

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

VEANO'S ITALIAN KITCHEN

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Date of Hearing: January 22, 2015

Case No. 49137

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on October 22, 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 December 30, 2014. The Wage Claim is for \$3,990.00 in unpaid wages.

The claimant testified that he worked for the employer from March 9, 2013 until August 24, 2013. He stated that there was a verbal agreement for an hourly rate of \$10.00 and there was no agreement to barter for food. There were time cards for the employees but he did not have a time card. He had scheduled times and did not fill out any kind of federal tax documents. He was asked to keep track of his own time and he turned in his o\hours at the end of his employment.

The claimant stated that he kept track of his time in a note book and that the employer has a history of not paying.

The employer testified that all of his employees fill out time cards and have a hiring agreement. The claimant, a family member, offered to help out at the restaurant but would never fill out the time cards of the proper federal forms. The employer stated that he only pays by checks and that he had his employees covered by worker's compensation insurance so all employees must be recorded.

The employer stated that the claimant would come into the restaurant and if it was busy, he would offer to help out. When this happened the employer would pay the claimant in dinners

and other food items. The employer further stated that the claimant's records show some 14 hour days. The owner himself never worked those type of hours at the restaurant.

The employees provided statements that the claimant often ate at the restaurant and was not billed for the meals. There were home deliveries that were never paid for by the claimant. The employees were also on time cards. One of the owners stated that she developed the work schedules and the claimant was never on a schedule.

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 employer testified credibly that the claimant did help out a few times and was paid in free meals and other food orders. Even though the claimant was a relative, the employer asked him to fill out time cards and fill out the proper hiring paper work. The claimant did not do this.

The claimant said that he kept track of his time and submitted a listing of hours worked. The claimant said that he kept these hours in a notebook but did not provide the book as an exhibit. The claimant stated that he was often scheduled to work but the employer had one person in charge of scheduling and she testified that the claimant was never on the schedule.

The record shows that the claimant did do some work at times and was paid off in meals and in food deliveries. The employer provided credible evidence that this happened.

The Wage Claim is invalid.

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 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: February 23, 2015

TFH/kdc