

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Pay Less Towing LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary

Employer: Pay Less Towing LLC, 193 Union Sq, Milford, NH 03055

Date of Hearing: October 28, 2015

Case No.: 51161

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of his wage claim, that he was owed \$745.49 in unpaid salary weeks worked between October 2014 and May 2015.

He subsequently amended his claim, prior to the hearing, to \$1,729.00, for two and one half hours not paid each week for thirty-three weeks.

At the hearing, the claimant again amended his claim, to \$3,678.67, stating he worked 46.5 hours each week and was only compensated for 40. He alleges he is due the 6.5 hours of overtime at an overtime rate of \$17.15.

The employer denies the claimant was not paid for all time worked. He asserts the claimant was always an hourly employee and received payment for all time worked.

FINDINGS OF FACT

The claimant worked for the employer from late September 2014, through July 4, 2015. His first paycheck was dated October 3, 2014 and the last July 3, 2015.

The employer previously submitted a notice of rate of pay signed by the claimant on October 2, 2014, showing a rate of \$7.25 per hour. The claimant received additional increases in his rate of pay which the employer did not reduce to writing.

The claimant argued different theories under which he believed the employer owed additional wages. He initially argued he had been salaried and did not receive his full regular salary during each pay period that he performed work. He then argued he received an hourly rate and did not receive payment for all hours worked. He then argued he should have received additional overtime as an hourly employee.

The claimant took particular issue with the fact that his pay stubs did not show the number of hours he worked during any given week. Because he claims he did not know his hourly rate or the number of hours he worked during any given week, he argued he is due the claimed wages.

The employer maintains the claimant received his regular hourly rate, including overtime, for all hours worked. The employer maintained that the claimant had completed timesheets, but they were unable to locate those records. They provided samples from other employees, previously submitted.

The claimant's argument that the total number of hours did not show on his pay stub and he could not figure out his wages, is not persuasive. RSA 275:49 IV requires an employer to furnish each employee with a statement of deductions made from his or her wages under RSA 275:48 for each pay period such deductions are made. The employer did provide this information on each check that the claimant received. There are no requirements for the employer to furnish the number of hours worked on a pay stub.

The claimant argued passionately that he was not paid all wages due, under several theories. The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he was not paid for all hours worked. The Hearing Officer finds that the claimant failed to meet that burden of proof as his 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 he is owed the claimed wages.

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.

The Hearing Officer finds the claimant failed to meet his 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 he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: November 6, 2015

MJD/kdc