

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Emerald Green Clean LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:48 I illegal deductions

Employer: Emerald Green Clean LLC, 53 Ayers Rd, Newport, NH 03773

Date of Hearing: July 7, 2015

Case No.: 50457

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant, through a consolidated hearing with one other former employee of the employer, asserts she is due \$1,425.00 in unpaid wages for time spent traveling in the employers van to and from home and the job site. She further argues the employer did not properly withhold taxes from her wages.

The employer denies the claimant is due any further wages. The employer allows employees to ride in the employer van as a courtesy and a benefit. It is not mandatory and employees are free to make their own way to work.

FINDINGS OF FACT

The claimant worked for the employer from approximately November 2014 through March 2015.

The claimant argues the other claimant spoke with an inspector from this Department who advised that the moment they stepped into a company van until they were dropped off was considered work time and they should be paid, regardless of whether or not it was mandatory to ride with the employer.

The employer argued he provided a benefit to the claimant to ride in the employer's van, at no cost to the employee, and at the employee's choice. The claimant could have found her own ride to and from work.

Pursuant to 29 CFR 785.35, incorporated by reference at Lab 803.04, discusses travel time. 785.35 Home to work; ordinary situation. An employee who travels from home before his regular workday and returns to his home at the end of the workday is

engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

The employer provided an option for employee's to ride to work in a company van. The employer does not mandate this option and employees are free to find their own transportation.

The travel time spent riding in the employer's vehicle between home and the first stop and the last stop and home is not considered worktime.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence that she is due the claimed wages.

The claimant argues the employer should have taken taxes out of at least three checks and did not. She argues it is "not her job" to be responsible for the taxes.

The claimant received all wages due for time worked. This Department does not have jurisdiction over taxes nor the calculations of such deductions.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant failed to meet her burden in this claim.

DECISION

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 failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: July 9, 2015

MJD/kdc