

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



**V**

**SPEEDWAY 51 INTERNATIONAL LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43-b unpaid salary

**Employer:** Speedway 51 International LLC, 1010 VT 14 S, E. Montpelier, VT 05651

**Date of Hearing:** August 15, 2016

**Case No.:** 53048

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 15, 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 July 27, 2016.

The claimant testified that she started working for the employer on May 12, 2015. At that time she was an hourly employee. During the course of her employment the claimant changed to a salaried employee at a rate of \$300.00 per week. The claimant testified that her employment was ended on January 5, 2016. The claimant has not been paid for the final nine weeks of work from the employer.

The claimant testified that she did a lot of clerical work for the race track. The racing season ended on October 31, 2015 and she continued to work. She did testify that most of her work was done in November. This also included the end of the year racing banquet. The claimant stated that she often worked from home and received numerous inquiries about the office functions until January of 2016 when she realized that she no longer had a job. The claimant said that she received no wages for the final nine weeks.

The employer testified that the claimant was hired for the racing season that ended on October 31, 2015. The racing season is from May to October. The employer testified that the November banquet was a volunteer effort and there were no wages paid. All other inquiries to the claimant were because she knew how to get into the stored documents that were necessary

to file year end reports. The employer stated that the claimant knew that the job was seasonal and not year round.

The employer maintains that all wages have been paid.

### **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 deals with the rules governing a salaried employee and their wages.

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. The claimant has the burden to show that there are wages due and owing and she met this burden.

It is clear to the Hearing Officer that the claimant was hired to work during the racing season. At the end of October the season ended and both parties provided testimony that there was not much work to do, for the claimant's position after the close of the season. The claimant testified that in early November she did some work in setting up the "year end" banquet. In fact the claimant was requesting wages for just the first two weeks of November. The claimant testified that she worked from home after that and did answer some questions on the operation of the business.

The employer testified that when hired he made it clear to the claimant that the work was just for the racing season. The employer further testified that he knew the claimant worked on the banquet but the banquet was always done with voluntary help. The Chef set up the banquet and there were no wages paid for staff working on the banquet.

The Hearing Officer finds that the claimant was credible in her testimony about the first two weeks in November. There was a banquet and the claimant worked on the banquet. The claimant's testimony was credible in that she felt it was part of her job to help make the banquet work. Her testimony further shows that the rest of the time until January of 2016 was working from home and answering questions.

The employer did not make it clear in writing that the term of employment ended at the end of October. There is a risk when an employee continues to work on a company function and is not in a pay status. The employer was credible in his testimony that in the later weeks of

2015 the employer was only making inquiries about certain office procedures and programs. The claimant was under no obligation to take these calls and they were not part of the work function.

The Wage Claim is valid for the first two weeks of November 2015 in the amount of \$600.00. Any claim for wages from that point on until January 2016 is invalid.

**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 that she was not paid all wages due, it is hereby ruled that the Wage Claim is valid in the amount of \$600.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$600.00, less any applicable taxes, within 20 days of the date of this Order.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: August 29, 2016

Original:      Claimant  
cc:            Employer

TFH/aph