

1 **UNITED STATES COURT OF APPEALS** 2 3 **FOR THE SECOND CIRCUIT** 4 5 August Term,
2009 6 7 8 (Argued: September 9, 2009 Decided: November 12, 2009)

9

10 Docket No. 08-5847

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14 ANDREW YOUNG,

15

16 Plaintiff-Appellee,

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18 - v.-

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20 COOPER CAMERON CORPORATION,

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22 Defendant-Appellant.

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08-5847-cv

26 Before: JACOBS, Chief Judge, POOLER and PARKER, 27 Circuit Judges. 28 29

The U.S. District Court for the Southern District of 30 New York (Swain, J.

) held on summary judgment that, as a 31 matter of law, plaintiff-appellee

Andrew Young ("Young"), a 32 Product Design Specialist, was outside the

"professional 33 exemption" to the overtime requirements of the Fair Labor

34 Standards Act. Following a bench trial, the court (Conti, 35 J.) found

that Cameron's violation of the FLSA was willful.

1 Cameron appeals both the exemption and the willfulness
2 determinations. We affirm.

3 JENNIFER B. RUBIN, JOHN M.
4 DELEHANTY, and ANDREW NATHANSON,
5 Mintz, Levin, Cohn, Ferris,
6 Glovsky & Popeo, P.C., New York,
7 New York, for Appellant.

8
9 MICHAEL J.D. SWEENEY, Getman &
10 Sweeney PLLC, New Paltz, New
11 York; Edward Tuddenham, New
12 York, New York, for Appellee.

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14
15 DENNIS JACOBS, Chief Judge:

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17 The overtime requirements of the Fair Labor Standards
18 Act ("FLSA" or "the Act") are subject to an exemption for
19 persons "employed in a bona fide . . . professional
20 capacity," 29 U.S.C. § 213(a)(1), which is defined by
21 regulation as work in "a field of science or learning
22 customarily acquired by a prolonged course of specialized
23 intellectual instruction and study." 29 C.F.R.
24 § 541.3(a)(1).¹ Andrew Young worked for three years as a
25 "Product Design Specialist II" ("PDS II") for Cooper Cameron
26 Corporation ("Cameron"). When hired, Young had

¹ As both parties and the district court recognized, the 2002 version of the Code of Federal Regulations controls in this case. Accordingly, the citations in this opinion are to the 2002 Regulations.

1 approximately 20 years of engineering-type experience, and
2 his work at Cameron involved complicated technical expertise
3 and responsibility. Like all of the other PDS IIs, however,
4 Young lacked any formal education beyond a high school
5 diploma.

6 Young was not paid overtime because Cameron had
7 classified PDS IIs as exempt professionals under the FLSA.
8 After losing his job in 2004 due to a reduction-in-force,
9 Young sued Cameron under the FLSA, alleging that his
10 classification as an exempt professional willfully violated
11 the Act.

12 The U.S. District Court for the Southern District of
13 New York (Swain, J.) granted summary judgment in Young's
14 favor on the ground that he was not an exempt professional.
15 Cameron's violation of the FLSA was found to be willful
16 after a bench trial (Conti, J.). Cameron appeals both the
17 exemption and the willfulness determinations.

18 We now affirm, concluding that as a matter of law Young
19 is not an exempt professional and that Cameron willfully
20 violated the FLSA.

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I

Young is a high school graduate. He enrolled in some courses at various universities, but did not obtain a degree. Before he was hired by Cameron, he worked for 20 years in the engineering field as a draftsman, detailer, and designer. He was a member of the American Society of Mechanical Engineers, a membership that required the recommendation of three engineers. For three of the 20 years, Young worked with what are known as hydraulic power units ("HPUs").

In the spring of 2001, Young applied for a job with Cameron, and he was offered the position of Mechanical Designer in the HPU group. This position paid an hourly wage of \$26 and was classified as non-exempt under the FLSA. Young, seeking higher pay, declined.

Soon after, Young met again with Cameron. This time, Cameron offered to hire him as a PDS II--a position that Cameron had determined, through multiple internal and external analyses, was exempt from the FLSA's overtime provisions. This job paid an annual salary of \$62,000 (an effective hourly wage of \$29.81). Applicants were required to have twelve years of relevant experience; but no

1 particular kind or amount of education was required, and no
2 PDS II had a college degree. Young accepted Cameron's offer
3 on July 23, 2001, understanding that the position was exempt
4 from the FLSA's overtime provisions. For his three-year
5 tenure at Cameron, Young worked as a PDS II in the HPU
6 group.

