

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

[REDACTED]

V

[REDACTED] **dba Mark's Painting**

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Mark's Painting, 12 Winter St 2nd Fl, Laconia NH 03246

Date of Hearing: October 20, 2014

Case No.: 48741

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant, through a consolidated hearing with two other former employees of the employer, asserted that he was due \$484.00 in unpaid wages.

He argued he worked June 2 through June 7, 2014, June 9 through June 14, 2014, and June 16, 2014. He worked a total of fifty-eight hours at a rate of \$13.00 per hour.

He argued he did work on June 14 and June 16, 2014, because was there when Mike Gallo of Gallo Realty appeared on the site and did not have a check to pay Mark's Painting.

The claimant wanted to amend his wage claim to include \$150.00 in gas expenses which he claims the employer promised him. This issue was not included in the original wage claim and was not noticed for this hearing. The employer did not agree to hear this issue at the hearing. The claimant was advised he could file a subsequent wage claim for this issue.

The claimant then agreed he received \$150.00 in cash from the employer but testified that was for the gas expense, not towards the unpaid wages.

The employer agreed the claimant is due \$169.00. He argues that the claimant did not work on June 14 or 16, 2014, pursuant to the time record previously submitted. He paid the claimant \$150.00 cash in July 2014, towards the wages due.

He has not been working and will pay the claimant when he has the funds.

██████ testified that Gallo Realty had paid Mark's Painting all monies due. She is now aware of the prime contractor responsibility for the payment of wages under RSA 275:46.

FINDINGS OF FACT

The claimant worked for the employer for a couple of years and was always paid.

The parties disagreed as to the number of days worked and a gas expense reimbursement.

RSA 279:27 requires an employer to keep a true and accurate record of the hours worked by each, wages paid to each. The employer provided copies of the time records in question for this issue, previously submitted.

The employer admitted the claimant is due a balance of \$169.00 for hours worked between June 9 and June 13, 2014, after deducting \$150.00 cash payment in July 2014.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he worked the hours claimed and was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as his story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that he is owed all the wages claimed.

However, the Hearing Officer finds the claimant is due \$169.00 pursuant to the records of the employer.

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 he is owed a portion of the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$169.00.

The employer is hereby ordered to send a check to this Department, payable to ██████ in the total of \$169.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 3, 2014

MJD/slh