

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE


V

Prayag Inc.

DECISION OF THE HEARING OFFICER

Appearances: Joshua Mesmer, Esq. representing Prayag Inc.

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Prayag, Inc., 239 Steam Mill Road, Auburn, NH 03032

Date of Hearing: May 19, 2014

Case No.: 47751

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$9,000.00 in unpaid wages for hours because she arrived one and one half hours early each day. She also alleges she performed work after her scheduled time for which she was not paid. She argues she provided the owner with the times she worked on “makeshift time slips” which were scraps of paper.

At the hearing, the claimant admitted that she was paid for all time worked for approximately one year after this owner took over the store, in October 2008. She further testified that she stopped recording the time she arrived at work and used 5:00am as her start time, stating that putting the actual time she began work “would go no where.” She was also occasionally compensated for staying later than her regularly scheduled shift end of 1:00pm.

The claimant could not explain the methodology she used to calculate the wages due of \$9,000.

The employer denies the claimant was not paid for all time worked. They assert that the claimant was scheduled to work a four day, thirty two hour schedule and was paid according to the time slips she submitted. Pursuant to previously submitted documentation, the claimant was paid over her regularly scheduled time on many occasions.

The employer purchased the business in October 2008. The claimant was an employee of the former owner. The employer notified the claimant she was not to open the store earlier than 5:00am, pursuant to a town ordinance which forbade opening prior to 5:00am. They argue she would “occasionally” open the store for her friends earlier than 5:00am and they reprimanded her for doing so.

FINDINGS OF FACT

The claimant worked at the same location for over sixteen years. She worked for this employer from October 2008 through March 2014. Her rate of pay was \$8.85 per hour.

The claimant argued that the current employer told her in October 2008, when the business was purchased, that her hours were to remain the same as they had been with the prior owner. Those hours were 3:30am to 2:00pm. She argued the employer paid her for the hours she physically worked for about one year after the purchase. She did complete a "makeshift timeslip" each week for the hours worked. At some point, she began recording the hours worked as 5:00am to 1:00pm, rather than the 3:30am start time because she had approached Mr. Patel's brother about the pay between 3:30am and 5:00am on "a couple of occasions" and it "went no where."

The claimant previously submitted documentation for many dates between October 2011 and March 2014, showing the time she logged in to the computer system. She argued she was not paid from the time she logged in, but from 5:00am, leaving the difference of approximately one and one half hour each work day unpaid. She also argued she was required to stay after her shift up to fifteen minutes, at least once per week. She did not have any supporting documentation for the hours she claims after the end of her shift.

The employer argued that the claimant was told not to open the store any earlier than 5:00am on multiple occasions. He further argued that the claimant submitted her own time record which stated she began work at 5:00am, and she was paid in full.

The register time receipts submitted by the claimant show the claimant logged onto the computer system for times varying between 3:18am to 4:05am. Both parties agree the claimant was not paid until 5:00am. The claimant did not provide any evidence that she worked after her scheduled shift.

RSA 279:27 states, in relevant part, every employer of employees shall keep a true and accurate record of the hours worked by each, wages paid to each.

While an employer may require an employee to record their own time, the employer is ultimately responsible for the paying employees for all time worked. The employer had access to the computer system which showed the time the claimant logged into the system each day. The employer should have know the time the claimant was working and paid her accordingly.

The Hearing Officer finds that claimant proved by a preponderance of the evidence she was not paid for all time worked on the dates for which she submitted a time slip from the register. A calculation of these slips showed the claimant was not paid for 620.02 hours at a rate of \$8.85 per hour, or \$5,487.18

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 that the

claimant proved by a preponderance of the evidence that she is owed a portion of the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$5,487.18.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$5,487.18, less any applicable taxes, within 20 days of the date of this Order.

/s/

Melissa J. Delorey
Hearing Officer

Date of Decision: June 4, 2014

Original: Claimant
cc: Employer

MJD/clc