

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

PENUCHE'S BAR AND GRILL

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43-b unpaid salary
RSA 279:21 unpaid minimum wage

Employer: Penuche's Bar and Grill, 96 Hanover Street, Manchester, NH 03101

Date of Hearing: July 25, 2016

Case No.: 53011

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on June 9, 2016. The notice was sent to the employer and there was no written objection. The Notice of Hearing was sent to both parties on July 8, 2016. The employer was present for the hearing.

The claimant testified that he was a salaried employee who was terminated in the middle of a work period. He feels that he was let go from his employment for no reason and so as a salaried employee he is entitled to the wages for the entire pay period.

The claimant also testified that after he was discharged from his employment he calculated his hours worked and his salary and discovered that he was not making the equivalent of the minimum wage. The claimant feels that he is due \$.65 for every hour that he worked. The claimant did testify that he never brought the issue of wages to the attention of the employer while working for the restaurant. He did review the Wage Claim once he was terminated from employment.

The claimant stated that he is due \$223.00 for his last pay period and \$447.85 for all hours paid under the minimum wage.

The employer testified that the claimant was hired at a negotiated wage and the number of hours to be worked. The claimant had been a former part owner of the business. The employer testified that the claimant did not file the proper information with the Department of Labor and the business encountered problems. This time the claimant was hired back as a

salaried employee with set hours. The claimant received all wages up to the date of discharge and cashed all checks issued for the wages. The employer stated that the claimant did not question the wage structure or complain about the minimum wage until he left the employ of the restaurant.

The employer testified that there were problems with the claimant being served papers from the local sheriff, at the restaurant, because of outside domestic problems. The employer testified that they took the keys to the restaurant back from the claimant and terminated his services. The employer maintains that it was a discharge "for cause".

The employer testified that upon discharge, the claimant demanded payment for the work performed in that pay period and he was issued a check for \$100.00. The employer maintains that there are no wages due and owing.

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-b in pertinent part provides that "A salaried employee shall receive full salary for any pay period in which such employee performs any work without regard to the number of days or hours worked.

This part of the law spells out the rules of paying a salaried position and the ways the wage must be paid and the ways a salary can be stopped.

RSA 279:21 **Minimum Hourly Rate.** – Unless otherwise provided by statute, no person, firm, or corporation shall employ any employee at an hourly rate lower than that set forth in the federal minimum wage law, as amended. Tipped employees of a restaurant, hotel, motel, inn or cabin, or ballroom who customarily and regularly receive more than \$30 a month in tips directly from the customers will receive a base rate from the employer of not less than 45 percent of the applicable minimum wage. If an employee shows to the satisfaction of the commissioner that the actual amount of wages received at the end of each pay period did not equal the minimum wage for all hours worked, the employer shall pay the employee the difference to guarantee the applicable minimum wage.

This area of the law governs the payment of a minimum wage for hours worked.

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 did meet part of this burden.

The claimant prevails in the part of the Wage Claim where he feels that he is due for payment of the entire pay period when the employer terminates the employment. The claimant was working into the pay period when he was asked for his keys and terminated. As set forth in statute, a salaried employee that performs work during a pay period is entitled to their full salary for said period, save in certain exceptions which are inapplicable to this instance.

The employer prevails in the area of the minimum wage. The claimant did admit that he was a salaried employee and it was not until he was discharged that he tried to figure out the number of hours worked and the amount of the salary paid. Because he was a salaried employee he was not required to keep track of time worked. The employer was responsible for the payment of wages that did not violate the minimum wage law. The employer was credible in their testimony that the claimant never said that he was being paid too little and he signed and cashed every pay check. There was no documentation to show that the salary fell below the minimum wage. The Wage Claim is invalid in the request for the minimum wage.

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 by a preponderance of the evidence that he was not paid all wages due; it is hereby ruled that the Wage Claim is valid in the amount of \$223.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$223.00, less any applicable taxes, within 20 days of the date of this Order.

All other issues are invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: August 19, 2016

Original: Claimant
cc: Employer

TFH/aph