

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

TJN Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 279:21 VIII unpaid overtime wages

Employer: TJN Inc, 64 Sullivan Farm Dr, Rochester NH 03868

Date of Hearing: August 18, 2016

Case No.: 52985

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$1,566.00 in unpaid overtime wages for travel time hours not paid commuting from the shop to jobsites and back.

The employer denies the claimant is due any wages for travel time. He offers a convenience to allow employees to ride in his trucks to jobsites. The driver is paid for time worked as well as any time an employee is required to perform any work at the shop, i.e. loading trucks. The claimant received payment for wages when he performed work at the shop. Employees are not required to meet at the shop to ride to the jobsites, it is offered as a convenience.

FINDINGS OF FACT

The claimant initially argued he was required to meet at the shop to ride to jobsites. He later admitted he was not required to be at the shop to ride to the jobsite but could arrive to the jobsite on his own.

The employer argues he offers employees the convenience of riding in a company vehicle to jobsites, but it is not required. In the event employees at the shop are required to load vehicles, they are paid for their time.

The claimant's argument that CFR 785.38 requires the employer to pay travel time is not persuasive.

CFR 785.33-41, incorporated by reference at Lab 803.04, discusses travel time. Specifically, "Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and carry tools, travel from a

designated place to the workplaces part of the days work, and must be counted as hours worked regardless of contract, custom, or practice... An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding... ordinary travel from home to work need not be counted as hours worked".

The employer provided credible and persuasive testimony that the claimant was not required to report to the shop to ride to jobsites, but was able to do so as a convenience.

Therefore, the time the claimant spent riding to jobsites as a convenience is not considered time worked.

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.

Melissa J. Delorey
Hearing Officer

Date of Decision: August 31, 2016

Original: Claimant
cc: Employer

MJD/aph