

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

D&F BUILDERS LLC

DECISION OF THE HEARING OFFICER

Appearances: Ryan C. Trombly ESQ., Attorney for the Employer

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

Employer: D&F Builders, LLC, 37 White Hall Road, Hooksett, NH 03106

Date of Hearing: May 7, 2014

Case No. 47636

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on February 25, 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 28, 2014.

The claimant testified that he started to work for the employer as a sub-contractor. He was in business for himself and carried his own insurance. At a certain point in time the claimant became a full time employee for the company and used the company vehicle for transportation. The claimant said that there was no written hiring agreement for his work as a sub-contractor or full time employee.

The claimant said that he gave up a claim for hours when there was a problem with a job and he fixed the problem. When the claimant questioned his lack of wages, the employer told him to keep working and he would be paid in full. The claimant was starting to fall behind in his personal expenses because he was not being paid.

The claimant stated that he was paid up to date except for the new invoices he has submitted for jobs worked on for the employer. The claimant stated that the Wage Claim is now for \$4,245.00.

The employer testified that there is no employee-employer relationship. The claimant was hired as a sub-contractor and was paid based on submitted invoices. There was no recording of hours because the claimant was paid per job. The employer said that the claimant received a federal 1099 tax form for the year 2013 and will get another one for the year 2014. The claimant did fill out a federal W-9 form for the employer.

The employer said that the claimant met all of the criteria for a sub-contractor. The claimant did use the employer's van because he did not have any transportation. He was allowed to do other jobs if he so desired. The employer said that the claimant has around \$3,000.00 in outstanding invoices.

FINDINGS OF FACT

RSA 275:43 I

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

This part of the law places employee expenses under the category of wages when the expenses are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, 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's own testimony shows that he started as a sub-contractor and there is no indication that this status ever changed. The claimant's request for wages is based on the fact that he submitted expense vouchers for materials and that he kept a log of his hours. The claimant also said that he could not get jobs for himself because he used the employer's van to go to the jobs.

The employer was credible in that the claimant was hired as a sub-contractor and worked selected jobs for the employer. The claimant submitted invoices for these jobs and was paid but there is an outstanding balance. The claimant was not required to submit hours and did carry his own insurance coverage. The employer did say that he allowed the claimant to use a company van because the claimant did not have transportation.

The claimant also filled out and received all federal tax forms that are the same as would be received by a sub-contractor.

The Wage Claim is invalid. It is not in the proper forum.

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 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/

Thomas F. Hardiman
Hearing Officer

Date of Decision: May 20, 2014

Original: Claimant
cc: Employer

TFH/clc