7 HPU's contain fluid under pressure for use in connection
8 with oil drilling rigs. They are large and complex, and
9 they are subject to a variety of industry standards, codes,
10 and government specifications. Young was the principal
11 person in charge of drafting plans for HPU's. This work
12 required depth of knowledge and experience, and entailed
13 considerable responsibility and discretion. For example,
14 Young assimilated layers and types of specifications into a
15 safe, functional, and serviceable design that met consumer
16 demands, engineering requirements, and industry standards.
17 Young personally selected various structural components of
18 the HPU and modified certain specifications to account for
19 new technology. In these ways, Young operated at the center
20 of both the conceptual and physical processes of HPU
21 creation and development.

22 On August 2, 2004, after losing his job in a reduction-

1 in-force, Young sued Cameron in federal court, alleging that
2 Cameron had improperly and willfully classified him as an
3 exempt professional. The district court, adopting a report
4 and recommendation from the magistrate judge (Gorenstein,
5 M.J.), granted partial summary judgment to Young on the
6 exemption issue. The court held as a matter of law that the
7 work of a PDS II is "not of an advanced type in a field of
8 science or learning customarily acquired by a prolonged
9 course of specialized intellectual instruction and study."

10 A bench trial followed as to whether Cameron's FLSA
11 violation was willful. The district court found that
12 Cameron willfully violated the FLSA by "hir[ing] Young into
13 the exempt PDS II position instead of the non-exempt
14 Mechanical Designer position in order to avoid paying him
15 overtime, even though his responsibilities did not change
16 based on the different titles." Because Cameron's violation
17 was willful, the court applied the three-year limitations
18 period rather than the two-year period applicable to non-
19 willful violations.

20 On appeal, Cameron raises two issues. First, it argues
21 that the district court erred in granting summary judgment
22 to Young on the professional exemption issue, and asks us

1 either to vacate the summary judgment order and remand for
2 trial or, alternatively, to enter summary judgment in its
3 favor. Second, Cameron argues that any FLSA violation was
4 non-willful.

5
6 **II**

7 We review de novo an order granting summary judgment,
8 and we construe all facts in favor of the non-movant.
9 Pilgrim v. Luther, 571 F.3d 201, 204 (2d Cir. 2009).

10 Summary judgment is appropriate only if “there is no genuine
11 issue as to any material fact” and “the movant is entitled
12 to judgment as a matter of law.” Fed. R. Civ. P. 56(c).

13 Under the FLSA, employees who work more than 40 hours
14 per week must be compensated for each hour worked over 40
15 “at a rate not less than one and one-half times the regular
16 rate at which he is employed.” 29 U.S.C. § 207(a)(1).

17 However, “employee[s] employed in a bona fide . . .
18 professional capacity” are exempt from the FLSA’s overtime
19 requirements. Id. § 213(a)(1). And because the FLSA is a
20 remedial statute, this exemption must be “narrowly
21 construed.” A.H. Phillips, Inc. v. Walling, 324 U.S. 490,
22 493 (1945); Martin v. Malcolm Pirnie, Inc., 949 F.2d 611,

1 614 (2d Cir. 1991). The employer has the burden of proving
2 that the employee clearly falls within the terms of the
3 exemption. See Havey v. Homebound Mortgage, Inc., 547 F.3d
4 158, 163 (2d Cir. 2008).

5 The Act itself does not define the term "professional"
6 for purposes of the exemption; it delegates that
7 responsibility to the Secretary of Labor ("Secretary"). See
8 id. at 160. As relevant to this appeal, a person is an
9 exempt professional if his

10 primary duty consists of the performance of:
11 [w]ork requiring knowledge of an advance[d] type
12 in a field of science or learning customarily
13 acquired by a prolonged course of specialized
14 intellectual instruction and study, as
15 distinguished from a general academic education
16 and from an apprenticeship, and from training in
17 the performance of routine mental, manual, or
18 physical processes.

19
20 29 C.F.R. § 541.3(a)(1).²

21 "The typical symbol of the professional training and
22 the best prima facie evidence of its possession is, of
23 course, the appropriate academic degree, and in these

² Additionally, the employee's work must "require[] the consistent exercise of discretion and judgment in its performance," id. § 541.3(b), and the employee must receive a "salary or fee basis at a rate of not less than \$170 per week," id. § 541.3(e). These elements are not at issue in this appeal.

