

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

KINGSTON FAIRWAYS GOLF COURSE

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Kingston Fairways Golf Course, PO Box 728, Kingston, NH 03848

Date of Hearing: October 1, 2015

Case No. 51282

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on August 6, 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 September 9, 2015. The employer was telephonic for the hearing.

The claimant testified that she worked for the employer for sixteen years. She was an hourly employee at a rate of \$12.50 per hour. The claimant stated that she did fill out time sheets for the hours worked. The claimant further stated that she worked sixty hours over the last two weeks of her employment. The claimant stated that she was paid by a payroll service and was paid wages for the time worked in 2015 except for the last two weeks. The claimant worked as a cashier and stocked supplies.

The claimant testified that she learned from a friend that she had been terminated from her job. She asked another person to pick up her last check and that person said, in a written statement, that when he asked for the check another person pulled the time card out of the rack and tore it up. They told the person that the claimant was no longer an employee of the golf course.

The claimant testified that the checks she received for work performed in 2015 were signed either by Gail Andersen, a 25% member of the LLC, or Barbara Colanton, a 50% member of the LLC.

The employer, the Manager of the LLC, testified that the claimant had not worked for the employer in 2015. The Manager is a 25% member of the LLC and she stated that she never

saw the claimant work at the course in 2015. The employer testified that the claimant testified in court proceedings against the LLC and certain member(s). The employer said there was a Court order for the claimant to stay away from the course and not interfere with the club operations.

The Manger further testified that the employer paid employees through a payroll service and that the claimant's name did not appear on a payroll list. She further stated that if the claimant said she was paid through an account that was not part of the payroll service, the pay account had nothing to do with the Golf Course.

The employer maintains that all wages have been paid.

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.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is valid. The claimant has the burden to show that there are wages due and owing and she met this burden.

The claimant was credible in her testimony that she worked for the employer for many years and did work in 2015. The claimant said she was paid some wages and she did submit a

written statement from a person who saw her time card ripped up when he went to pick up her last paycheck.

The employer submitted a Court order that restricted the claimant from going to the property. The order received as an exhibit did not mention the claimant by name. The employer further stated that if there were payroll checks they were not issued on a golf course account. It is found that the claimant was paid some wages and it is not the claimant's responsibility to have payroll account information. The claimant was receiving wages on checks signed by different members of the LLC. The claimant would not be responsible for any problems with the management of the LLC and so should not suffer any loss of wages because of perceived in-fighting with the members.

The Wage Claim is valid in the amount of \$750.00.

DECISION AND ORDER

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 Hearing Officer finds that the claimant proved by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$750.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$750.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 26, 2015

TFH/kdc