

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
RSA 275:43-b unpaid salary

Employer: Kingston Fairways Golf Course, PO Box 728, 69 East Kingston Rd,
Kingston, NH 03848

Date of Hearing: September 30, 2015

Case No. 51284

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 claimant testified that he worked for the employer, on and off, since 1980. There was never any written agreement for a wage plan. He testified that his wage plan was for \$1,000.00 per week and he worked nine weeks in 2015. He testified that he started to work on April 15, 2015 to prepare the course for the upcoming season. This was part of his normal duties at the start of the year. The claimant stated that he held the position of Superintendent and Golf Pro. He did state that he was not a certified PGA Golf Professional but his duties did require him to set up golf leagues for the season. He testified that in 2015 he cleaned up the course from severe winter damage and during his tenure there were people paying to use the course and the facilities.

The claimant testified that he received four weeks of wages with checks signed by Gail Andersen, his wife and a 25% member of the LLC. He did state that one of his checks was signed by Barbara Colanton the 50% member of the LLC.

The claimant stated that he heard that he was discharged from employment because of allegation of theft and embezzlement but no charges were ever brought forth. The claimant also received a letter from an attorney for the LLC stating that June 12, 2015 was his last day of employment for Kingston Fairways Golf Course.

The claimant testified that he was on the payroll for 14 years and paid to get the course ready and to close the course. At the end of his last period of work, he had been paid for four of the nine weeks of salary. The Wage Claim is for \$5,000.00.

The employer testified that the Golf Course was an LLC and that there were three members. Two owned 25% each for a collective total of 50% of the club and one owned the other 50%. The Manager of the LLC testified that there was a Court order for the claimant and his wife, one of the 25% owners, to not come to the golf course. The employer further testified that the claimant had not worked at the club since October 24, 2014.

The employer presented a letter from an attorney, dismissing the claimant from his employment on June 12, 2015. The wife of the claimant, a 25% owner, was also asked not to come to the golf club. The Manager of the LLC still maintained that the claimant did not do any work at the club since October of 2014.

The Manager of the LLC further testified that the claimant was never on the payroll system in 2015. The employer testified that the claimant was not fired but was not rehired for 2015. The Manager did state that the claimant's wife was aware of the fact that the claimant was not going to be rehired.

The Manager further pointed out that the claimant was paid, in 2015, from an account controlled by his wife and not a part of the payroll system.

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 part of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43-b I. A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked; provided, however, a salaried employee may not be paid a full salary in each of the following instances:

(a) Any pay period in which such employee performs no work.

(b) When an employee receives a disciplinary suspension without pay in accordance with the Fair Labor Standards Act, as amended, for any portion of a pay period, and written notification is given to the employee, at least one pay period in advance, in accordance with a written progressive disciplinary policy, plan or practice and the suspension is in full day increments.

(c) If an unpaid leave of absence for a salaried employee is allowed pursuant to a written bona fide plan, policy or practice for absences, of a full day or more, of an employee caused by bereavement leave.

(d) Any portion of a work day or pay period for leave taken under, and in accordance with, the federal Family and Medical Leave Act of 1993, as amended, if written notification from the employer stating the reason for such leave is given to the employee and placed in the employee's personnel file.

(e) If the salaried employee voluntarily, without coercion or pressure, requests time off without pay for any portion of a pay period, after the employee has exhausted any leave time pursuant to a written bona fide leave plan, practice or policy and such leave time requested by the employee is granted by the employer.

II. Employers may prorate salary to a daily basis when a salaried employee is hired after the beginning of a pay period, terminates of his own accord before the end of a pay period, or is terminated for cause by the employer.

III. The employer may offset any amounts received by a salaried employee for jury duty or witness fees or military pay for a particular pay period, against the salary due for that pay period pursuant to a written bona fide leave plan, practice or policy.

This section of the law points out when and how a salaried employee is to be paid.

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 he met this burden. The claimant provided credible testimony as to his role in the work performed at the golf course.

Although the claimant was married to one of the members of the LLC, he was not responsible for the source of his actual pay. The claimant provided credible testimony that some of the checks were signed by his wife and at least one was signed by the 50% member of the LLC.

The employer provided a letter from an attorney that told the claimant that he was through with work, at the golf course, on June 12, 2015. This date is approximately nine weeks after the claimant testified that he started to work in 2015. During this time the claimant received four weeks of pay.

In questioning the employer about work done to get the course ready for the season, the claimant was again credible in the work done and the duties assumed by his position at the

club. The claimant, when questioned about his certification as a Golf Professional, did testify that he was not certified. There was no testimony if this certification was a necessary requirement for the position held. He was credible in his testimony that he performed the duties.

There were allegations of theft and embezzlement from the Golf Course but there was no records or proof brought forth to sustain these allegations. The employer said that claimant should not have been paid from a certain account but the fact remains that he was paid for his work. The claimant was also credible in his testimony that two of the three members of the LLC signed checks for his wages.

The claimant was credible in his testimony and the employer did not rebut the testimony presented with evidence that it was not correct. The Wage Claim is valid in the claimed amount of \$5,000.00.

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 he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$5,000.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$5,000.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 21, 2015

TFH/kdc