1 professions an advanced academic degree is a standard (if
2 not universal) prerequisite." 29 C.F.R. § 541.301(e)(1).
3 So it is not the case that "anyone employed in the field of
4 . . . engineering . . . will qualify for exemption as a
5 professional employee by virtue of such employment." Id.
6 § 541.308(a). At the same time, "the exemption of [an]
7 individual depends upon his duties and other
8 qualifications." Id. "The field of 'engineering' has many
9 persons with 'engineer' titles, who are not professional
10 engineers, as well as many who are trained in the
11 engineering profession, but are actually working as
12 trainees, junior engineers, or draftsmen." Id.
13 § 541.308(b). Thus "technical specialists must be more than
14 highly skilled technicians" to be eligible for the
15 professional exemption. Id. § 541.301(e)(2); see also id.
16 ("The professional person . . . attains his status after a
17 prolonged course of specialized intellectual instruction and
18 study.").

19 As the Secretary interprets the regulations, a three-
20 part test determines whether an employee has the type of
21 knowledge sufficient to qualify as an exempt professional.
22 First, the employee's "knowledge must be of an advanced type

1 . . . generally speaking, it must be knowledge which cannot
2 be attained at the high school level." 29 C.F.R.

3 § 541.301(b). Second, the knowledge must be in a field of
4 science or learning. Id. § 541.301(c). Third, the
5 knowledge "must be customarily acquired by a prolonged
6 course of specialized intellectual instruction and study."

7 Id. § 541.301(d). The word "customarily" is key:

8 The word 'customarily' implies that in the vast
9 majority of cases the specific academic training
10 is a prerequisite for entrance into the
11 profession. It makes the exemption available to
12 the occasional lawyer who has not gone to law
13 school, or the occasional chemist who is not the
14 possessor of a degree in chemistry, etc., but it
15 does not include the members of such quasi-
16 professions as journalism in which the bulk of the
17 employees have acquired their skill by experience
18 rather than by any formal specialized training.

19
20 Id.

21 It is uncontested that the job of a PDS II requires no
22 formal advanced education. The issue is whether a position
23 can be exempt notwithstanding the lack of an educational
24 requirement, if the duties actually performed require
25 knowledge of an advanced type in a field of science or
26 learning. Cameron argues for a stand-alone "duties test"
27 independent from any educational considerations. Young
28 argues, and the district court held, that if advanced and

1 specialized education is not customarily required, the
2 exemption cannot apply, regardless of the employee's duties.

3 We agree with Young and the district court. The
4 regulations state that a professional is someone "[w]hose
5 primary duty consists of the performance of [w]ork requiring
6 knowledge of an advance type in a field of science or
7 learning *customarily acquired by a prolonged course of*
8 *specialized intellectual instruction and study.* 29 C.F.R.
9 § 541.3(a)(1) (emphasis added). As noted above,
10 "customarily" in this context makes the exemption applicable
11 to the rare individual who, unlike the vast majority of
12 others in the profession, lacks the formal educational
13 training and degree. But where most or all employees in a
14 particular job lack advanced education and instruction, the
15 exemption is inapplicable: hence, the Secretary's
16 interpretation advising that "members of such quasi-
17 professions as journalism in which the bulk of the employees
18 have acquired their skill by experience rather than by any
19 formal specialized training" are not properly considered
20 exempt professionals. See 29 C.F.R. § 541.301(d).

21 We therefore hold that an employee is not an exempt
22 professional unless his work requires knowledge that is

1 customarily acquired after a prolonged course of
2 specialized, intellectual instruction and study. If a job
3 does *not* require knowledge customarily acquired by an
4 advanced educational degree--as for example when many
5 employees in the position have no more than a high school
6 diploma--then, regardless of the duties performed, the
7 employee is not an exempt professional under the FLSA.

8 With these principles in mind, it is clear that Young
9 is not exempt. The undisputed evidence is that the PDS II
10 position required no advanced educational training or
11 instruction and that, in fact, no PDS II had more than a
12 high school education.

