

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted March 5, 2025\*

Decided March 14, 2025

**Before**

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2622

MATTHEW BURGESS,  
*Plaintiff-Appellant,*

*v.*

LESSIE BATES DAVIS  
NEIGHBORHOOD HOUSE and  
GARY GASTON,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Central District of Illinois.

No. 24-cv-3143

Karen L. McNaught,  
*Magistrate Judge.*

**ORDER**

Matthew Burgess sued Lessie Bates Davis Neighborhood House and its CEO, Gary Gaston, alleging that they violated the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, by withholding pay when he became an employee after volunteering there. The

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\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

district court granted the defendants' motion for judgment on the pleadings, concluding that Burgess was never an employee of Lessie Bates and so the FLSA did not apply to him. We agree and therefore affirm.

We draw our account of the facts—in the light most favorable to Burgess—from the complaint, the answer, and exhibits to the pleadings. *See* FED. RS. CIV. P. 10(c), 12(c); *Federated Mut. Ins. Co. v. Coyle Mech. Supply Inc.*, 983 F.3d 307, 312–13 (7th Cir. 2020).<sup>†</sup>

Lessie Bates is a nonprofit organization based in East St. Louis, Illinois. The Corporation for National and Community Service, better known as AmeriCorps, is an independent federal agency that provides grants for public service programs. *See* 42 U.S.C. § 12651. In 2021 and 2022, Lessie Bates sponsored an AmeriCorps program.

On March 8, 2021, Burgess—who at the time was a student at Southern Illinois University Edwardsville (SIUE)—enrolled in Lessie Bates's AmeriCorps program. His position entailed helping other AmeriCorps members enroll, participate in, and exit the program and communicating with Lessie Bates on behalf of those members. Burgess's email signature gave his title as "AmeriCorps Volunteer Intake Specialist Aide" at SIUE, and he submitted timesheets to Lessie Bates on AmeriCorps letterhead. As an AmeriCorps member, he was entitled to a living allowance during his program. *See* 42 U.S.C. § 12594. He received a fixed stipend each week, regardless of the number of hours he submitted on his timesheets.

Lessie Bates's volunteer coordinator emailed Burgess on July 22, 2021, and informed him that his "last living stipend will be today" and that the next AmeriCorps program would start with a new grant "the week of August 16." And on August 2, 2021, in response to an email from Burgess about an incoming AmeriCorps member, the coordinator stated that "the term actually ended July 30th." She explained that Lessie Bates was "currently awaiting the grant to be approved and signed," and so the start

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<sup>†</sup> Burgess argued in the district court that the motion should have been converted into a motion for summary judgment because Lessie Bates submitted a document that was outside the pleadings—Burgess's 2020 Member Service Agreement with AmeriCorps. *See* FED. R. CIV. P. 12(d); *Federated Mut. Ins. Co.*, 983 F.3d at 313. But the district court did not consider the document, and we do not find it necessary to our decision. Thus Burgess was not prejudiced by the submission of the exhibit.

date for the new program “is not set in stone right now.” Burgess continued to perform his role throughout August.

Burgess emailed the coordinator again on August 31, 2021, asking about the status of the AmeriCorps grant and stating that he had not received a living stipend since August 5 (for services rendered through the end of July). The coordinator responded that the grant had been signed and that the program would be starting in mid-September, and she stated that “once the grant year ends so do the stipend payments.” Burgess then asked whether he would receive backpay for the “last 4 weeks.” In an internal email, the coordinator stated to a coworker that Burgess was “a little confused on how the living stipend works” and asked, “Why does SIUE still have him working?” She then replied to Burgess that “the grant year ended July 31 so living stipends stop until the new grant starts and the program starts which will be Sept 13th.”

On September 15, 2021, Burgess signed a Member Service Agreement with AmeriCorps to participate in the program with Lessie Bates running from September 17, 2021, to July 31, 2022. The Agreement, which Burgess appended to his amended complaint, stated that his living stipend was “not an hourly wage or a salary” and that he “under[stood] that by participating in the Program, [he] does not become an employee of” Lessie Bates. It continued: “Any benefits received by [Burgess] or allowances paid to [him] are paid and provided only by and to the extent of the terms of a grant provided through the Corporation for National and Community Service.” After signing the Agreement, Burgess filed a grievance about not receiving a living stipend during the period between AmeriCorps programs. He met with Gaston to discuss the issue, but did not receive any backpay for working during the gap period. Burgess served as a volunteer intake specialist aide until the end of the new program.

