

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

NEW ENGLAND SIGNAL SYSTEMS INC

DECISION OF THE HEARING OFFICER

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

Employer: New England Signal Systems Inc., PO Box 326, Northwood, NH 03261

Date of Hearing: March 24, 2016

Case No.: 52226

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 29, 2016. 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 March 7, 2016. The claimant is seeking \$13,500.00 in unpaid wages including overtime and a similar amount, \$13,500.00 in liquidated damages.

The claimant testified that he worked for the employer for twelve years. The employer terminated his employment in October of 2015. The claimant stated that he was an hourly employee. During his twelve years of employment the claimant testified that he had never raised a pay issue with the employer.

The claimant testified that he arrived at the shop every day and was paid for the ride to the worksite. The problem occurred when the time after leaving the job and returning to the site was not paid. The claimant said that the employees turned in their time cards once a week.

The claimant feels that during the last three years of his employment, he worked 392 hours that were not paid and he made an hourly rate of \$19.00 per hour. The claimant did say that there were times when he drove the truck that required a CDL license and he was paid for travel to and from the worksite.

The claimant testified that he estimates that he is due 392 hours over the last three years. He also believes that he is due premium pay for all hours worked over the forty hours worked in a week. The claimant is also seeking liquidated damages in the amount of his last paycheck because he was not paid within 72 hours of termination.

The employer testified that the claimant was paid for all hours worked. The company has a policy that an employee can ride to a worksite in a company vehicle or meet there on their own. The company policy was to pay the driver with the CDL license for all time driving. The employees were also paid if there was a need to load the truck before setting off to the job.

The employer further testified that when the claimant drove the truck that required the CDL license he was paid for the time of the drive. The employer further testified that the claimant had access to a company pickup truck and he was free to use this vehicle as needed. The claimant was under no obligation to return to the shop if it was easier to just return to his home.

The employer further testified that the claimant filled out time slips and was aware of the policy. The claimant never challenged the policy while he was employed.

The employer stated that the claimant was terminated and he was paid for the hours worked on the next regular scheduled pay day. The employer was not aware of the 72 hour time frame when an employee is terminated, for cause.

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 279:21 VIII Those employees covered by the introductory paragraph of this section, with the following exceptions, shall, in addition to their regular compensation, be paid at the rate of time and one-half for all time worked in excess of 40 hours in any one week.

This part of the law allows for an hourly employee to receive premium pay when the employee goes beyond the established forty hour work week. The employer must also be governed by New Hampshire law in this area.

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.

This part of the law allows for a claimant to seek 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 actions.

It is the finding of the Hearing Officer, based on the written presentations 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 carry this burden.

The employer was credible in their testimony that there were work rules in place and that the claimant followed those rules for twelve years. During that period of time the claimant filled out time sheets and was paid for all hours worked.

When the claimant drove the truck that was over the 26,000 pound limit, the claimant was paid for his time. If the claimant helped to load the truck, if needed, he was paid for his time. The claimant did fill out his time sheets and was paid for the work performed.

The claimant also had the availability of a company truck issued to him which he controlled his time upon return to the shop or to go right directly home.

The claimant presented a rough time schedule that could not be followed to see the time that he worked to help loading the truck or if he drove the large truck. The claimant did not bear his burden to show that these were the dates where he was not paid all hours worked.

There is also no finding for liquidated damages. The employer admitted that they were not aware of the 72 hour limit and that they paid on the next scheduled payday. This does not rise to the level of willfulness and that they performed the act without good cause. The request for liquidated damages is denied.

The Wage Claim is invalid.

DECISION

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.

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 was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman

Hearing Officer

Date of Decision: April 12, 2016

cc: New England Signal Systems Inc., PO Box 326, Northwood, NH 03261
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TFH/aph