

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

St. Kathryn Parish

DECISION OF THE HEARING OFFICER

Appearances: Meredith Cook, Esq., representing the employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 279:21 unpaid overtime

Employer: St. Kathryn Parish, 153 Ash St., Manchester, NH 03105-0310

Date of Hearing: January 27, 2014

Case No.: 46813

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$6,006.00 in unpaid overtime wages for hours worked between October 2011 and March 2013. He argues he had an arrangement with Father Gary Belliveau, the pastor in charge of St. Kathryn's when he began working, to record any hours he worked over forty to be taken later as "comp time". He asserts he is due 156 hours of overtime pay at \$25.00 per hour.

He argues he was classified as a manager, which was incorrect and inappropriate.

The employer denies the claimant is due overtime pay. They offered to settle with claimant for \$1,000, through their written objection. The claimant rejected the offer. The employer also argues the claimant was paid a salary and was told explicitly, both through the handbook and a staff meeting reviewing the handbook, that comp time was forbidden.

Further, they offered argued the claimant could not have worked many of the instances he claimed for snow removal as there would have been little to no snow on those dates. He also had a "verbal confrontation" with another employee upon arrival on one of the dates he claimed to work, and left the grounds immediately.

FINDINGS OF FACT

The claimant worked for the employer from May 2011 through November or December 2013, when he was terminated. When the claimant began work, the pastor was Father Gary Belliveau. Father Joseph Cooper took his place in October 2011.

The claimant argues he was required to work more than 40 hours during several pay weeks between October 2011 and March 2013, for which he was not compensated at the rate of time and one half for those hours.

Father Cooper called a meeting with all the staff in October 2011 to review the handbook. The claimant signed a copy of the acknowledgement of the handbook on October 3, 2012. The handbook clearly states, periodically, you may be asked to work additional hours beyond your normal schedule. Non-exempt employee are entitled to be paid one and one-half (1½) times their normal rate of pay for all hours worked in excess of forty (40) hours per week. Sick days, holidays, vacation days, leaves of absence, and other time-off are not counted as time worked toward overtime. Compensatory time-off in lieu of overtime pay is not permitted."

Both parties agree the claimant was a salaried employee. The employer produced a rate of pay notification for the claimant dated FY July 1, 2012 through June 30, 2012, showing a salaried rate of pay, however it is not signed or dated by either party.

Pursuant to RSA 275:43-b I a salaried employee shall receive their full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked.

There are no requirements from this Department for a salaried employee to receive an overtime rate for hours worked over 40. Further, RSA 275:43 VII which allows the use of compensatory time is only allowable for governmental entities and public sector employees under certain circumstances. The claimant does not fall under either of those categories.

There are also no statutes from this Department that prohibit an employer from paying any employee on a salaried basis, rather than hourly.

The Hearing Officer finds the claimant was a salaried employee who was paid his full salary. Therefore, he is not entitled to overtime pay under this jurisdiction.

The Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

DECISION

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 failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 4, 2014

Original: Claimant
cc: employer

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MJD/all