

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**GRAMMY AND GRAMPY'S GIFT BASKETS**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Employer:** Grammy & Grampy's Gift Baskets, 16 North Main Street, Rochester, NH 03867

**Date of Hearing:** February 20, 2014 and April 21, 2014

**Case No.** 47133

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 10, 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 hearing process was continued into a second day, April 21, 2014.

The claimant notified the Department of Labor, after the first day of the hearing that she did not want to appear for another hearing date and she did not want to participate telephonically. The claimant did say that she wanted the hearing to go forward and she was not withdrawing her Wage Claim.

The claimant testified that she is due \$2,032.50. She said there was no written contract but she was hired at a rate of \$15.00 per hour. She stated that she was helping to set up the business and did a lot of work from her home. She said that she kept track of the hours. The claimant did state that at the time of the working from home she was employed full time with another employer. This time period was around March of 2013.

The claimant said that prior to the business opening she set up accounts and did research for the business. Her presented hours show that some of the time spent on the research and account set ups, happened late at night and not while she was working at her full time job.

The employer testified that the claimant approached him with a desire to help out in the start up business. The claimant's husband also did some contract work for the business. The

employer states that he opened the business accounts in year 2012. These accounts were also claimed by the claimant. The employer said that he had several interviews with the claimant and she is trying to say the time for the interviews is time she should be paid her hourly rate.

On March 22, 2013 the employer said that he had the second interview with the claimant. The third interview took place on June 16, 2013 and that on or about July 10, 2013 the claimant filled out her tax forms for the employer. The claimant worked for the employer from July 7, 2013 until August 1, 2013. The employer said that there were two rates of pay for the claimant but because of the difficulty of managing these two rates, he paid the claimant at the higher rate of \$15.00 per hour.

The employer stated that all wages owed have been paid. The claimant never produced records for the employer that show documentation of the research and how that research deals with the employer. In order to keep the record clean, the employer said that all wages and expenses have been paid.

The claimant did not show up to cross-examine the employer.

### **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 presented for the two days of the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden. The claimant did not prove through her testimony that there were hours due for payment of the hourly rate.

The employer was credible that he interviewed the claimant several times to work in the store. It is clear that the claimant started the work, filled out the federal tax forms and began her employment. It is also clear that there were two set hourly rates based on what the claimant was doing for the employer. These rate finally evolved into the payment of the higher rate (\$15.00) for all hours worked.

It is found that the claimant did not prove that she worked for several months prior to the store opening. The Wage Claim is invalid.

**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 Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

/s/

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: May 6, 2014

Original: Claimant  
cc: Employer

TFH/clc