

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



V

**Viper Logistics Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:48 I/II illegal deductions  
RSA 275:42 I/II employer/employee relationship

**Employer:** Viper Logistics Inc, 107 Danis Park Rd, Goffstown, NH 03045

**Date of Hearing:** August 5, 2015

**Case No.:** 50630

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$15,930.89 as the employer made illegal deductions from his wages between March 1, 2015 and June 28, 2015, when his employment ended.

He argues he was initially an independent contractor between January 23, 2015 and February 28, 2015, when he had a contract in place with Viper Logistics Inc for the lease of a truck which he used in the course of his business relationship with them. Viper Logistics Inc ceased to provide a contract after the final temporary contract expired February 28, 2015. Viper Logistics Inc offered a permanent contract shortly thereafter and then advised him not to sign it as there were still issues with the contract.

The claimant further argues he became an employee when the contract for the lease of the truck expired on February 28, 2015, and Viper Logistics Inc continued to make deductions from the claimant's wages, illegally.

Viper Logistics Inc denies the claimant was an employee. The claimant was at all times an owner/operator leasing a truck from Viper Logistics Inc. Viper Logistics Inc voided this contract for non-payment on May 25, 2015.

He also argues the claimant received a higher payment on each job because he was an independent contractor. Had he been an employee, he would have received a much lower rate per job.

### **FINDINGS OF FACT**

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "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.

The claimant entered into an arrangement with Viper Logistics Inc under his business name of Primo Trucking. He completed a W-9 on February 25, 2015, under the name Primo Trucking and the associated employer identification number of 06-1836231. The parties executed an Addendum to Independent Contractor Operating Agreement on January 4, 2015, Plaintiff's Exhibit #1. No evidence of the original Independent Contractor Operating Agreement was provided by either party. The parties completed multiple lease agreements for the use of a truck for beginning January 2015 and expiring February 28, 2015.

The claimant argues he initially began the relationship with Viper Logistics Inc as an independent contractor. However, when the lease for the truck expired on February 28, 2015, he alleges he became an employee on March 1, 2015.

Viper Logistics Inc argues the claimant was at all times an independent contractor as an owner/operator. He contends the relationship continued under the

terms of the lease agreement which expired February 28, 2015, without any changes by either party. Ultimately, Viper Logistics Inc canceled the lease contract on May 25, 2015, for non-payment by the claimant.

The claimant's argument that the expiration of the lease contract changed the relationship to that of an employee/employer is not persuasive. Nothing in the lease agreement discussed the working relationship between Viper Logistics Inc and Anthony Hartley dba Primo Trucking. The lease agreement only addressed the term and conditions for the lease of the truck.

The Hearing Officer finds the claimant met all of the criteria list in (a) through (g) to be considered an independent contractor as the claimant has a social security number and an employer identification number; he had control and discretion over the means and manner of the performance of the work; he had control over the time he worked, and could accept or refuse jobs as he saw fit; Viper Logistics did not prohibit him from hiring assistants; he held himself out to be in business for himself and has registered with the state as a business; he was responsible for the satisfactory completion of the work and per the Addendum to Independent Contractor Operating Agreement could be held contractually responsible for the failure to complete the work; and he was not required to work exclusively for the employer.

Because the claimant was an independent contractor, not an employee of an employer, this Department does not have jurisdiction over his claim. The claimant may have a cause of action in another legal venue.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that his 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.

Neither party provided specific documentation regarding the original Independent Contractor Operating Agreement, only the one page addendum. Both parties submitted documentation regarding receipts for expenses, payments made, text messages, emails, and narratives. Documentation regarding the relationship between the parties was noticeably missing.

The Hearing Officer finds the claimant failed provide testimony and evidence to meet his burden in this claim.

**DECISION**

Based on the testimony and evidence presented, as RSA 275:51 V affords the Wage Claim process to employees of employers only, it is hereby ruled that the Wage Claim is invalid due to a lack of jurisdiction by this Department.

---

Melissa J. Delorey  
Hearing Officer

Date of Decision: August 25, 2015

Original: Claimant  
cc: Viper Logistics Inc.  
MJD/kdc