13 Two sister courts have issued persuasive opinions on
14 this subject. In Vela v. City of Houston, 276 F.3d 659, 675
15 (5th Cir. 2001), the only decisive factors were education
16 and discretion (the exercise of professional judgment on the
17 job). On that basis, the court distinguished emergency
18 medical technicians and paramedics (who are not required to
19 have college degrees) from nurses and athletic trainers (who
20 are so required). Id. (explaining that EMTs and paramedics
21 are not exempt professionals because they "lack the
22 educational background to satisfy the education prong of the

1 Learned Professional exemption”).

2 In Fife v. Harmon, 171 F.3d 1173, 1177 (8th Cir. 1999),
3 the minimum qualifications for the plaintiffs’ position as
4 Airfield Operation Specialists were “a Bachelor’s degree in
5 aviation management or a directly related field, or four
6 years of full-time experience in aviation administration, or
7 an equivalent combination of experience and education.” The
8 court held the exemption inapplicable: “This is advanced
9 knowledge from a general academic education and from an
10 apprenticeship, not from a prolonged course of specialized
11 intellectual instruction.” Id. (internal quotation marks
12 omitted). The court did not separately consider the nature
13 of the plaintiffs’ duties.

14 Other cases similarly tie the exemption analysis to the
15 academic requirements of the position at issue. See, e.g.,
16 Reich v. Wyoming, 993 F.2d 739, 743 (10th Cir. 1993)
17 (concluding that game wardens are subject to the
18 professional exemption because they must have a degree in
19 wildlife management, biology, or a similar field); Dybach v.
20 Fla. Dep’t of Corr., 942 F.2d 1562, 1566 (11th Cir. 1991)
21 (“Dybach’s position [as a probation officer] did not rise to
22 the level of a section 213(a)(1) [exempt] professional

1 because it did not require a college or an advanced degree
2 in any specialized field of knowledge.”).

3 Finally, the case law advanced by Cameron is neither
4 binding on this Court nor inconsistent with our conclusion.
5 Some of these cases either misapply (or ignore altogether)
6 the requirement that the plaintiff’s knowledge be of the
7 type customarily acquired by a prolonged course of advanced
8 intellectual study. See Debejian v. Atl. Testing Labs.,
9 Ltd., 64 F.Supp.2d 85, 88 (N.D.N.Y. 1999); Stevens v.
10 Provident Constr. Co., No. 04-15189, 137 Fed.Appx. 198, 199
11 (11th Cir. Apr. 18, 2005). Another case cited by Cameron
12 provides minimal justification for its holding. See
13 Dingwall v. Friedman Fisher Assocs., P.C., 3 F. Supp. 2d
14 215, 218 (N.D.N.Y. 1998) (holding, without explanation, that
15 designing electrical systems is “clearly an area requiring
16 advanced knowledge in a field of science or learning
17 customarily acquired by a prolonged course of specialized
18 intellectual instruction and study”).

19 On the basis of the foregoing, we conclude that, as a
20 matter of law, Young was not an exempt professional because
21 he did not do work which required knowledge customarily
22 acquired by a prolonged course of advanced intellectual

1 study.

2
3 **III**

4 An employer willfully violates the FLSA when it "either
5 knew or showed reckless disregard for the matter of whether
6 its conduct was prohibited by" the Act. McLaughlin v.
7 Richland Shoe Co., 486 U.S. 128, 133 (1988); see also Herman
8 v. RSR Sec. Svcs. Ltd., 172 F.3d 132, 141 (2d Cir. 1999).
9 Mere negligence is insufficient. McLaughlin, 486 U.S. at
10 133. The effect of a willfulness finding is to extend the
11 statute of limitations period from two to three years. See
12 29 U.S.C. § 255(a). The burden is on the employee to show
13 willfulness. Herman, 172 F.3d at 141.

14 We review the district court's willfulness
15 determination de novo. Id. at 139; see also Reich v.
16 Waldbaum, Inc., 52 F.3d 35, 39 (2d Cir. 1995). But we
17 review the district court's underlying findings of fact for
18 clear error. Herman, 172 F.3d at 139. Under this standard,
19 "[i]f the district court's account of the evidence is
20 plausible in light of the record viewed in its entirety, the
21 court of appeals may not reverse it even though convinced
22 that had it been sitting as the trier of fact, it would have

1 weighed the evidence differently." Anderson v. City of
2 Bessemer City, N.C., 470 U.S. 564, 573-74 (1985).

