

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ECHO RIDGE FARM LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions
RSA 275:44 IV liquidated damages
RSA 275:42 I/II employer/employee relationship

Employer: Echo Ridge Farm LLC, 22 Cartland Road, Lee, NH 03861

Date of Hearing: February 5, 2014

Case No. 47049

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 22, 2013. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and she amended the Wage Claim. This was noticed and there was an objection. The claimant requested a hearing and the Notice of Hearing was sent to both parties on January 2, 2014.

The claimant testified that she boarded her horse at the employer's farm. She also said that she left her trailer at the farm and this was allowed without charge. The claimant stated that she was allowed to sign up for odd jobs at the farm and this led to a reduction in her monthly boarding fees for her horse.

The employer announced that there needed to be a removal of stored trailers because of a Town policy about conservation land. If the trailers were not removed there would be a fee charged.

The claimant testified that the employer deducted \$200.00 from her earnings. This was a deduction from the earned offset to the boarding fees and the trailer storage. The claimant feels that the employer had no right to illegally deduct earnings and is seeking Liquidated Damages because the employer was willful and did not have good cause to take away wages.

The employer testified that the claimant was not an employee and that she was only doing odd jobs to offset the boarding costs. The employer was also informed that the area

where she allowed trailer storage was in a conservation zone. She notified the owners of the trailers that they had to be removed or there would be daily fines.

The employer also challenges the claimant's standing in this process. The employer maintains that the claimant was not an employee and this is the wrong forum for this claim.

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 275:48 I Withholding of Wages. – I.
No employer may withhold or divert any portion of an employee's wages unless:

- (a) The employer is required or empowered to do so by state or federal law, including payroll taxes.
- (b) The employer has a written authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee as provided in regulations issued by the commissioner, as provided in subparagraph (d) or for any of the following:
 - (1) Union dues;
 - (2) Health, welfare pension, and apprenticeship fund contributions;
 - (3) Voluntary contributions to charities;
 - (4) Housing and utilities;
 - (5) Payments into savings funds held by someone other than the employer;
 - (6) Voluntary rental fees for non-required clothing;
 - (7) Voluntary cleaning of uniforms and non-required clothing;
 - (8) The employee's use of a vehicle under RSA 261:111, III;
 - (9) Medical, surgical, hospital and other group insurance benefits without financial advantage to the employer, when the employee has given his or her written authorization and deductions are duly recorded; and
 - (10) Required clothing not covered by the definition of uniform.
- (c) The deductions are pursuant to any rules or regulations for medical, surgical, or hospital care or service, without financial benefit to the employer and openly, clearly, and in due course recorded in the employer's books.
- (d) Upon an employee's written request, an employer may deduct the following items from the employee's wages, provided that the employer shall provide a written itemized accounting of such requested deductions to the employee at least once per month:

(1) Voluntary contributions into cafeteria plans or flexible benefit plans, or both, as authorized by section 125 or section 132 of the Internal Revenue Code.

(2) Voluntary payments by the employee for the following:

(A) Child care fees by a licensed child care provider.

(B) Parking fees.

(C) Pharmaceutical items, gift shop, and cafeteria items purchased on site of a hospital by hospital employees.

(3) Voluntary installment payments of legitimate loans made by the employer to the employee as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(4) Voluntary payments for the recovery of accidental overpayment of wages when the following conditions are met:

(A) The recovery is agreed to in writing.

(B) The deduction for the overpayment begins one pay period following the date the parties execute the written agreement.

(C) The written agreement specifies:

(i) The date the recovery of the overpayment will begin and end.

(ii) The amount to be deducted, which shall be agreed upon by the employer and the employee but which shall, in no event, be more than 20 percent of the employee's gross pay in any pay period.

(iii) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(5) Voluntary payments for the recovery of tuition for non-required educational costs paid by the employer for the employee to an educational institution when the specific deduction is authorized in writing prior to the deduction as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(6) Voluntary payments for the employee's use of a health or fitness facility that is sponsored by the employer for the benefit of its employees and that is located within the employer's facility or workplace, or operated by a private health and fitness facility that offers discounted memberships of 50 percent or more to all employees of the employer, as evidenced by a document that includes the following:

(A) The time the payments will begin and end.

(B) The amounts to be deducted.

(C) A specific agreement regarding whether the employer is allowed to deduct any amount outstanding from final wages at the termination of employment.

(e) The employee requests in writing that deductions may be made for contributions to a political action committee from the employee's wages.

(f) The employer has a written request from the employee, made at the time of the original request without coercion or pressure, that authorizes the employer to deduct from the employee's final wages at the termination of employment any amount the employee may owe for voluntary payments for vacation pay, paid time off pay, earned time pay, personal time pay, annual pay, sick pay, sick dependent pay, and bereavement pay made pursuant to a written

employment policy as required by RSA 275:49, III, when the payments have been requested and paid to the employee in advance of eligibility.

This part of the law spells out when and how deductions can be made from wages.

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 is where a claimant can ask for damages up to the amount of the Wage Claim when there is a valid decision and the Hearing Officer finds that the employer was willful and/or did not have good cause for their action(s).

RSA 275:42 I reads: "The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor or any of the same, employing any person, except employers of domestic labor in the houseRSA:42 I reads: "The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor or any of the same, employing any person, except employers of domestic labor in the house of the employer, or farm labor where less than 5 persons are employed." of the employer, or farm labor where less than 5 persons are employed."

RSA 275:42 II reads: "Employee" means and includes every person who is permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but exempts any person who meets the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work in achieving the result of the work.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this criterion does not prohibit the employer from reaching agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts of expenditures.

(h) The person receives compensation for work or services performed and remuneration is not determined unilaterally by hiring party.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(k) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(l) The person is not required to work exclusively for the employer.

This is the definition of an employee and what the aspects of the determination are.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is not valid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The employer challenged the designation of employee in this Wage Claim. There has to be an employer/employee relationship in order for this process to take place. Under RSA 275:42 I, there is no employer status for a farm situation with fewer than five employees.

Because there is no employer/employee relationship, the Wage Claim forum is not the proper forum to adjudicate this claim. The Wage Claim is invalid.

DECISION

The employer is credible in showing that this is a farm business and they do not meet the criteria of an employer. The Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 11, 2014

Original: Claimant
cc: Employer

TFH/all