

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

SMOKE SHACK SOUTHERN BBQ

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Smoke Shack Southern BBQ LLC, 146 King St Boscawen NH 03303

Date of Hearing: November 20, 2014

Case No. 48975

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on September 29, 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 November 3, 2014.

The claimant testified that he worked for the employer for six months. He was an hourly employee at the rate of \$8.00 per hour. There was time cards that recorded the hours worked. In his Wage Claim the claimant sought \$150.00 or 30 hours at \$5.00 per hour. The Wage Claim was adjusted to \$192.00.

The claimant said that he worked at the race track for the employer and worked for 24 hours over a three day period. He stated that he turned in his time card. He was never paid for this time. He said that during his employment he only received one pay check; the other wages were all paid in cash. The last cash received by the claimant was for \$64.00. The claimant did say that he does not report taxes on any cash received.

The employer testified that all wages have been paid. The claimant had asked for a loan from the employer and for advancements on wages while he was at the race track. The employer said that he was contacted by the Department of Labor because of a complaint made by the claimant and he was told that the claimant was seeking \$64.00 for hours worked at the race track. The Department of Labor asked the employer to pay the claimant and he did so with a cash payment. The employer believed that the claimant had been paid all wages and was surprised at the Wage Claim and the amended amount on the day of the hearing.

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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 invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant actually presented three different amounts that he felt were not paid to him for work performed. He also said that he requested the Department of Labor (DOL) to get 8 hours of pay due to him from his work at the race track. The DOL followed up on this and the employer paid the claimant in cash.

The employer was credible in testimony that the claimant received advances and loans against his wages. The employer felt that when he was asked to pay the \$64.00 because of the DOL request, that this was the final wages paid.

The claimant was inconsistent relative to the wage amounts due. He also did not bring up the loans or advances. The claimant did admit that he received these payments during the hearing.

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: December 12, 2014

TFH/slh