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Amazon Managers' Physical Work Highlighted In OT Trial

By **Dorothy Atkins**

Law360 (June 24, 2021, 8:38 PM EDT) -- Two former Amazon managers testified in a California federal bench trial Thursday over another ex-manager's claims that he was shorted overtime pay that they regularly worked over 40 hours a week primarily doing "very demanding" physical work without clocking overtime, while spending only a small fraction of their shifts managing workers.

The ex-managers' testimonies came during the fourth day of a bench trial in U.S. District Court for the Northern District of California that is expected to wrap up on Friday. The trial before Judge Jeffrey S. White **kicked off Monday** and is over claims by former Amazon.com LLC warehouse shift manager Michael Anthony Ortiz that Amazon misclassified him as a manager and shorted him overtime pay and work breaks. The trial was held at the courthouse in Oakland with audio streaming. Some witnesses testified via Zoom.

Ortiz initially filed a proposed class action against Amazon in 2017, claiming that while he oversaw a team of 80 to 100 employees as a night 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**, and in April 2020 the judge **refused to certify a class** of Amazon workers, finding that the issues were too individualized to proceed on a classwide basis.

On Thursday, Ortiz's counsel called two former Amazon managers, Michael Martin and Sennai Merid, to the stand despite Amazon's objections. Amazon's counsel, Joseph R. Rose of Gibson Dunn & Crutcher LLP, argued that the two men never worked directly with the plaintiff and that any probative value of their testimony would be minimal and outweighed by the "waste of time" the court spent hearing them.

But Judge White overruled the objections and said Amazon's complaints about the "so-called waste of time" go to the weight of the witnesses' testimonies and not their admissibility. The judge noted that one "big issue" in the case is whether Ortiz was complying with Amazon's expectations of its managers, so their experiences could speak to that. He added that ultimately Amazon bears the burden of showing that the time the court spends hearing the former managers' testimony outweighs any benefit, and that Amazon hasn't met that burden.

During their examinations, Merid and Martin each recalled the weeks of training they went through, where they learned techniques for picking up, packing and sorting boxes and operating machinery in order to be an Amazon Level 4 manager — a salaried position that is exempt from overtime pay.

Martin said that as a manager he would do lower-level associate work to complete tasks for the day on time, and that doing associate work as a manager was "baked into" the job.

"You did what you needed to do," he said. "If that means move a pallet because it would have taken five minutes to get an associate," the manager does it.

Martin explained that Amazon's operational success relied on customer satisfaction, and that his job was to "manage the shift accordingly and manage the shift objectively."

"There was always a timetable," he said.

Martin, who is a veteran, also testified that the work itself was physically demanding, but that he was physically fit enough to be able to do the job.

"There was always a physical element — there was always a demanding element to the job," he said.

Martin recalled that some days their teams were short-staffed, but he couldn't call in more workers. Even with his help, there could still be more work to do.

"The shift wasn't going to completely crumble or become all of a sudden stellar simply because we were [all] offloading a truck," he said.

Martin added that although Level 4 managers had their personal style for managing, for the most part they all did the same work. He said he worked more than 40 hours a week without overtime pay "pretty consistently," with some shifts running more than 13 hours, and he couldn't recall being told that he needed to take a 30-minute uninterrupted break, as is required by California law.

Merid, also a Level 4 manager, said the end-of-shift reports he would produce as a manager typically took less than 45 minutes to complete and often only 15 minutes. He recalled that they were occasionally understaffed, and said he never wrote down the hours he worked, but worked more than 40 hours "every week." He also echoed Martin's testimony on the workload, agreeing that it was "very" physically demanding, and that "the main purpose was to finish on time."

Merid also said he couldn't remember if Amazon ever told him during training that he could take a 30-minute break.

Both men said they weren't allowed to discipline or "coach" associates who were hired through staffing agencies, unless it was over a safety concern. Martin said "half the time" he had to tell staffing agencies about their underperforming workers, and Merid said "most" of the associate training was done by others.

Amazon called three witnesses on Thursday: manager Mahmoud Abdel Aziz, senior regional human resources manager Amanda Bania and former operations manager Diego Nevado.

In a short examination, Abdel Aziz said he worked with Ortiz for a few months in 2016. He remembered the plaintiff, he said, because he always played music during shifts. Over Ortiz's counsel's objections, Abdel Aziz testified that on one occasion Ortiz showed him his laptop after Ortiz had searched Google for images of "sexy Egyptian female." Abdel Aziz said he didn't feel comfortable with the discussion, so he walked away, and because he was a recent immigrant, he didn't report the incident to human resources.

Later on, Bania took the stand and testified that it was "critical" that Amazon managers delegate work to associates, and said Ortiz completed training sessions that instruct managers on how to do that. She also noted that Amazon job titles explicitly say that Level 4 managers must be able to lift boxes up to 49 pounds and be able to "twist, pull and bend."

Bania also testified that Amazon gives managers "the autonomy to take meal and rest breaks." She said, "We're much less prescriptive" about when managers can take breaks, but hourly associates must take breaks during a specified period under California wage and hour statutes.

The trial day wrapped with Amazon calling Nevado to the stand. He recalled that he had hired Ortiz, but said he was never aware that Ortiz was performing associate tasks. However, the judge sustained many objections that Ortiz's counsel raised to Nevado's testimony.

Nevado's cross-examination will continue Friday before the parties rest. At the end of the trial day Thursday, the judge said he would not be hearing closing arguments.

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 Michael 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 Karin Roberts.

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