

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

BIRCH TREE AUTO AND TRUCK REPAIR

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Birch Tree Auto & Truck Repair, 227 DW Highway, Merrimack, NH
03054

Date of Hearing: February 11, 2015

Case No. 49540

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 15, 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 filed the Wage Claim for \$45.50. He was an hourly employee being paid at the rate of \$13.00 per hour. The claimant stated that he worked for about six months with the employer. The claimant said that there was a time clock in place and on a Saturday he worked through his lunch hour and was not paid for that time. That day would have been an overtime situation.

The claimant further stated that on his last day he came into work and was terminated from employment. He said he had to get his tools and fill out some paperwork provided by the employer. The claimant feels that he is due the minimum of two hours for having reported to work.

The employer testified that the claimant was terminated for cause and that problems had been brought up in prior meetings. The claimant did come in on the day after he was terminated to pick up tools and sign some paperwork. The claimant did not sign in on the time clock and did not perform any work for the employer.

The claimant also had a history of not signing out at times and on the Saturday in question the employer does not know why he worked an extra hour and did not eat lunch. The employer said that it was standard practice to take a lunch on Saturdays.

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 of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and he met this burden.

The claimant testified credibly that he worked through his lunch on the Saturday in question. The time record shows that no lunch was taken and another employee, worked with him that day and there was no record produced that shows the other employee taking a lunch. The supervisor was not at work on that Saturday.

The claimant was also credible in his testimony that he reported to work on his last day and was told that he was being terminated. Although the employer testified that the claimant had been terminated the day before, the employer did have paperwork for the claimant to fill out. It is the finding that the claimant is due the two hour minimum for his last day.

The Wage Claim is valid in the amount of \$45.50.

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$45.50.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$45.50, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: March 13, 2015

TFH/kdc