

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

**V**

**UNITED MOTOR FREIGHT**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 I/II employer/employee relationship

**Employer:** United Motor Freight LLC, 26 Kendall Pond Road, PO Box 1421  
Derry, NH 03038

**Date of Hearing:** March 25, 2014 continued until July 16, 2014

**Case No.** 47423

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on January 27, 2014. 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 February 27, 2014.

The claimant testified that he worked for the employer for about five and a half weeks. He stated that he was an employee of the company and he had signed a lease/purchase with the employer for the truck he was driving. He was paying \$700.00 per week for the truck.

The claimant stated that he had signed a Federal 1099 tax form and that he had the intention that he was going to become an Independent Contractor. He said that the employer received all money before it was distributed to him as the driver. He was also given all job assignments by the employer.

The employer testified that the claimant filled out a Federal W-9 tax form and was aware of the employer's position on issues because he signed off on all of the employee manuals. The employer said that they had a lease agreement with the claimant and that the claimant would eventually own the vehicle.

The parties were given until May 2, 2014 to submit any relevant documents or any other exhibits. Another hearing was scheduled for July 16, 2014. The employer showed up for the hearing, the claimant did not show up.

### **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 275:42 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 holds himself or herself out to be in business for himself or herself.
- (e) The person is not required to work exclusively for the employer.

This is the part of the law that establishes the criteria for the employer/employee relationship.

It is the finding of the Hearing Officer, based on the testimony and the submitted written documents, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant testified that he was eventually going to become an Independent Contractor. He filled out all the federal forms to indicate that he was not an employee but an Independent Contractor.

The claimant did not show up for the second hearing and the employer said that they stood on the testimony they gave on day one.

The Wage Claim is invalid. There is no ruling on the employer/employee status.

### **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 he 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: August 6, 2014

Original: [REDACTED], Claimant

cc: Edward Ramsdell, Owner  
United Motor Freight LLC

TFH/cag