3 The district court rejected Cameron's defense that it
4 had exercised due diligence and good faith in classifying
5 the PDS II position as exempt: "The question here is not
6 whether Cameron acted in good faith when it originally
7 determined that a PDS II should be exempt, or when it
8 reviewed that determination in subsequent years." What
9 matters, as the district court framed this issue, is
10 "whether Cameron acted in good faith when it classified
11 Young as exempt."

12 The district court found that "the only reason [Young]
13 was offered the PDS II position instead of the Mechanical
14 Designer position was because Cameron wanted to avoid paying
15 him overtime," and that Young--notwithstanding his title of
16 PDS II--did the work of a non-exempt Mechanical Designer.

17 Neither finding is clearly erroneous. Young was
18 originally considered for employment as a Mechanical
19 Designer. Only after Young rejected the offer of \$26 per
20 hour as a Mechanical Designer did Cameron raise with him the
21 PDS II position. At that point, there was little discussion
22 of the PDS II's duties because both Young and Cameron

1 understood that his duties would be about the same as those
2 of a Mechanical Designer. And for the entire time Young
3 worked at Cameron, he did the work of a Mechanical Designer.

4 The district court observed "almost no evidence to
5 contradict Young's version of the foregoing events." The
6 court discounted some of Cameron's testimony as not credible
7 and found Young's version of events "more coherent," "better
8 supported," and more credible. Finally, the court noted
9 that Cameron's own human resources manager admitted that
10 "the FLSA would not permit Cameron to hire Young into an
11 exempt position and have him do the work of a non-exempt
12 employee" and that "hiring Young into the exempt position
13 just to avoid overtime would run afoul of the FLSA."

14 Cameron submits that the district court committed clear
15 error when it found that Young was functioning as a
16 Mechanical Designer, arguing "that the positions were
17 different in ways that gave Cameron ample reason to conclude
18 that the [PDS II] position was properly classified as exempt
19 even if the [Mechanical Designer position] was not." For
20 support, Cameron relies on the testimony of Mac Kennedy, its
21 engineering manager and Young's supervisor:

22 The main difference is in the level of experience
23 and the amount of interaction that an engineer

1 would need to do in order for their work to be
2 completed. A specialist can take a product from a
3 concept to a near complete design with very little
4 interaction, maybe a couple of questions he has to
5 ask for clarification about the specs, whereas a
6 designer needs a lot more interaction and
7 direction as the design progresses.
8

9 This testimony, according to Cameron, addresses "exactly the
10 attributes that justified [it]s decision to classify the PDS
11 II position as exempt."

12 Cameron's argument answers the wrong question. This
13 evidence might help establish that the position of PDS II
14 differs from that of Mechanical Designer; but, as we have
15 already noted, and even conceding that the jobs are
16 different, what matters is whether *Young* did the work of a
17 non-exempt Mechanical Designer, *not* whether PDS IIs
18 generally did more advanced work than Mechanical Designers.

19 The district court did not err in determining that
20 Cameron willfully violated the FLSA.
21

22 IV

23 Finally, *Young* asks us to remand this case to the
24 district court for an award of attorney's fees and costs
25 associated with this appeal.

26 The FLSA provides that a court "shall, in addition to

1 any judgment awarded to the plaintiff or plaintiffs, allow a
2 reasonable attorney's fee to be paid by the defendant, and
3 costs of the action." 29 U.S.C. § 216(b). Young's
4 entitlement to fees and costs extends to this appeal. See
5 Caserta v. Home Lines Agency, Inc., 273 F.2d 943, 948 (2d
6 Cir. 1959) ("Counsel for plaintiff is allowed an additional
7 \$150 for his services on this appeal."); see also Velez v.
8 Vassallo, 203 F.Supp.2d 312, 315 (S.D.N.Y. 2002)
9 ("[P]revailing plaintiffs in FLSA cases are entitled to
10 attorneys' fees for prosecuting or defending appeals.")
11 (citing Caserta).

12 We therefore remand this matter to the district court
13 for the proper determination of appellate fees and costs
14 owed to Young. See Aaron v. Bay Ridge Operating Co., 162
15 F.2d 665, 670 (2d Cir. 1947).

16

17

CONCLUSION

18 For the foregoing reasons, we affirm the judgment of
19 the district court, and we remand the case for the sole
20 purpose of allowing the district court to award Young the
21 reasonable fees and costs of this appeal.