

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

SERENITY PAINTING AND RENOVATION

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: Serenity Painting and Renovation, 63 Emerald St., Keene, NH 03431

Date of Hearing: August 25, 2016

Case No.: 53235

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 1, 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 27, 2016. The employer did show up for the hearing.

The claimant testified that he worked for the employer from April until May 27, 2016. The claimant stated that his last pay period was not paid. He testified that he recorded all hours worked and the hours were texted to the employer. The claimant said that his last recorded time was for 46.5 hours and he was paid at an hourly rate of \$14.00.

The claimant testified that he received two payments towards the wages owed, one payment of \$60.00 and another payment of \$87.00. The claimant filed the Wage Claim for the remaining balance of \$504.00.

The employer testified that the hours were worked and he was having financial difficulty in paying the wages. He offered a weekly settlement and it was rejected by the claimant.

FINDINGS OF FACT

RSA 275:43 Weekly. –

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:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one

free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or

(e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

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.

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

The employer agrees that the wages are due and although he offered a settlement plan, it was rejected by the claimant. The law requires that wages be paid within certain time frames and this was not done here. The employer has the responsibility to pay for work performed and cannot have an employee work when wages cannot be paid under the law.

The Wage Claim is valid in the amount of \$504.00.

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 \$504.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED] in the total of \$504.00, less any applicable taxes, within 20 days of the date of this Order.

Thomas F. Hardiman
Hearing Officer

Date of Decision: September 13, 2016
Original: Claimant
cc: Employer
TFH/das