

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

MORRIS HOSPITALITY INC.
dba FRANCONIA INN

DECISION OF THE HEARING OFFICER

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

Employer: Morris Hospitality Inc. dba Franconia Inn, 1172 Easton Rd., Franconia NH 03580

Date of Hearing: February 1, 2016

Case No.: 51935

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on December 1, 2015. The notice was sent to the employer and there was a written 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 January 13, 2016.

The claimant testified that he worked for the employer for fifteen weeks. He was paid bi-weekly and was a salaried employee. The claimant testified that he worked under a hiring agreement that was to pay him \$800.00 a week, after taxes.

The claimant testified that he met with the employer and drew up a written agreement and he worked under that agreement for the fifteen week period until he was terminated in early November of 2015. The claimant testified that he was paid the same amount every week, \$684.43. The claimant believes the difference between the \$800.00 and the amount paid was \$115.57 for fifteen weeks. This amount of \$1,733.55 is the amount of the Wage Claim.

The claimant testified that he never questioned the amount and that at the start of the working relationship everything was going well. It was after the discharge that the claimant filed the Wage Claim because he felt his hiring agreement was for \$800.00 per week after taxes were deducted. The \$800.00 per week was handwritten in the hiring agreement and it meant that it was after taxes had been deducted. The claimant showed a copy of his written agreement and it did state that the \$800.00 was after taxes.

The employer testified and submitted the written signed agreement, and it did not say that the \$800.00 was after taxes but the total of the weekly wage. The owner testified that he has been in business since 1981 and never had a hiring agreement that spelled out the wages after taxes. The owner stated that the rate of hire was \$800.00 per week and this is the amount the claimant worked for without question or complaint. The owners' written agreement does not say that the amount is after taxes.

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.

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 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.

This part of the law spells out how a salaried employee is to be paid and the conditions under which he/she works.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

The owner provided credible testimony as to the intent of the salary being \$800.00 per week. The owner was also credible in his testimony that he never hired at a rate that was quoted after taxes. The claimant was hired for \$800.00 per week and he worked for fifteen weeks without questioning this amount.

The testimony shows that there was a good working relationship at the start of the employment. Whatever happened that caused the claimant to be discharged from his position is immaterial to the claim. At no time during the employment did the weekly rate get challenged. The Wage Claim brought forth the problem after the discharge.

The Wage Claim is invalid.

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 the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: February 19, 2016

Original: Claimant

cc: Employer

TFH/aph