

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Binnacle Industrial Contractors Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid vacation pay

**Employer:** Binnacle Industrial Contractors Inc, PO Box 396, Epping NH 03042

**Date of Hearing:** June 2, 2016

**Case No.:** 52583

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$310.00 in unpaid wages for 23.5 hours worked week ending March 9, 2016 and \$770 for 38.5 hours of unpaid vacation pay due upon her separation.

During the hearing, she determined she was only due 15.5 hours of unpaid wages for week ending March 9, 2016.

The employer agrees the claimant is due a total of \$645.00, \$235 for 11.75 hours of work and \$410.00 for 20.5 hours of unpaid vacation pay. They paid the claimant \$160.00 gross, for eight hours of work on March 18, 2016, leaving a balance of \$485.00. They had previously had issued a check for \$210.00, gross, on March 14, 2016, which has not been cashed and the claimant testifies she has not received it. They have agreed to reissue that check and pay the remaining \$275 they concede is due pursuant to their records.

**FINDINGS OF FACT**

The claimant worked for the employer from August 4, 2015 through March 9, 2016. Her rate of pay was \$20.00 per hour.

The claimant argues she is seeking 15.5 hours of unpaid wages for week ending March 9, 2016. She agrees the employer paid eight hours of wages, or \$160.00, through direct deposit, after she had this Department make a call to the employer because she did not receive her final paycheck.

The employer argues they were unable to verify the claimed hours worked by the claimant. They concede she worked a total of 11.75 hours for the week ending March 9, 2016. They used their records of internet usage and Quickbooks entries, for which there were none for March, to determine her hours worked. She also claimed to work on Saturday, March 5, 2016. She had never worked on a Saturday before, but as they could see she logged into their bank website that day, they agree to pay two hours for the day. They are unable to find any proof that she worked on March 7, 2016. Generally the claimant had a heavy internet usage, and had none for March 7, 2016. She did work an eight hour day on March 8, 2016, minus a forty-five minute lunch. They did verify she worked 2.5 hours on March 9, 2016.

RSA 279:27 and LAB 803.03 require that every employer of employees shall keep a true and accurate record of the hours worked by each, including time work began and ended including any bonafide meal periods. The employer failed to maintain these records. However, the penalty for failure to keep time records is a civil penalty, not the automatic award of a claim for hours worked.

The Hearing Officer finds the employer's testimony that, in the absence of a time record, they paid the hours that they could most accurately determine were worked by the claimant, more persuasive.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due \$235.00 for 11.75 hours worked week ending March 9, 2016.

The claimant also asserts she is due \$770.00 for 38.5 hours of unpaid vacation pay due upon her separation from employment.

The employer argues the claimant is only due 20.5 hours of vacation pay. The claimant was responsible for administering the vacation and personal day policy, and she had mismanaged the records she input for herself for the usage of that benefit time. She had used over fifty hours of time off, but had not recorded the time used properly.

The Hearing Officer finds the employer's testimony that the claimant had 20.5 hours of vacation pay, more persuasive.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence she is due \$410.00 for 20.5 hours of vacation pay.

The employer paid the claimant \$160.00, gross, on March 14, 2016, which is a credit towards the award in this Decision. As this award is inclusive of the \$210.00 check which the employer agreed to reissue, the employer is not required to reissue the \$210.00 in a separate check from the award.

## **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met her burden for a portion of this claim.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed a portion of the claimed wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$235.00.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due a portion of the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$410.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$485.00 (\$235.00 + \$410.00 - \$160.00 already paid), less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: June 28, 2016

Original: Claimant  
cc: Employer

MJD/aph