

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Discount Price LLC dba Robberts Market

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Date of Hearing: February 18, 2015

Case No.: 49376

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$612.00 in unpaid wages for 68 hours worked in November 2014, for \$9.00 per hour.

The claimant worked for the employer for several weeks and he had been paid for all time worked. The employer refuses to pay for the final two weeks of work, arguing that the claimant bid the job and had been paid everything due.

The employer did not respond to the Notice of Wage Claim. He raised the issue that the claimant was an independent contractor, not an employee, for the first time at the hearing. He argues that the claimant bid the job and received full payment. He also gave the claimant an additional \$200 when he stated he needed money.

The employer and the claimant engaged in a negotiation to settle the claim prior to the close of the hearing. They were unable to agree on a settlement.

FINDINGS OF FACT

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner

by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The Hearing Officer finds that the claimant was an employee of the employer, Discount Price LLC dba Robberts Market, not an independent contractor, because the claimant does not meet the criteria in (b), (c), (d), (e), or (f). The claimant testified credibly that the employer dictated the means and manner of the work to be performed, and the time during which the work was to be performed. The claimant did not hire his own assistants. The claimant did not hold himself out to be in business for himself and did not have any recurring business liabilities or obligations. The claimant was not responsible for the satisfactory completion of work, and he could not be held contractually responsible for failure to complete the work.

The parties agree that the claimant worked the hours claimed. They disagree as to whether or not he had been paid.

The claimant provided credible testimony that the arrangement he had with the employer was for \$9.00 for all hours worked and that the employer failed to pay for the remaining 68 hours of work. The employer had paid the claimant for all hours worked prior to the final two weeks.

The employer could not provide any documentation to show the claimant had been paid all wages due.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wage in the amount of \$612.00 (68 hours * \$9.00 per hour).

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 the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$612.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$612.00, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: February 25, 2015

JD/kdc