

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

**V**

**CUMBERLAND TRANSPORTATION**  
**dba PELICAN TRANSPORTATION**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses

**Employer:** Cumberland Transportation dba Pelican Transportation, 500 Harvey Rd,  
Ste 103, Manchester NH 03103

**Date of Hearing:** December 28, 2015

**Case No.:** 51858

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on November 12, 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 hearing was held open until January 5, 2016 so that the claimant could get a copy of the ticket/fine from the Department of Safety.

The claimant testified that he was hired by the employer in April of 2015. He was a salaried employee and was paid in cash.

In July of 2015 the claimant was stopped for driving an unregistered motor vehicle. The vehicle was a van owned by the employer. He testified that the employer asked him for the price of the ticket and the employer would pay the fine.

The claimant said that he left the job in September and he went to renew his New Hampshire license. He was told that he could not renew the license because there was an outstanding fine for the unregistered vehicle. The claimant testified that he paid \$115.00 for the fine in order to renew his driver's license.

The claimant further testified that he was not paid for the last two pay periods. The Wage Claim is for \$1,075.00 in unpaid wages and employee expenses.

The employer testified that he paid the claimant up to date and had always paid on time since the claimant started to work. The claimant had asked for cash payments because he held another job and said that he would be responsible for his own taxes. The claimant was a salaried employee and received a cash payment for every pay period worked.

The employer also said that he knew about the fine and that the vehicle was owned by the employer. He asked for the ticket and he would pay the fine. The claimant never presented the ticket and if he were to do so, the employer would reimburse the amount of the fine to the claimant.

The employer testified that the claimant was paid \$760.00 in cash for his last pay period. The employer testified that there are no wages owed and upon receipt of the paid ticket, the employer will pay for the expenses to the claimant.

The Hearing Officer asked that the claimant provide a copy of the payment of the ticket. The claimant did bring in a copy of the payment to the Division of Motor Vehicles. The employer did state that the registration on the ticket was that of a vehicle owned by the employer.

### **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 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as employee expenses into the category of wages when the expenses 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 in part and invalid in part.

The claimant stated that he worked for the employer for several months and was paid in cash for his wages. It was only the last pay period that he was not paid. There was no testimony that this was an ongoing problem.

The employer was persuasive and credible in his testimony that he paid cash at the request of the claimant and that he always paid for time worked. The employer credibly stated that all wages due had been paid.

The employer did testify that if the claimant suffered an expense because of an unregistered vehicle and that vehicle was owned by the employer, he would pay the fine back to the claimant. The claimant was asked to produce a copy of a receipt for the fine.

The claimant did produce a copy of the fine receipt and the employer did say that it was one of his vehicles on the ticket. The ticket however was for \$62.00 and not for \$115.00.

There are no unpaid salaried wages due but the Wage Claim for unpaid expenses is valid in the amount of \$62.00.

#### **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 that he was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$62.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$62.00 within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: January 14, 2016

TFH/slh