

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

IRON WORKS PROTECTION LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Iron Works Protection LLC, 3 Robinson Rd Ste A-4, Bow NH 03304

Date of Hearing: January 21, 2014

Case No. 46939

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 4, 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 December 4, 2013.

The claimant testified that he was an hourly employee and worked for the employer from November of 2012 until February of 2013. The claimant said that on his last day of employment he worked for three hours and quit. He was having problems with other employees and he felt the employer would not correct the situation(s). The claimant stated that because he walked off the job, he did not fill out a time card. He feels that he is owed three hours of wages at the \$18.00 rate.

The employer stated that the claimant was a relative and they went out of their way to help him out. They knew the claimant left the job and requested that he come in and fill out the time sheet. The employer felt that they did not have to pay him until he filled out the time sheet.

The claimant is also seeking liquidated damages because the employer did not have good cause to hold back the pay. They knew the hours had been worked and they were just making it difficult for him to be paid. The employer said that all the claimant had to do was to fill out the time card and he would be paid.

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.

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition."

This part of the law allows for the claimant to seek liquidated damages up to the amount of the Wage Claim. It can be ruled on by the Hearing Officer if there is a finding that the employer was willful and/or did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony at the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden. The claimant has proved that he worked the three hours and was not paid for those hours. The claimant is credible in his position that the employer was just playing games when they would not pay without a signed time sheet.

The employer, under the law, has so much time to pay wages for time worked. In this case they have never paid for hours worked even though it was known that the hours were worked. It appears that a family situation has not allowed the time to be paid. This practice is outside of the law and not a factor in paying wages.

The Wage Claim is valid in the amount of \$54.00 for the three hours worked.

The hearing Officer also finds that the employer did not have good cause to withhold the payment of the three hours worked. Any reasoning for this action was beyond any practice mandated by law. The request for liquidated damages is valid in the amount of \$54.00.

DECISION AND ORDER

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required

by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/he fails to pay them".

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 by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$54.00.

There is also a finding for \$54.00 in liquidated damages.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$108.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 6, 2014

Original: Claimant
cc: Employer

TFH/all