

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

DESIGN TECH GROUP LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid employee expenses

Employer: Design Tech Group LLC, PO Box 918, Exeter, NH 03833

Date of Hearing: February 20, 2014

Case No. 47126

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 9, 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 January 15, 2014.

The claimant testified that he was an hourly employee who worked for the employer from April of 2013 until November of 2013. He started out as an hourly employee and was changed to a "per job" pay status. The total amount of the Wage Claim has changed several times but the final figure appears to be \$489.22.

The claimant testified that he misplaced a pay check in May. The payroll company said that it was reissued the following week in the amount of \$327.22. The claimant stated that he never received this check but he did get a personal check for the overtime worked. The claimant said he continued to follow up on this check even into September.

The claimant also said that he was due parking expenses for work done in Portsmouth. The claimant said that he asked many times about these fees and the employer said that they were built into the "flat fee" billing rate. The claimant said that he believed that the parking fees reimbursement was a policy of the employer and he is owed \$45.00.

The claimant also said that he performed several jobs and when he received his pay check it was \$85.00 short of the earned amount. He said that he showed this to the employer and was told that it was going to be reviewed. The claimant said that it should be part of the record keeping process because he texted the employer every time he started a job, every day.

The claimant also said that the employer took \$32.00 out of his wages because he did not return the shirts when he terminated. The claimant brought the shirts in for the hearing.

The employer's representative testified that he has been working with the employer for six months. He said that if there were any problems with the payroll, the owner fixed it the same day. He also said that the payroll company has a copy of the missing check and the check was cashed.

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 275:43 V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses into the category of wages when the expenses are due and owing.

It is the finding of the Hearing Officer, based on the submissions and the testimony presented for the hearing, that the Wage Claim is valid in part and invalid in part. The claimant has the burden to show that there are wages due and owing and he met part of this burden.

The claimant has brought in four separate figures for the Wage Claim. It is difficult to figure out the ways in which these totals were arrived at for the Wage Claim. It is the finding that the claimant has not proved that there were parking fees due. The employer said that they are part of the "flat fee" arrangement and this was backed up by another statement.

The claimant did not meet his burden to show that there was a paycheck that was shorted by \$85.00.

The claimant prevails in his unpaid check of \$327.22 because the employer could have easily produced a copy of the signed and cashed check. This was not done. The claimant was credible in his testimony that the check was lost and never replaced.

The claimant also prevails in the deduction for the company shirts. These were returned and the employer should not have illegally deducted the money from wages. The employer could use other means to get the money back or the shirts back without withholding wages.

The Wage Claim is valid in the amount of \$359.22.

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 \$359.22.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$359.22, within 20 days of the date of this Order.

All other parts of the Wage Claim are invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 24, 2014

Original: Claimant
cc: Employer

TFH/all