

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



V

**North Coast Services LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages

**Date of Hearing:** February 24, 2016

**Case No.:** 51972

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$4,394.00 for two paid fifteen minute breaks per day for one hundred sixty-nine weeks and four days. He argues the employer offered two fifteen minute paid breaks in his offer letter. He worked on commissions 95% of the time and seeks payment for the two fifteen minutes breaks.

The employer argues the claimant received payment for all time and commissions due. On the days he worked in a commissioned capacity, the claimant did not have a schedule set by the employer and could take as many breaks as he chose. On the days he worked in an hourly capacity, he chose to use the fifteen minute breaks in lieu of the unpaid meal period.

**FINDINGS OF FACT**

The claimant worked for the employer in both an hourly capacity and a commissioned capacity. His work in either capacity was in full day increments.

The claimant argues his August 24, 2012, offer letter states he is to receive two fifteen minute paid breaks, daily, and on the days he worked in a commissioned capacity, he did not receive payment for those breaks.

The claimant is seeking to receive his regular hourly rate for these paid breaks for days he was engaged on a commissioned basis.

Breaks of less than twenty minutes, or rest periods, are considered time worked under 29CFR785.18 incorporated by LAB 803.04, which states, "Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time".

Therefore, these breaks must be compensated.

Though the claimant did not receive an hourly rate during the days he received a commissioned wage, he did track his hours worked, as required by the employer. He did not punch out for any fifteen minute breaks he may have taken.

RSA 279:21 requires an employer to pay employees at least minimum wage for all hours worked. The employer calculated that the claimant received between \$20 and \$40 per hour for all hours worked on a commissioned basis, including any time for breaks or rest periods as included as the total hours worked, well in excess of the statutory minimum wage of \$7.25.

As the breaks are included in the total hours worked, the breaks were in fact paid by the employer through the commissioned rate. If the claimant had not received the statutory minimum wage for all hours worked, including any rest periods of less than twenty minutes, the employer would have had to make up the difference to the claimant.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed wages.

### **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 that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: March 2, 2016

Original: Claimant  
cc: Employer

MJD/aph