

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

USA CHICKEN AND BISCUIT

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: USA Chicken and Biscuit, Manchester, NH 03103

Date of Hearing: December 11, 2013

Case No. 46857

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 16, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on November 7, 2013.

The claimant testified that he worked for the employer for about two weeks. He was paid in cash and at different hourly rates. The claimant said that he was paid at a rate of \$7.25 per hour for some of the hours and at \$5.48 for other hours. He said that the employer issued uniform shirts to wear when working and he brought the shirt to the hearing.

The claimant said that he worked about 75 hours at the lower rate of pay.

The employer testified that he never met the claimant before the hearing and he works at the business almost every day. He said that all employees fill out federal tax forms and there are none filled out for the claimant. He stated that the claimant probably got the shirt from the trash at the restaurant. The fact that the claimant said there was an assault at the restaurant is not true because there are no police or ambulance reports on an incident.

The claimant further stated that it is true that he never met the owner until the hearing but it was the manager who hired him and the person he worked with at the time of employment.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony provided for the hearing, that there is a valid Wage Claim. The claimant was credible that he performed some work for the employer and that he was paid in cash. He also produced a shirt that he was required to wear while working.

The employer probably never saw the claimant or heard about him but the fact that the employer stated the shirt probably came out of the garbage seems to lend credibility to the claimant. The assault incident does not factor into the Wage Claim so there is no need to review it in this hearing.

The Hearing Officer finds that the claimant was under paid for 75 hours at a rate of \$1.77 an hour. The Wage Claim is valid in the amount of \$132.75.

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 Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$132.75.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$132.75, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 7, 2014

Original: Claimant
cc: Employer

TFH/all