

## In The News

# Judge chews our Labor Department over its handling of wage case

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*Houston Chronicle*

An oil-and-gas servicing firm will be getting a check for nearly \$600,000 from the U.S. Department of Labor to cover its legal fees and other costs after it was able to prove the government didn't have "substantial justification" to prosecute the company.

In a stinging rebuke to the way the Labor Department handled the wage-and-hour case against Corpus Christi-based Gate Guard Services, Senior U.S. District Judge John Rainey in Victoria issued an order on Wednesday to reimburse the company for some but not all of its legal expenses.

In his order, Rainey takes the federal agency to task for performing an incomplete investigation in the way the company classified its 400 gate attendants as independent contractors, destroying key evidence and then not dropping the litigation when it realized it was in error.

"The DOL failed to act in a reasonable manner both before and during the course of this litigation, and it continues to insist that the gate attendants are employees, despite overwhelming contradictory evidence," Rainey's order says.

Four years ago, Gate Guard was told by the Labor Department that it owed \$6.2 million in back pay including minimum wage and overtime for the attendants who log traffic at oil and gas drilling sites.

Last year, Rainey sided with the company and ruled that its 400 gate attendants are independent contractors and not employees who would be entitled to minimum wage and overtime pay.

Rainey cited several factors that indicate they're independent business owners: They work without supervision or training, can do what they want when there are no vehicles to log, and can hire substitute gate watchers at any time.

In his order issued Wednesday, Rainey noted that the Labor Department investigator began his inquiry at the request of a friend and then interviewed "just a handful" of the roughly 400 gate attendants before presenting the company with a \$6 million back-wage demand.

The Labor Department later lowered its demand to \$2 million, acknowledging that it erred by not excluding sleep and meal time, according to the order.

Rainey's order also described it as "unsettling" that the investigator destroyed all of his interview notes during a four-month period by shredding and/or burning them.

The agency responded with a written statement.

"The Department of Labor has received the decision and we are reviewing our options," the statement reads.

Houston lawyer Daniel Pipitone, who represents Gate Guard, said his client is relieved there is a law in place that allows business owners to recoup some of their legal fees when they've been wrongly pursued by the government.

"Not everyone can afford to fight the fight in the first place," he said.

Pipitone estimates the legal fees Rainey awarded represent about 70 percent of Gate Guard's total bill.

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