Extra! Extra!"

1 assignment, plus \$51.75 for mileage reimbursement as discussed
2 above.

3 CONCLUSIONS OF LAW

4 1. There is no legitimate reason for Elite's failure
5 to pay Petitioner the \$40 in dispute with respect to her
6 modeling work at Elite's fashion show. This is the amount that
7 is listed on the MPS Rate Sheet as standard compensation for
8 such an assignment. Petitioner never agreed to model at this
9 show without compensation. Whether or not Elite budgeted the
10 money for paying the models who work at its fashion show, such
11 compensation must be made. Elite owes Petitioner \$40 for this
12 show, plus interest from October 31, 1989 to the present in the
13 amount of \$6; pursuant to Civil Code §§3287 and 3289, for a
14 total of \$46 owed.

15 2. Under Labor Code §2802, an employee is entitled to
16 reimbursement for business expenses incurred by the employee on
17 behalf of an employer. But mileage from an employee's residence
18 to the place of work is not considered a business expense for
19 which reimbursement is mandatory. Here, Petitioner would be
20 entitled to mileage reimbursement only if she had reached an
21 agreement with Best on a specific mileage rate at the time of
22 her acceptance of the "Extra! Extra!" assignment. Because of
23 Petitioner's failure to discuss mileage reimbursement for this
24 job with anyone from Best, Petitioner is not entitled to
25 reimbursement for her mileage.

26 3. Under the terms of the MPS Rate Sheet, Best is
27 entitled to 20% of Petitioner's earnings on the "Extra! Extra!"

1 job as a service fee. Despite Best's failure to promptly pay
2 Petitioner all of the money she earned for that job, Best is
3 still entitled to its 20% share of these earnings.

4 4. It is undisputed that Best still owes Petitioner
5 \$464.40 for the "Extra! Extra!" assignment. This money should
6 have been paid to Petitioner over one year ago. Best did not
7 offer this money to Petitioner until June, 1990, and even then,
8 the fact that the offer was conditioned as "payment in full"
9 means that Petitioner was not obligated to then accept the
10 money. Consequently, Best now owes Petitioner \$464.40 for the
11 "Extra! Extra!" assignment, plus interest from December 24, 1989
12 to the present, in the amount of \$61.92, pursuant to Civil Code
13 §§3287 and 3289, for a total of \$526.32 owed.

14 ORDER

15 It is, therefore, ordered that Elite pay \$46 to
16 Petitioner and that Best pay \$526.32 to Petitioner.

17
18 DATED: 4/30/91

Miles E. Locker
19 MILES E. LOCKER, Attorney for
20 the Labor Commissioner

21 The above Determination is adopted by the Labor
22 Commissioner in its entirety.

23
24 DATED: April 30, 1991

James H. Curry
25 JAMES H. CURRY
26 Acting Labor Commissioner
27

