

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



**V**

**SKY ZONE MANCHESTER**  
**(BLOOMING VINE, LLC)**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses  
RSA 275:44 IV liquidated damages

**Employer:** Sky Zone Manchester/Blooming Vine, 108 Golfview Drive, Manchester NH 03102

**Date of Hearing:** February 3, 2016

**Case No.:** 51967

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on December 4, 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 January 13, 2016.

The Wage Claim was filed in four different areas of the law. The first was for a month of wages, the second for liquidated damages, the third for employee expenses and the fourth was for 2% interest on the amount owed for a time period of 45 days. The claimant could not explain the 2% interest issue and he dropped that from the Wage Claim.

The claimant testified that he was hired by the employer as the General Manager. He signed a written contract that started on November 1, 2015. The written contract called for a salary of \$5,769.20 per month. This was a company starting with a new location in New Hampshire.

The employer was going to hire an entire staff to run the facility and the claimant was to schedule interviews and to sit in on them. The claimant testified that he worked for the month of October setting up the staff so that the facility could open in November.

The claimant also testified that he felt the employer just wanted to set up the business and that they were going to hire younger managers. The claimant said that he was terminated from his position in the first month. He feels that the employer was willful and did not have good cause for their action. He is seeking liquidated damages in the amount of \$5,769.20.

The claimant also testified that the employer sent him to a training session in New York and that he used his own vehicle. The employer paid for the fuel used but not for the wear and tear on the car. The claimant is seeking \$500.00 for this expense.

The claimant also testified that he did not raise the issue of wages and expenses while he was employed by the company. He stated that he was a new employee and wanted to see his position and the employer do well with the startup facility.

The employer testified that the claimant applied for the position in September of 2015. An employment contract was drawn up and signed and the start date of employment was November 1, 2015. The claimant was aware of the starting time and offered to set up some of the interviews and sit in on some of the interviews. The employer maintains that the claimant acted in a voluntary position to help the company get set up for business. The employer did allow the claimant to set up some of the appointments and to sit in on the interviews.

The employer does not feel that liquidated damages are due because the claimant was working under a signed agreement and was paid in accordance with that agreement. The claimant never asked for any wages to be paid prior to November 1, 2015 and the employer feels that they are a part of this Wage Claim solely because the claimant was cited by the employer for a series of incidents that led the company to talk to the claimant about his actions. The claimant voluntarily resigned his position with the company.

The employer also testified that the claimant was asked to attend a training session in New York and that he was provided transportation for the session. The claimant requested that he be allowed to use his own vehicle to attend. The employer agreed and did pay for fuel usage to and from the training session. The employer testified that the claimant never asked for extra car expenses until after he resigned his position.

The employer feels that all wages have been paid and that they were paid in a timely fashion. There are no wages or employee expenses due.

### **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 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.

RSA 275:44 IV If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

Under this section of the law a claimant can ask for liquidated damages up to the amount of the Wage Claim when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

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 has the burden to show that there are wages due and owing and he met part of this burden.

The claimant and the employer testified that there was work performed by the claimant during the month of October. The claimant testified that he was setting up interviews and did sit in on some of the interviews. The employer did not disagree with this except to say that the written contract did not have the claimant starting until November. Neither side disagreed that the claimant was holding a salaried position.

An employer cannot allow an employee to work for free. In this case there was a written contract and it was for a salaried position that started in November. However, the claimant actually started in October and performed work for the employer. The claimant has to be paid for this work. The only identifiable wage structure was salaried and a person working in a salaried position works for "the many or the few" hours in a pay period. There was no testimony that pointed out that the claimant did not work a part of the pay periods in the month of October. This part of the Wage Claim is valid in the amount of \$5,769.20.

The employer provided credible testimony that the employee expenses were suffered by the employee and not the company. The Hearing Officer finds that the claimant accepted an amount for fuel and this was paid. The claimant asked to take his own vehicle and not go with the vehicle provided by the employer. The claim for employee expenses is invalid.

The Hearing Officer also finds that the employer did not willfully withhold wages. The employer had good cause to believe that the claimant was working for free in the month of October. This belief does not reach the standard for liquidated damages. The request for liquidated damages is denied.

### **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 \$5,769.20.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$5,769.20, less any applicable taxes, within 20 days of the date of this Order.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: February 24, 2016

Original: Claimant

cc: Employer

TFH/aph