

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v

PR INTERPRISES (PANERA BREAD MANCHESTER)

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages/commissions

Employer: PR Interprises (Panera Bread) 52 March Ave, Manchester, NH 03103

Date of Hearing: July 6, 2015

Case No. 50369

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 31, 2014. The claim was placed in a hold status by the request of the claimant. The notice was sent to the employer on May 6, 2015. The employer submitted an objection and the objection was sent to the claimant. The claimant requested a hearing. The Notice of Hearing was sent to both parties on June 10, 2015.

The claimant testified that the Wage Claim was for \$32,638.00 because there had been a payment of \$800.00 for expenses. The claimant further testified that she has worked for the employer for approximately twelve years. She stated that she was an hourly employee and was hired with a verbal agreement.

The claimant testified that the employer started a catering service in 2006. She was still receiving a base pay but now there was an escalating bonus plan that paid up to 7%. The claimant testified that she was promoted to a position of shift supervisor and her hourly wage was raised to \$12.02 per hour. The claimant stated that in 2011 she was informed by the employer that there was an internal structure change and that the position of shift supervisor was being eliminated. In January of 2012 the claimant testified that the change in hourly rate was to go into place. Instead the claimant got a raise in pay although she did not take a higher position that was offered. The claimant further testified that in March of 2012 her hourly rate was reduced to \$10.00 per hour.

The claimant testified that the pay period with the company changed to a weekly pay schedule and in March of 2014 the practice of commission pay stopped. The claimant said that the employer changed the formula for commissions and that she was losing money by the new standard because there were multiple stores involved and this was not working well for the

claimant. The claimant did state that the District Manager did explain the new company policy on wages.

The claimant has based her Wage Claim on the fact that the employer did not provide written notification of any wage changes and she feels that she is due the extra \$2.24 for all hours worked since 2012.

The employer testified that in 2011 the claimant received three checks. One was for the hourly rate, one was for any commission earned and the last one was provided weekly with an employee's tip earnings. The hourly checks always had the hourly rate printed on the checks.

The employer provided further testimony that any changes in the wage structure were done so on a system wide basis. The changes were not isolated to one person, one store or a grouping of stores. The changes were a management decision for the company.

The employer stated that they paid all wages with a check and a payroll stub. The employee was well aware of the wage structure and any changes that occurred over the years. The commission structure was at the discretion of the District Manager as to the grouping set up for the commission review. When the commission structure did not work, it was discontinued.

The employer maintains that the hourly wage structure has not changed in three years and was well known to the claimant. Each check stub reflected the hourly rate and the claimant was always paid above the minimum wage rates.

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. Commissions are also included as wages under this section of the law.

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 she did not meet this burden.

The claimant raised the issues of changes being made in a wage structure without proper written notice. The employer provided credible testimony that any changes in a corporate wage plan were discussed with employees prior to their implementation. In this claim that claimant challenged the commission structure which was a prerogative of management and changed several times over the first twelve years of her employment.

The claimant had the opportunity to seek a higher position once the shift supervisor's position was eliminated but she chose not to do so. This action meant that she was placed in a lower position. The claimant also received a written record of the hourly rate with ever pay stub that she received. The claimant continued to work under these new practices.

It is found that the basic hourly wage plan did have amounts changed but these were changed with notice. All the other issues were management prerogatives and not subject to the Wage Claim process.

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 she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: July 28, 2015
TFH/kdc