

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

RELIABLE RESTORATION AND RECOVERY

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages

Employer: Reliable Rest and Recovery, 333 Pleasant St, Epping, NH 03042

Date of Hearing: July 30, 2015

Case No. 50636

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 3, 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 July 10, 2015.

The claimant testified that he worked for the employer for about three months. He was an hourly employee and scanned a card to record his hours. The claimant further testified that he worked six days and two hours for his last pay check. This was not paid and so the Wage Claim is for 50 hours at a rate of \$14.00 per hour.

The claimant is also seeking liquidated damages because he feels that the employer was willful and did not have good cause to pay him for his last 50 hours of work.

The employer testified that the claimant was terminated "for cause" on Tuesday April 28, 2015. The termination was the result of an incident that occurred on Monday April 27, 2015. The employer testified that the claimant worked for a recorded 12.25 hours on Monday, April 27, 2015. On the Tuesday the claimant was called into work and terminated. The claimant was paid the minimum of two hours for this Tuesday.

The employer produced a time record that showed the claimant worked a total of 35 hours for the week ending April 24, 2015. Because of the termination, the claimant was paid the 12.25 hours and the 2 hours with the paycheck for the week ending April 24. The time records show 35 hours plus 12.25 hours and 2 hours, as time worked for the last check.

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 275:44 IV If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This part of the law allows for a claimant to seek liquidated damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

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 employer was credible and produced records that showed the claimant was paid for all hours worked. The claimant was seeking six days of pay plus two hours on the last day of

employment. The claimant was paid for the last full week (35 hours) and one full day on Monday (12.25 hours) and the mandated two hours on Tuesday the day the claimant was terminated "for cause".

The claimant appeared to have the dates of the last days of work mixed up. The times he gave were not accurate but the dates cited, although not in line with the claimant's testimony, reflected the days and hours he said he worked and signed off as having worked.

There is no finding for liquidated damages.

The Wage Claim is invalid.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 25, 2015

TFH/kdc