

FILED

June 8, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60965
Summary Calendar

WILBUR KOLLMEYER,

Plaintiff-Appellant,

versus

WTVA, INC.,

Defendant-Appellee.

Appeal from the United States District Court for
the Northern District of Mississippi
(USDC No. 1:02-CV-355-D-D)

Before REAVLEY, JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Plaintiff Wilbur Kollmeyer filed a claim for compensation under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207, along with a state law breach of contract claim. The plaintiff worked as a Sports Director for the defendant WTVA, Inc., a

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

television station. Upon resigning, he claimed he had not been compensated for 71 days of overtime.

WTVA filed a motion for summary judgment. Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, the district court granted WTVA's motion for summary judgment on the FLSA claims and remanded the plaintiff's state law claims to state court. We affirm the decision of the district court as the plaintiff fits within the small market exemption to overtime requirements. See 29 U.S.C. § 213(b)(9). The defendant did not waive its right to the exemption by providing the plaintiff with compensation days off in return for overtime hours. We decline to address the revocation of the small market exception as this issue was not clearly raised before the trial court. See United States ex rel. Wallace v. Flintco Inc., 143 F.3d 955, 971 (5th Cir. 1998).

AFFIRMED.