

**UNITED STATES COURT OF APPEALS**

**FOR THE SECOND CIRCUIT**

August Term, 2009

(Argued: September 9, 2009            Decided: November 12, 2009)

Docket No. 08-5847

- - - - -x

ANDREW YOUNG,

Plaintiff-Appellee,

- v. -

08-5847-cv

COOPER CAMERON CORPORATION,

Defendant-Appellant.

- - - - -x

Before:            JACOBS, Chief Judge, POOLER and PARKER,  
                         Circuit Judges.

The U.S. District Court for the Southern District of New York (Swain, J.) held on summary judgment that, as a matter of law, plaintiff-appellee Andrew Young ("Young"), a Product Design Specialist, was outside the "professional exemption" to the overtime requirements of the Fair Labor Standards Act. Following a bench trial, the court (Conti, 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:

16  
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).<sup>1</sup> 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

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<sup>1</sup> 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.

## 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).<sup>2</sup>

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

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<sup>2</sup> 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.