

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SILVER CHARIOT LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Silver Chariot LLC, 18 Throwbridge Dr. Merrimack NH 03054

Date of Hearing: October 30, 2014

Case No. 48791

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 3, 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 October 7, 2014.

The claimant testified that he is seeking \$5,111.53 in wages because he was an hourly employee and he averaged sixty hours a week and was not paid minimum wage for those hours. The claimant stated that he worked for the employer for 22 months as an hourly employee and there was no written hiring agreement. When he received a paycheck it was for an amount with no backup for hours worked and the hourly rate. The claimant said that he never challenged the employer because he was fearful of losing his job.

When the claimant left the job, he had an inquiry made as to the records kept by the employer. The employer never responded to this request. The claimant felt that his hours consisted of many duties preparing for the job and preparing the vehicle he was to use. These hours should have been compensated but he has no way of knowing if they were or not. The amounts he was paid weekly, if divided by the 60 hours of work fall far below the minimum wage for the State of New Hampshire.

The employer testified that time sheets were done every week and they were used to track overtime. A review of the records shows that the claimant was paid on an average of \$14.00 per hour. The claimant was never "on call" and any work done on the vehicle was time on the clock. The employer said that the employees contacted the office when they started to work and when they finished.

The employer also stated that there were employee meetings and any issues were brought up and resolved. The employer said that the claimant always had questions but he never brought up the hourly rate being paid.

The employer stated that they tracked all hours worked by the employees and that the records were available for review. The employees did not want constant reports and there were never any complaints about the wages being paid.

There were some complaints about the claimant's driving and he provided the results of eye issues that he was having. There was a mutual agreement to severe employment.

All employees receive packets with the company rules and regulations. In the opinion of the employer the claimant was paid all wages due and was paid well.

FINDINGS OF FACT

RSA 275:43 I 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.

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 provided 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 raised issues such as the employer not answering the request for records and the employer's position taken at the Unemployment Hearing. These are part of the record but not part of the decision. The request for records was part of the exhibits submitted for the hearing. These exhibits were timely and placed into consideration for this decision. The decision of the Department of Employment Security is also outside of this decision making process. The fact that it is being submitted for credibility purposes is factored into the decision.

The claimant testified that he worked an average of 60 hours per week for the 22 months that he worked. A review of the records and the testimony of the employer do not show this to be a fact. The records show that there were never any weeks where the time worked even came close to the sixty hours being claimed.

The claimant had the time to review these records and he did not credibly address them except to say they were inaccurate. During his period of employment the claimant accepted wages for time worked and just because the checks did not record the hours worked or the hourly rate, the claimant continued to work and did not question the amount being paid.

The employer was credible in their testimony that the records were kept and that there were never any other challenges to wages paid. The claimant did not provide any credible evidence as to the hours worked. The Wage Claim is invalid.

DECISION

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 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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: November 24, 2014