

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



V

**Ledges Golf Link Inc dba Loudon Country Club**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:48 I/II illegal deductions  
RSA 275:44 IV liquidated damages  
RSA 279:26-b mandatory tip pooling

**Employer:** Ledges Golf Link Inc dba Loudon Country Club, 653 NH Rte 106, Loudon, NH 03307

**Date of Hearing:** August 19, 2015

**Case No.:** 51087

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$1,934.00 in unpaid wages which the employer illegally deducted from her because they required her to participate in a mandatory tip pool. She alleges these tips/wages were illegally deducted from her during the 2012, 2013 and 2014 seasons.

The employer denies the claimant participated in a mandatory tip pool. They argue the employees who work in this section have agreed amongst themselves to participate in a tip pool. The employees handle the management and arrangements regarding all aspects of the tip pool, including how the tips are split and distributed.

**FINDINGS OF FACT**

- The claimant presented three W-2 forms showing tips claimed as follows:
- 2012 \$346.75
  - 2013 \$305.50
  - 2014 \$315.00

She claims she participated in a mandatory tip pooling arrangement in which she gave away tips in an equal amount to the amount she claimed for her taxes.

The employer argues the tip pooling arrangement was completely voluntary. The employees decided amongst themselves to participate in a tip pool and managed the pool themselves.

Both parties presented documentation, previously submitted, from employees, both past and present, stating agreement with each party's position.

The Hearing Officer finds that the claimant testified as credibly, not more credibly, than the employer. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that she was required to participate in a mandatory tip pooling arrangement and that the employer illegally deducted her tips/wages. The Hearing Officer finds that the claimant failed to meet that burden of proof as her story is only as credible as, not more credible than, the employer's. The claimant, therefore, fails to prove by a preponderance of the evidence that she is owed the claimed wages.

Because no wages are found to be owed, no liquidated damages can be awarded.

### **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.

Even if the claimant had met her burden to prove she had participated in a mandatory tip pool, she would still have the burden to prove tips/wages had been illegally deducted from her.

RSA 275:51 V requires that an employee file a Wage Claim no later than thirty-six months from the date the wages were due. This Wage Claim was filed with this Department on July 22, 2015. Therefore, any portion of the claim prior to July 22, 2012, cannot be dealt with through this decision.

The claimant only presented W-2 forms for year-end to show the tips she was claiming. As she did not show the dates the tips/wages were distributed in the tip pool for any year, but specifically 2012, the claimed \$346.75 for 2012 would be barred by the statute of limitations as the Hearing Officer cannot determine when the tips were pooled.

The claimant provided testimony employees received tips came from a number of sources including a "beer cart" (a mobile unit from which beverages and food were sold on the golf course), tabs customers ran throughout their visits, and a tip jar located on the bar. She did not operate the beer cart. Throughout all relevant periods for the claim, the claimant was a bartender.

The claimant alleges that the amount she tipped out to other employees, an amount equal to the tips claimed for her taxes, were her tips. During the time she participated in a tip pool, she claimed the amount of tips she took home each day, with the exception of banquet gratuities which are not a part of this hearing. The claimant did not keep a record of the tips that she received directly from the customers. The claimant would be unable to prove the total amount of tips that she received directly from

customers, and subsequently, the tips she gave away as part of the tip pool. She would also be unable to prove that she did not financially benefit from participating in the tip pool, rather than distributing her own tips to other staff.

Therefore, the Hearing Officer would have found that the claimant did not prove by a preponderance of the evidence that she would have been due the claimed tips/wages for 2013 and 2014.

### **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: September 18, 2015

MJD/kdc