

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**R.E.PERRY ACOUSTICAL CEILINGS LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 275:42 I/II employer/employee relationship

**Employer:** R. E. Perry Accoustical Ceilings, LLC, 30 Morse Rd., NH 03046

**Date of Hearing:** February 10, 2015

**Case No.** 49446

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 2, 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 January 12, 2015.

The claimant testified that he worked for the employer for two and a half weeks. There was no written hiring agreement. The employer usually paid him in cash. The claimant stated that he was not in business for himself and he did fill out time cards for the employer. He said that he agreed to an hourly rate of \$20.00, he had no interest in being a sub-contractor and he would file his own taxes.

The employer said that he placed an ad for temporary help and needed to get a job done prior to the start of school. The claimant responded to the ad and was given a work order by the employer. There was no employer/employee relationship. The claimant did not believe that there was any issue with his hours of work.

The claimant did say that he had to buy a drill bit to do some of his work and even though the employer did not pay him for the purchase, the claimant believes that it is an expense suffered for the employer. The claimant kept the drill bit.

The claimant stated that he was paid cash a couple of times but it was not equal to the wages due and owing.

The employer maintains that the claimant was not an employee and was working on an order and would be paid upon invoicing for the work.

The employer stated that he did not have any kind of written agreement because the job had to be done in a very short time frame.

### **FINDINGS OF FACT**

RSA 275:42 I The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

RSA 275:42 II. "Employee" 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.

This is the section of the law that spells out the employer/employee relationship.

It is the finding of the Hearing Officer, based on the written submissions and the testimony at the hearing, that the claimant was an employee. The employer hired the claimant based on an ad placed for a job that needed to be done. The employer said that there was no time to prepare any paperwork because the job was on a tight time schedule. The employer has the obligation to keep track of all records of employment including the hiring agreements. The employer did not do so in this case.

The claimant was credible in his testimony that wages were paid in cash but never in the correct amount due. There were records submitted by the claimant but the hours were not paid. It is the responsibility of the employer to keep records of employment and this was not done.

The employer made excuses not to show up for the hearing and yet he did attend. There were no records presented by the employer.

The claimant did buy a drill bit but he kept the drill bit as part of his tools. There are no expenses (\$6.00) due in this claim.

The claimant is due 64 hours of pay at the rate of \$20.00 per hour.

### **DECISION AND ORDER**

There is an employee relationship in this case.

There is no finding for expenses in this claim.

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 Hearing Officer finds that the claimant proved that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$1,280.00.

The employer is hereby ordered to send a check to this Department, payable to Albert Plass in the total of \$1,280.00, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: March 12, 2015

TFH/kdc