Burgess sued Lessie Bates and Gaston in state court, alleging that Lessie Bates unlawfully withheld pay from him while he was an employee, in violation of the Illinois Minimum Wage Law and the Illinois Wage Payment Act. He later amended his complaint to add a claim under the FLSA. Lessie Bates and Gaston then removed the suit to federal court, answered the complaint, and moved for judgment on the pleadings, arguing that Burgess was never an employee of Lessie Bates and thus could not obtain relief under the FLSA.

The district court agreed with the defendants and granted their motion. The court concluded that Burgess was a member of the AmeriCorps program from March 2021 through July 2021 (when the first program ended) and from mid-September 2021

(when the new program began) through July 2022, and thus, by law, he could not have been an employee of Lessie Bates during those periods. Further, the court determined that there was no mutual assent that Burgess continue providing services for Lessie Bates after the first program ended, and therefore Burgess was not an employee between the two programs. Then, having resolved Burgess's sole federal claim, the court relinquished supplemental jurisdiction over his state-law claims.

On appeal, Burgess contends that the district court erred in granting the motion for judgment on the pleadings. He argues that he was an employee of Lessie Bates, and so the organization's refusal to pay him overtime and compensate him during the gap between programs violated the FLSA's minimum-wage and maximum-hours requirements. *See* 29 U.S.C. §§ 206–207. We review a district court's grant of judgment on the pleadings de novo. *See Lisby v. Henderson*, 74 F.4th 470, 472 (7th Cir. 2023).

The FLSA requires “[e]very employer” to pay its “employees” a minimum wage of \$7.25 per hour, 29 U.S.C. § 206(a)(1)(C), and to compensate its employees extra for time worked over 40 hours in a workweek, *id.* § 207(a)(1). Burgess “bears the burden” of alleging facts that, if true, establish he was an employee of Lessie Bates, *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 290 (7th Cir. 2016), and that he was “underpaid for at least one workweek,” *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 664 (7th Cir. 2022).

The defendants were entitled to judgment on the pleadings because Burgess was not a Lessie Bates employee at any time. AmeriCorps members are not employees under the FLSA. *See* 42 U.S.C. § 12511(30) (members “shall not be considered to be an employee of the organization receiving [federal] assistance”); 45 C.F.R. § 2510.20. The pleadings demonstrate that Burgess was an AmeriCorps member from March 2021 through July 2021, which means that he cannot have been an employee of Lessie Bates. Burgess does not dispute that Lessie Bates sponsored an AmeriCorps program during this time. His email signature and timesheets show that he operated under the ambit of the AmeriCorps program, and he was paid a consistent living allowance for his participation in the program. (The living allowance that AmeriCorps members receive is “not a wage.” 45 C.F.R. § 2522.245.)

When the program ended in July 2021, Burgess was not an AmeriCorps member anymore, so we must consider whether his services to Lessie Bates qualified him as its “employee” for FLSA purposes during the gap period. This determination “depends on the totality of circumstances” of the working relationship. *Berger*, 843 F.3d at 290 (quoting *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)).

Under that practical approach, Burgess was not an employee of Lessie Bates during the gap period. The pleadings show that Lessie Bates told Burgess near the end of the first program that he would not receive further living stipends until the grant had been re-signed and the new program started. Burgess does not allege that anyone from Lessie Bates asked him to perform work during the gap period; the emails attached to the amended complaint show that he unilaterally sent questions and updates about current and prospective AmeriCorps members. Burgess, who did not work on site during either the program years or the gap period, continued to complete timesheets on AmeriCorps letterhead and inquired whether he would receive any additional “stipends” — the AmeriCorps living allowance — after they stopped. And when Burgess asked about backpay, the volunteer coordinator did not even know why “SIUE still ha[d] him working,” because the grant that funded his program had ended. The totality of circumstances thus reflects that Burgess acted as though his AmeriCorps position was ongoing and was not an employee of Lessie Bates.

The pleadings further show that Burgess was an AmeriCorps member (and, by definition, not an employee) again from mid-September 2021 through July 2022 when the new funding began. He signed an Agreement that stated explicitly that he was not an employee of Lessie Bates and that his living stipends were not a wage or salary.

Burgess counters that because he became an employee during the gap period, he could not have become an AmeriCorps member again because of the provision in 42 U.S.C. § 12637(b)(3) prohibiting employers from “displac[ing]” employees with AmeriCorps members. We need not address this argument because, as we have explained, Burgess did not become an employee of Lessie Bates during the gap period and, therefore, there was no risk of employee displacement.

We conclude by noting that the judgment does not state whether Burgess’s state-law claims were dismissed with or without prejudice. The dismissal of claims for relinquished jurisdiction is necessarily without prejudice, *see Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999), but for clarity, we modify the judgment to state that Burgess’s state-law claims are dismissed without prejudice.

AFFIRMED as MODIFIED