

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

HOPE'S DINER

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Hope's Diner, 127 Plaistow Road, Plaistow, NH 03865

Date of Hearing: February 19, 2014

Case No. 47176

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 11, 2013. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on January 15, 2014. The employer was represented at the hearing.

The claimant testified that she started to work for the Diner three years ago. She was hired as a waitress. From November 2010 until March of 2011 she worked for three cousins. In May of 2011 she started to work again for a new management team. This team only lasted five months when they were released by the ownership.

At this point in time the ownership asked the claimant to run the Diner. The claimant ran the business until September 2011 when a new manager was hired. The new manager was fired in January of 2012.

Once again the claimant was asked to run the business. She was required to do staffing, food ordering and taxes along with other duties. The claimant testified that she felt the owners were trying to sell the Diner and it would be an easier sell if the Diner was operational.

There were several times when the business could not cover the payroll expense. The claimant said that she did not pay herself and often contributed to the expenses for the Diner and contributed to the payroll. She stated that she was assured by the ownership that she would get her money back.

At this point in time the claimant was running the business and the employer was signing checks. The claimant opened a joint checking account and made some deposits into it. Again,

the claimant was not being paid. She did work for tips. The equipment in the Diner started to be repossessed and she had to seek equipment from other places so the Diner could stay open. The claimant stated that the current General Manager installed the new equipment.

The claimant has filed this Wage Claim for a total of \$8,180.00 for payroll loans and not being paid for several weeks. The claimant was the person who called in the payroll so that the employees could be paid. The claimant did say that she reimbursed herself, a couple of times, from the joint checking account. The joint account was not held in an owner's name, it was a joint account between the claimant and another employee.

The employer maintains that all wages have been paid and that the claimant was paying herself out of the joint account. The employer maintains that the claimant owes the Diner money but they are not seeking restitution. The General Manager said there were discussions about paying for the equipment but there were no discussions about the payment of wages. The claimant paid the wages due and she had an account, into which Diner earnings were placed, and that she and another employee had access to that account.

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 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 issues involved were under the control of the claimant. She had access to the money generated by the Diner and she set up a joint checking account with another employee to handle the debts of the business. She made deposits into the account, except for credit card charges, and she dispersed these funds to pay the debts of the employer. The claimant said that she often did not pay herself. However she did testify that she took withdrawals from the joint account.

The employer did ask her to keep the Diner open and she did a great job of doing this. It appears that the claimant was an exceptional administrator. However, it is hard to ascertain if she paid herself cash and kept on working in the business.

The employer feels that there are funds owed to the business but they are not going after those funds. They feel that all wages have been paid.

The Wage Claim is invalid.

DECISION

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.

The claimant may have a claim against the employer because of her investments but those are not part of this Wage Claim. This is not the proper forum for those claims.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 19, 2014

Original: Claimant
cc: Employer

TFH/all