

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

RYMES PROPANE AND OIL

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Rymes Propane and Oil, PO Box 2948, Concord, NH 03302

Date of Hearing: July 2, 2014

Case No. 48015

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on April 30, 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 June 5, 2014.

The claimant testified that he worked for the employer for five months as an hourly employee. He stated that at the time of hire he was told that he would earn \$19.00 per hour.

The claimant said that after he received his first paycheck he realized it was for \$18.00 an hour and not the rate he had agreed to work for his wages. He asked the employer questions on the hourly rate but never received an answer. He testified that he tried to resolve the problem at least three times but did not receive an explanation. The claimant believes that he is due \$1,290.00 in unpaid wages.

The employer testified that they interviewed the claimant for a part-time position in the Keene District. The employer said that they told the claimant that the hourly rate for a driver was \$17.00 to start. It could increase over the years to \$19.00 per hour.

The employer needed a driver as soon as possible and so the claimant was given an hourly rate of \$18.00. The claimant agreed to this and started to work. The claimant did question

the employer about the starting rate and the employer said that they clarified the issue. The claimant worked from October 28, 2013 until April 11, 2014.

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 presented for the hearing, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant was credible in his testimony that he believed he was hired at the \$19.00 per hour rate. Upon receiving his first check he questioned the hourly rate. He said this was done several times and he did not receive a satisfactory answer.

The employer submitted an exhibit, the Employee Data Sheet. The data sheet was signed by the claimant. In the space for "Rate" it looks like the \$19.00 was changed to \$18.00. This backs up the claimant's testimony.

The Wage Claim is valid in the amount of \$1,290.00.

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,290.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$1,290.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 23, 2014

Original: Claimant
cc: Employer

TFH/cag