

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



V

**CITY OF KEENE, NEW HAMPSHIRE**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses

**Employer:** City of Keene, 3 Washington St, Keene, NH 03431

**Date of Hearing:** July 1, 2015

**Case No.** 50367

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on May 4, 2015. 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 June 10, 2015. Both of the parties were granted a telephonic hearing.

The claimant testified that he worked for the employer for almost six years. He testified that he was an hourly employee in a part-time position. He was given a handbook at the time of his hire but he stated that because he was part-time he did not fall under the provisions of the handbook.

The claimant testified that he worked for the City of Keene at three different work sites. He did this rotation two times a week. In 2010 he used a City vehicle to travel between the work sites. He then used his own vehicle. He stated that he was unaware of any mileage policy and was not informed of any policy by his supervisor. The claimant testified that he confronted the City officials about the policy of mileage in March of 2015 just before he left the employment of the City.

The claimant feels that he is due the Federal mileage rate for the miles he had to drive to complete his job functions. The claimant stated in his Wage Claim submission that he is due 24 miles a week for 45 weeks in calendar year 2012. He is due 38 miles a week for 45 weeks in calendar year 2013. Finally he is due 38 miles per week for 45 weeks in calendar year 2014. The Wage Claim is for \$2,540.25.

The employer presented testimony that the City had a handbook for employees and that the claimant signed for that handbook on April 13, 2009. There were also "Administrative

Directives” that were available to all employees on the City’s web site. The handbook and some policies dealt with the rules for the reimbursement of mileage and expenses.

The employer stated that the claimant never brought up the request for mileage until March of 2015. The claimant said that this was when he asked for the payment just before he left the service of the City. The employer testified that there was a meeting in March of 2015 when this issue was raised and it was explained in detail to the claimant. The employer also pointed out that the claimant did not retire until April 29, 2015. From March to April the claimant did not follow any of the practices contained in the City policies for mileage reimbursement. The Wage Claim was not filed until after the claimant left his job.

The employer further stated that it was not the fault of the claimant’s supervisor that the claimant was not aware of the policy, the supervisor’s role was to make sure the reimbursement forms were correct. The claimant never filed any forms or requested any advance for expenses.

### **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.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses into the category of wages when the expenses 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 invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The claimant was aware of the policy as he signed for the policy at the start of his employment. The claimant was not credible in stating that he was not covered by the policy because of his part-time status. He was also not credible in his position that the supervisor should have been responsible for the process of being paid for expenses incurred.

The employer provided credible testimony that the City had a written policy and issued periodic changes or clarification of policy that was available to all employees. The claimant did raise the issue a month before he left service and the employer explained the policy and the use of said policy. In the remaining month of his employment, the claimant never filed for expenses.

It is found by the Hearing Officer that the employer was credible in their oral presentation and did have the necessary policies in place and that they were known to the employees. The claimant did not bear his burden to show that there are wages due and owing.

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.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: July 28, 2015  
TFH/kdc