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Amazon Judge Hears Competing Truths In OT Bench Trial

By **Dorothy Atkins**

Law360 (June 23, 2021, 10:01 PM EDT) -- A former Amazon manager accusing the company of shorting him overtime pay wrapped up his testimony in a California bench trial Wednesday by explaining that he sued "to speak truth to power," while his own onetime supervisor took the stand to say the plaintiff "is not a truthful person."

The dueling takes on what motivated former Amazon.com LLC warehouse shift manager Michael Anthony Ortiz to sue his former employer framed the second day of a bench trial before U.S. District Judge Jeffrey S. White over Ortiz's claims that Amazon misclassified him as a manager and shorted him overtime pay and work breaks.

Ortiz first took the stand Monday, testifying that he believed the e-commerce giant had **taken advantage of him** by setting lofty goals that forced him to work more than 40 hours a week without overtime and perform the same manual labor assigned to his subordinates in order to clear the workload at the warehouses.

He continued his testimony Wednesday, recalling during direct examination that his night shift at Amazon mentally and physically exhausted him, and that he would have panic attacks in the morning thinking he overslept for a shift.

Ortiz said he hurt his back and always had bumps and bruises from moving boxes, and the work would push him to the level of "sheer exhaustion" in which he would be on the verge of falling asleep as he was going home. When asked if he had been worried about his physical health, he said that he was because the job was hard on his body.

"I was very worried," Ortiz said. "But I thought it was worth it."

He recalled that he hurt his head when he fell on a conveyor belt while trying to unjam a machine, requiring a trip to the hospital. On the stand, Ortiz admitted that he asked his colleague Marc Lopez to tell his superiors that he fell in a stairwell instead of on the conveyor belt, because he knew Amazon prohibited workers from standing on it.

But Ortiz said he asked Lopez to lie "in a moment of panic," because he was worried about his livelihood and losing the financial security that working at Amazon provided. After the incident, Ortiz said his colleagues abandoned him once he started asking about workers' compensation when he realized the potential long-term consequences of his fall.

"Nobody would talk to me," he said.

Ortiz acknowledged that at the time of his injury he was "very angry" at Amazon, because he thought he had dedicated a lot of time to the company and had "bled, sweated, and cried different nights for this company."

But as his testimony concluded, Ortiz emphasized that he isn't suing out of a sense of revenge and that he is still an Amazon customer.

"I don't have any bad blood toward Amazon anymore," he said. "I'm doing this because somebody needs to speak truth to power," and if not "you'll keep seeing this happening" with workers getting

injured on the job.

But after Ortiz's examination, Amazon's counsel called Lopez to testify. The parties agreed to call witnesses out of order to get the in-person examinations all done at once before turning to videotaped testimonies.

During his direct examination, Lopez, who is now a Level 5 Amazon manager, criticized Ortiz and said he was one of the last managers to "jump in" and do the work of his subordinates, and that on one occasion, Ortiz's subordinates told him they saw Ortiz asleep in his van during a shift. Afterward, Lopez said he told Ortiz not to sleep during shift breaks.

"We discussed how that's not an appropriate place to take a break," Lopez said. "We don't want associates seeing our managers in that position."

He went on to testify that Ortiz never said he needed more workers to complete the tasks assigned to his team, nor did Ortiz complain that he wasn't able to take breaks or that he was doing menial work.

Lopez said after Ortiz fell on the conveyor belt, Ortiz asked him to "do him a solid" and lie about where he fell, but instead Lopez told his supervisor and the human resources department about what had happened in a written statement.

"He is not a truthful person," Lopez said.

During cross-examination, Ortiz's counsel, Laura Van Note of Scott Cole & Associates APC, pointed out that Lopez was recently promoted after Amazon learned he would testify in the trial.

The attorney also pressed Lopez on whether he himself directed Ortiz to unjam the machine while Ortiz was standing on the conveyor belt. In a tense examination, Lopez repeatedly said he doesn't recall whether he yelled at Ortiz to clear the jam, leading the attorney to press him further.

"You were present on site when [Ortiz] was injured, right?" Van Note asked.

"Yes," Lopez replied.

The trial will continue Thursday.

Ortiz initially filed a proposed class action against Amazon in 2017, claiming that while he managed a team of 80 to 100 employees as a shift manager, he spent the bulk of his time replacing batteries and moving pallets and boxes — the same tasks as the associates working underneath him.

In 2019, Judge White **trimmed the suit**, rejecting claims of violations of the Fair Labor Standards Act, while allowing Ortiz's state law claims to proceed. In April 2020, Judge White **denied** Ortiz's bid for class certification, saying he hadn't convinced the court that common issues predominated over individual issues or that litigating their issues as a group was a superior way of resolving the claims.

Ortiz is represented by Scott Edward Cole and Laura Van Note of Scott Cole & Associates APC.

Amazon is represented by Jason C. Schwartz, Bradley J. Hamburger, Joseph R. Rose and Megan Cooney of Gibson Dunn & Crutcher LLP.

The case is Ortiz v. Amazon.com LLC et al., case number 4:17-cv-03820, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hannah Albarazi. Editing by Adam LoBelia.

Update: This story has been updated to include additional counsel for Amazon.