

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

MOLLY'S TAVERN AND RESTAURANT

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Molly's Tavern and Restaurant, 26 Mount Vernon Road, New Boston, NH
03070

Date of Hearing: April 24, 2014

Case No. 47556

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 13, 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 March 25, 2014.

The claimant testified that she was a salaried employee and was paid weekly. Her salary rate was \$770.00 per pay period. In her last pay period she was only paid for one day. The claimant stated that she was not discharged "for cause"

The employer testified that the claimant did work one day in the last pay period. He said that it came to the point where he had to talk to the claimant about hours worked and job performance. He also said that the business funds were very tight at this time. The pay period was five days a week between Sunday and Saturday.

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 section of the law mandates that an employer must pay an employee all wages due at the time the wages are due and owing.

RSA 275:43-b: Payment of Salaried Employees. –I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

- (a) Any pay period in which such employee performs no work.
- (b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.
- (c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.
- (d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.
- (e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This part of the law deals with the salary process. The law spells out when a pay period has to be paid and when wages can be prorated.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that

there are wages due and owing and she met this burden. The claimant was credible in her testimony that she worked one day out of the pay period and was discharged because of the management of the business.

The employer provided conflicting testimony about the job performance of the claimant and the fact that the business was experiencing some financial problems with "tight" funds. The employer did not provide any evidence of disciplinary action and did state that the claimant worked one day of the pay period.

It is not found that the claimant was ever paid any time for her last week. It appears that the claimant came in for one day and was released from employment. It is found that the claimant is due the full week's salary of \$770.00.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due to an employee, and as this Hearing Officer finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$770.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$770.00, less any applicable taxes, within 20 days of the date of this Order.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: May 16, 2014

Original: Claimant
cc: Employer

TFH/clc