

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Town of Middleton

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime wages
RSA 275:44 IV liquidated damages

Date of Hearing: March 3, 2016

Case No.: 52131

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$135.93 in unpaid overtime wages for hours worked week ending November 28, 2015. He alleges the employer improperly calculated his overtime pay.

The employer argues they correctly calculated the overtime pay, in the same manner they have always done.

FINDINGS OF FACT

The parties agree to the substantive facts of the case, which are:

During the pay week of November 22 through November 28, 2015, the claimant worked a total of 63.5 hours as follows:

Sunday	14.5 hours
Monday	10.0 hours
Tuesday	0.0 hours
Wednesday	4.0 hours
Thursday	10.0 hours
Friday	11.5 hours
Saturday	13.5 hours

Thursday and Friday are classified as holidays under the employer's written policy as Thanksgiving and the Day after Thanksgiving. The claimant worked 21.5 hours on these holidays, for which he received time and one half his regular rate of pay, pursuant to the written policy of the employer.

The parties disagree as to the calculation of the overtime because the claimant received holiday pay for the 21.5 hours worked on the two holidays.

The employer used the cumulative hours for the week, 63.5, and deducted the hours paid at the holiday rate, 21.5, for a balance of 42.0 hours. As they pay an overtime rate on hours worked over 40, they paid the claimant his regular hourly rate, or straight time, for 40 hours and his overtime rate for 2 hours.

The claimant argues the employer should have paid the overtime rate based on the hours as worked during the progression of the week. Between Sunday and Wednesday, the claimant worked 28.5 hours, for which he received his regular hourly rate, or straight time. On Thursday, a holiday, he worked 10.0 hours for which he receive the holiday rate, and ended the day with a current total of 38.5 hours worked. On Friday, a holiday, he worked 11.5 hours for which he received the holiday rate. During the hours worked on Friday, he crossed over 40 hours worked for the week. Subsequently, all of the hours worked on Saturday, 13.5, should have been paid at the overtime rate.

The employer does not argue the requirement to pay overtime wages, only how it is calculated. The written policy states that "overtime" shall mean authorized work performed in excess of 40 hours during a work week, previously submitted.

The parties agree the work performed by the claimant was authorized and within one work week.

The employer's calculation of the overtime pay is not supported by the written policy. The policy states overtime is work performed in excess 40 hour during a work week. The claimant worked in excess of forty hours one and one half hours into his shift on Friday, November 27, 2015. The balance of his hours worked for the week ending November 28, 2015, should have been paid at the overtime rate. The fact that the claimant received holiday pay, which is paid at the same rate as overtime pay for all hours worked on Thursday, November 26, 2015 and Friday, November 27, 2015, is not relevant.

Therefore, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed wages under the written policy of the employer, in the amount of \$135.93.

The claimant agrees he is not due liquidated damages under RSA 275:44 IV as he is still employed with the Town. However, he argues that because the employer has adopted portions of the Fair Labor Standards Act (FLSA), that it should be considered they have adopted all of the FLSA into their policy, which allows for double and treble damages.

The claimant's argument is not persuasive. The employer did not notice the claimant verbally or in writing they had adopted the damages portion of the FLSA. Further, this Department does not have jurisdiction to enforce the FLSA.

As the claimant is still employed with the Town, RSA 275:44 IV is not applicable.

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

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 Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed overtime wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$135.93.

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.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$135.93, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 11, 2016

Original: Claimant
cc: Employer
Laura Spector-Morgan, Esq

MJD/aph