

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

ROCHESTER PANCAKES (IHOP)

DECISION OF THE HEARING OFFICER

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

Employer: Rochester Pancakes (IHOP), 160 Washington St Ste 401, Rochester,
NH 03867

Date of Hearing: December 29, 2015

Case No.: 51851

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on November 10, 2015. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on December 8, 2015. The employer was represented at the hearing.

The claimant testified that he worked for the employer for several weeks. He was a salaried employee and paid on a bi-weekly pay schedule. The claimant testified that he was terminated from his position in a pay period. He also stated that he was still undergoing his training program.

The claimant testified that there was no disciplinary action against him and that he was told his termination was because he did not fit in with the company plans. His last day of work was November 6, 2015 and the pay period ended on November 16, 2005. The claimant feels that he is due the net salary of \$1,166.65 for the remaining days of the pay period.

The employer testified that they paid the claimant for all hours of work and that the claimant was terminated "for cause".

FINDINGS OF FACT

RSA 275:43 I Weekly 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 275:43-b Payment of Salaried Employees.

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 part of the law deals with the process of paying wages in a salary system. The law tells when and how the wages have to be paid and how they can be stopped.

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 that he was in the training period with the company and he was terminated while working into a pay period. The claimant did not feel that he was discharged "for cause" because all he was told when he was terminated was that he was not a "good fit". The claimant testified credibly that he had not received any discipline during his short tenure with the company.

The employer did not produce any disciplinary action in a written form and did not present any type of corrective action that could be taken by the claimant. The discharge was during a pay period and the claimant was paid for all time worked in the pay period.

The law requires that an employee must be paid if the employee works any part of a pay period and is a salaried employee. There are ways to stop the payment of salary such as a voluntary quit. This did not happen in this case. There is also no finding that there was a discharge "for cause".

The Wage Claim is valid in the amount of \$1,166.65.

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 \$1,166.65.

The employer is hereby ordered to send a check to this Department, payable to James L. Bride III in the total of \$1,166.65 less any applicable taxes if there are taxes due, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: January 21, 2016
TFH/slh