

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 22-2122

REBECCA WIRTH,

*Plaintiff-Appellant,*

*v.*

RLJ DENTAL, S.C.,

*Defendant-Appellee.*

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Appeal from the United States District Court for the  
Eastern District of Wisconsin.  
No. 18-cv-910 — **William C. Griesbach**, *Judge.*

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SUBMITTED DECEMBER 7, 2022 — DECIDED JANUARY 31, 2023

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Before FLAUM, KIRSCH, and JACKSON-AKIWUMI, *Circuit Judges.*

KIRSCH, *Circuit Judge.* After she was fired, Rebecca Wirth sued her former employer, RLJ Dental, S.C., for retaliation under the Fair Labor Standards Act (FLSA) and for violations of Wisconsin's Wage Payment and Collection Laws. She lost the FLSA claim at trial and does not raise any issues pertaining to that claim on appeal, so we say no more about it. The sole issue for us to decide is whether RLJ violated Wisconsin law

when it failed to compensate her for lunch breaks when she was admittedly not working. Because the answer is no, we affirm.

## I

The following facts are undisputed. RLJ Dental, S.C., is a dental service organization that has multiple offices across eastern Wisconsin. From May 2017 to February 2018, RLJ employed Rebecca Wirth as the office manager for its Neenah, Wisconsin location. Wirth was paid on an hourly basis and was required to clock in and out using the office's electronic timekeeping system. Wirth's workday usually began at 7:30 am and concluded around 5 pm.

RLJ closed its offices every day from 1–2 pm and did not schedule any patients during that time. Employees were expected to take an hourlong lunch break during which they were not required to work and were free to leave the office. RLJ's employee handbook provided: "Employee[s] will clock out for lunch time and will clock back in when lunch is finished. Lunches are unpaid time[,] and you should not clock in until their [sic] next scheduled patient."

Despite this policy, Wirth frequently clocked out for less than 30 minutes. Over the nine months that she worked for RLJ, she did this a total of 89 times. Wirth's supervisor repeatedly instructed her that she needed to take full lunch breaks, but Wirth ignored these instructions. On one occasion, Wirth told her supervisor that she had done some research and that RLJ could not force her to take the full break.

After Wirth was terminated, she filed suit in federal court. Relevant to this appeal, Wirth argued that RLJ failed to compensate her for numerous lunch breaks in violation of

Wisconsin's Wage Payment and Collection Laws. Wisconsin law requires employers to compensate employees for breaks less than 30 minutes, but not for meal periods of 30 minutes or more during which the employee is completely relieved from duty. See Wis. Admin. Code, Dep't of Workforce Dev. § 272.12. Although RLJ paid her for the entire time she was clocked in during the lunch hour (despite her repeated violations of RLJ's handbook and her supervisor's admonitions), Wirth argued that RLJ was also required to pay her for the time she was clocked out and admittedly not working.

The jury returned a verdict in favor of Wirth, finding that RLJ was required to compensate her for the time she was clocked out during the 89 shortened lunch breaks. Following trial, the court concluded that it had made a prejudicial error in instructing the jury and that under Wisconsin law, RLJ was not required to compensate Wirth for the lunch periods as long as it consistently provided her with a break of at least 30 minutes. The court granted RLJ's motion for a new trial to determine whether RLJ did so, and the parties stipulated to a bench trial.

The court found that RLJ allowed a regular lunch break from 1-2 pm and that Wirth chose not to take the full break even though her job duties did not prevent her from doing so. The court also found that "Wirth was well aware of the law and intentionally manipulated her lunch hour so as to increase her earnings." Wirth does not challenge these findings on appeal. Instead, she challenges only the court's conclusion that RLJ was not required to compensate her for the time she was clocked out during her lunch break.

## II

The only issue on appeal is whether the district court's interpretation of Wisconsin law was correct. We review a district court's legal conclusions de novo. *Ernst v. City of Chicago*, 837 F.3d 788, 795–96 (7th Cir. 2016).

Wirth argues that Wisconsin law imposes a bright-line rule that if an employee elects to take any break of less than 30 minutes, then the entire break period offered by the employer (here, an hourlong lunch break) must be compensated. In other words, Wirth wants to be paid not just for the portion of her lunch break during which she was clocked in, but also for the time she was clocked out and admittedly not working.

Our analysis begins and ends with the plain language of the regulatory scheme, which distinguishes between compensable rest periods and non-compensable meal periods. *Lexington Ins. Co. v. Rugg & Knopp, Inc.*, 165 F.3d 1087, 1091 (7th Cir. 1999) (citing *State ex. rel. Jacobus v. State*, 559 N.W.2d 900, 903 (Wis. 1997)). The Wisconsin Department of Workforce Development provides that employees “must be paid for all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer's business.” Wis. Admin. Code, Dep't of Workforce Dev. § 272.12(1)(a)(1). Employees must also be paid for “rest periods of short duration[,]” which are defined as breaks of less than 30 minutes. *Id.* at § 272.12(2)(c)(1). Wisconsin law distinguishes rest periods from meal periods. Meal periods of 30 minutes or more during which employees are completely relieved from duty for the purposes of eating regular meals are not compensable. *Id.* at § 272.12(2)(c)(2).

Wirth attempted to transform her non-compensable meal period into a compensable rest period by clocking back in after less than 30 minutes, despite what her employer provided and her employer's repeated instruction to take her full break. Wirth wants us to focus on her conduct—the fact that she elected to take a lunch break of less than 30 minutes. But this focus is misplaced. The Wisconsin regulatory scheme focuses on what the employer provided, not what the employee elected. Because RLJ provided 30 minutes or more during which Wirth was completely relieved from duty for the purposes of eating lunch, RLJ was not obligated under the law to pay her for the time she was off the clock.

AFFIRMED